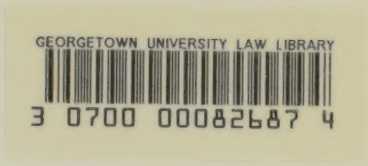
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92d Congress
2d Session

COMMITTEE PRINT

LEGISLATIVE HISTORY OF THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

(H.R. 1746, P.L. 92-261)

AMENDING TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

PREPARED BY THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

R1827
8-2-73

NOVEMBER 1972

Printed for the use of the Committee on Labor and Public Welfare

U.S. GOVERNMENT PRINTING OFFICE

74-699 O WASHINGTON : 1972

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[3] Senator Williams, sponsor and floor manager of the Senate bill, submitted a special section-by-section explanation of the Senate-passed version of the bill; similarly, Senator Williams as Chairman of the Senate Conferees and Mr. Perkins, as Chairman of the House Conferees, submitted identical section-by-section explanations of the Conference-passed version of the bill which was adopted by both houses. These analyses are particularly relevant as they represent a more detailed explanation of all the provisions of the bill as viewed by the sponsors and legislative leaders.

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92D CONGRESS
1ST SESSION

H. R. 1746

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. HAWKINS (for himself, Mr. REID of New York, Mr. BINGHAM, Mrs. CHISHOLM, Mr. CLAY, Mr. COLLINS of Illinois, Mr. CONYERS, Mr. CORMAN, Mr. DELLUMS, Mr. DENT, Mr. DIGGS, Mr. METCALFE, Mrs. MINK, Mr. MITCHELL, Mr. NIX, Mr. RANGEL, and Mr. STOKES) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(a) Effective one year after the date of enactment of this Act, strike "twenty-five" wherever it appears therein and insert in lieu thereof "eight".

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(b) In subsection (a) insert "governments, governmental agencies, political subdivisions," after "individuals,".

(c) In subsection (b) strike out "a State or political subdivision thereof" and insert in lieu thereof "the District of Columbia";

(d) In subsection (c) strike out "or an agency of a State or political subdivision of a State,".

(e) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

SEC. 3. Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) is amended by striking out "or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution".

SEC. 4. Section 706 of the Civil Rights Act of 1964 (89 Stat. 259; 42 U.S.C. 2000e–5) is amended to read as follows:

"PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

"SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of

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the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is no reason to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes

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public information in violation of this subsection shall be fined not more than $1,000 or imprisoned not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, as far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the

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filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge shall be filed within one hundred eighty days after the alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice

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with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by the person aggrieved within three hundred days after the alleged unlawful employment practive occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case

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shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other persons a right to intervene or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: *Provided*, That interim earnings

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or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice, approved by the Commission, and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsection (k) and the provisions of that subsection shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsection (h) or (i) of this section shall be determined on the record.

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"(k) The Commission may petition any United States court of appeals within any circuit wherein the unlawful employment practice in question occurred or wherein the respondent resides or transacts business for the enforcement of its order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall cause notice thereof to be served upon the parties to the proceeding before the Commission, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission. No objection that has not been urged before the Commission, its member, or agent, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence

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is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) Any party aggrieved by a final order of the Commission granting or denying, in whole or in part, the relief sought may obtain a review of such order in any United States court of appeals in the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the United States Court of Appeals for the District of

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Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission (and to the other parties to the proceeding before the Commission) and thereupon the Commission shall file in the court the certified record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (k), the findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and the court shall have the same jurisdiction to grant such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The commencement of proceedings under this subsection or subsection (k) shall not, unless ordered by the court, operate as a stay of the order of the Commission.

"(m) The provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (47 Stat. 70 et seq.; 29 U.S.C.

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101–115), shall not apply with respect to (1) proceedings under subsection (k), (l), or (o) of this section, (2) proceedings under section 707 of this title, or (3) proceedings under section 715 of this title.

"(n) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the General Counsel of the Commission.

"(o) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding the Commission may bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of

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title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection."

SEC. 5. Section 707 of the Civil Rights Act of 1964 (78 Stat. 261; 42 U.S.C. 2000e–6) is amended by adding the following new subsections:

"(e) Any record or paper required by section 709 (c) of this title to be preserved or maintained shall be made available for inspection, reproducton, and copying by the Commission, the Attorney General, or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the Commission, the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any

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court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper.

"(d) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (e) and (f) of this section.

"(e) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the

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Attorney General or Acting Attorney General, as appropriate.

"(f) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: *Provided*, That all such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof."

SEC. 6. Section 709 (b), (c), and (d) of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e–8(b)–(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may pay by

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advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulation or orders thereunder. The Commission shall, by regulations, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training pro-

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gram to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides or transacts business, shall, upon application of the Commission,

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have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish, upon request and without cost to any State or local agency charged with the administration of a fair employment practice law, information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e–9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Rela-

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tions Act (49 Stat. 455; 29 U.S.C. 161) shall apply: *Provided*, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703 (a) (2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–2 (a) (2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703 (c) (2) of such Act (78 Stat. 255; 42 U.S.C. 2000e–2 (c) (2)) is amended by inserting the words "or applicants for membership" after the word "membership".

(c) Section 703 (h) of such Act (78 Stat. 257; 42 U.S.C. 2000e–2 (h)) is amended by striking out "to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin" and inserting in lieu thereof the following: "to give and to act upon the results of any professionally developed ability test which is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position con-

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cerned: *Provided*, That such test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin."

(d) (1) Section 704 (a) of such Act (78 Stat. 256; 42 U.S.C. 2000e–3 (a)) is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704 (a).

(2) Section 704 (b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs.", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(e) (1) The second sentence of section 705 (a) (78 Stat. 258; 42 U.S.C. 2000e–4 (a)) is amended by inserting before the period at the end thereof a comma and the following: "and all members of the Commission shall continue to serve until their successors are appointed and qualified: *Provided*, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy

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shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted".

(2) The fourth sentence of section 705 (a) of such Act is amended to read as follows: "The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(f) Section 705 (g) (1) of such Act (78 Stat. 258; 42 U.S.C. 2000e–4 (g) (1)) is amended by inserting before the semicolon at the end thereof the following: "and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 (b) of the Revised Statutes (31 U.S.C. 665 (b))".

(g) Section 705 (g) (6) of such Act (78 Stat. 259;

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42 U.S.C. 2000e–4(g)(6)) is amended by striking out "section 706" and inserting in lieu thereof "section 715".

(h) Section 713 of such Act (78 Stat. 265; 42 U.S.C. 2000e–12) is amended by adding at the end thereof the following new subsections:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i) and (k) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter: *Provided*, That nothing in this subsection authorizes the Commission to provide

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for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

(i) Section 714 of such Act (78 Stat. 265; 42 U.S.C. 2000e–13) is amended by striking out "section 111" and inserting in lieu thereof "sections 111 and 1114".

(j) Section 715 of such Act (78 Stat. 265; 42 U.S.C. 2000e–14) is amended to read as follows:

"CIVIL ACTIONS BY PERSONS AGGRIEVED

"SEC. 715. (a) If (1) the Commission determines that there is no reasonable cause to believe the charge is true and dismisses the charge in accordance with section 706(b), (2) finds no probable jurisdiction and dismisses the charge, or (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706 (c) or (d), the Commission has not either (i) issued a complaint in accordance with section 706(f), (ii) determined that there is not reasonable cause to believe the charge is true and dismissed the charge in accordance with section 706(b) or found no probable jurisdiction and dismissed the

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charge, or (iii) entered into a conciliation agreement acceptable to the Commission and to the person aggrieved in accordance with section 706(f) or an agreement with the parties in accordance with section 706(i), the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission to intervene in such civil action if it certifies that the case is of general public importance. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto: *Provided*, That, upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

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"(b) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this section. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, or in the judicial district in which the plaintiff would have been employed but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper.

"(c) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without backpay (payable by

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the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any backpay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704 (a).

"(d) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (a), the Commission may commence proceedings to compel compliance with such order.

"(e) Any civil action brought under subsection (a) and any proceedings brought under subsection (d) shall be subject to appeal as provided in sections 1291 and 1292 title 28, United States Code.

"(f) In any action or proceeding under this section, the

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court, in its discretion, may allow the prevailing plaintiff a reasonable attorney's fee as part of the costs."

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(55) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

SEC. 10. Sections 706 and 710 of the Civil Rights Act of 1964, as amended by this Act, shall not be applicable to charges filed with the Commission prior to the effective date of this Act.

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new sections:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment in the competitive service (as defined in section 2102 of title 5 of the United

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States Code) or employees or applicants for employment in positions with the District of Columbia government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: *Provided*, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

"(c) Within thirty days of receipt of notice given under subsection (b), the employee or applicant for employment, if aggrieved by the final disposition of his complaint, may file a civil action as provided in section 715, in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 715 shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission

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which the Director of the Bureau of the Budget determines relate to nondiscrimination in government employment are transferred to the Equal Employment Opportunity Commission.

"(f) All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order.

"EFFECT UPON OTHER LAW

"SEC. 718. Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

SEC. 12. New section 717, added by section 11 of this Act, shall become effective six months after the date of enactment of this Act.

[From the Congressional Record—House, June 2, 1971]

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HAWKINS. Committee on Education and Labor. H.R. 1746. A bill to further promote equal employment opportunities for American workers (Rept. No. 92–238). Referred to the Committee of the Whole House on the State of the Union.

Union Calendar No. 92

92D CONGRESS
1ST SESSION

H. R. 1746

[Report No. 92–238]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. HAWKINS (for himself, Mr. REID of New York, Mr. BINGHAM, Mrs. CHISHOLM, Mr. CLAY, Mr. COLLINS of Illinois, Mr. CONYERS, Mr. CORMAN, Mr. DELLUMS, Mr. DENT, Mr. DIGGS, Mr. METCALFE, Mrs. MINK, Mr. MITCHELL, Mr. NIX, Mr. RANGEL, and Mr. STOKES) introduced the following bill; which was referred to the Committee on Education and Labor

JUNE 2, 1971

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(a) Effective one year after the date of enactment of this Act, strike "twenty-five" wherever it appears therein and insert in lieu thereof "eight".

(b) In subsection (a) insert "governments, governmental agencies, political subdivisions," after "individuals,".

(c) In subsection (b) strike out "a State or political subdivision thereof" and insert in lieu thereof "the District of Columbia".

(d) In subsection (c) strike out "or an agency of a State or political subdivision of a State,".

(e) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

SEC. 3. Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) is amended by striking out "or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution".

SEC. 4. Section 706 of the Civil Rights Act of 1964 (89 Stat. 259; 42 U.S.C. 2000e–5) is amended to read as follows:

"PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

"SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of

the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is no reason to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes

public information in violation of this subsection shall be fined not more than $1,000 or imprisoned not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, as far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the

filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge shall be filed within one hundred eighty days after the alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice

with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by the person aggrieved within three hundred days after the alleged unlawful employment practive occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case

shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other persons a right to intervene or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: *Provided*, That interim earnings

or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice, approved by the Commission, and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsection (k) and the provisions of that subsection shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsection (h) or (i) of this section shall be determined on the record.

"(k) The Commission may petition any United States court of appeals within any circuit wherein the unlawful employment practice in question occurred or wherein the respondent resides or transacts business for the enforcement of its order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall cause notice thereof to be served upon the parties to the proceeding before the Commission, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission. No objection that has not been urged before the Commission, its member, or agent, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence

is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) Any party aggrieved by a final order of the Commission granting or denying, in whole or in part, the relief sought may obtain a review of such order in any United States court of appeals in the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the United States Court of Appeals for the District of

Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission (and to the other parties to the proceeding before the Commission) and thereupon the Commission shall file in the court the certified record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (k), the findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and the court shall have the same jurisdiction to grant such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The commencement of proceedings under this subsection or subsection (k) shall not, unless ordered by the court, operate as a stay of the order of the Commission.

"(m) The provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (47 Stat. 70 et seq.; 29 U.S.C.

101–115), shall not apply with respect to (1) proceedings under subsection (k), (l), or (o) of this section, (2) proceedings under section 707 of this title, or (3) proceedings under section 715 of this title.

"(n) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the General Counsel of the Commission.

"(o) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding the Commission may bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of

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title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection."

SEC. 5. Section 707 of the Civil Rights Act of 1964 (78 Stat. 261; 42 U.S.C. 2000e–6) is amended by adding the following new subsections:

"(e) Any record or paper required by section 709 (c) of this title to be preserved or maintained shall be made available for inspection, reproducton, and copying by the Commission, the Attorney General, or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the Commission, the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any

court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper.

"(d) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (e) and (f) of this section.

"(e) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the

Attorney General or Acting Attorney General, as appropriate.

"(f) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: *Provided*, That all such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof."

SEC. 6. Section 709 (b), (c), and (d) of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e–8 (b)–(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may pay by

advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulation or orders thereunder. The Commission shall, by regulations, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training pro-

gram to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides or transacts business, shall, upon application of the Commission,

have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish, upon request and without cost to any State or local agency charged with the administration of a fair employment practice law, information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e–9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Rela-

tions Act (49 Stat. 455; 29 U.S.C. 161) shall apply: *Provided*, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703 (a) (2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–2 (a) (2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703 (c) (2) of such Act (78 Stat. 255; 42 U.S.C. 2000e–2 (c) (2)) is amended by inserting the words "or applicants for membership" after the word "membership".

(c) Section 703 (h) of such Act (78 Stat. 257; 42 U.S.C. 2000e–2 (h)) is amended by striking out "to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin" and inserting in lieu thereof the following: "to give and to act upon the results of any professionally developed ability test which is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position con-

cerned: *Provided*, That such test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin."

(d) (1) Section 704(a) of such Act (78 Stat. 256; 42 U.S.C. 2000e–3(a)) is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704(a).

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(e) (1) The second sentence of section 705(a) (78 Stat. 258; 42 U.S.C. 2000e–4(a)) is amended by inserting before the period at the end thereof a comma and the following: "and all members of the Commission shall continue to serve until their successors are appointed and qualified: *Provided*, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy

shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted".

(2) The fourth sentence of section 705 (a) of such Act is amended to read as follows: "The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(f) Section 705 (g) (1) of such Act (78 Stat. 258; 42 U.S.C. 2000e-4 (g) (1)) is amended by inserting before the semicolon at the end thereof the following: "and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 (b) of the Revised Statutes (31 U.S.C. 665 (b))".

(g) Section 705 (g) (6) of such Act (78 Stat. 259;

42 U.S.C. 2000e–4(g)(6)) is amended by striking out "section 706" and inserting in lieu thereof "section 715".

(b) Section 713 of such Act (78 Stat. 265; 42 U.S.C. 2000e–12) is amended by adding at the end thereof the following new subsections:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i) and (k) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter: *Provided*, That nothing in this subsection authorizes the Commission to provide

for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

(i) Section 714 of such Act (78 Stat. 265; 42 U.S.C. 2000e–13) is amended by striking out "section 111" and inserting in lieu thereof "sections 111 and 1114".

(j) Section 715 of such Act (78 Stat. 265; 42 U.S.C. 2000e–14) is amended to read as follows:

"CIVIL ACTIONS BY PERSONS AGGRIEVED

"SEC. 715. (a) If (1) the Commission determines that there is no reasonable cause to believe the charge is true and dismisses the charge in accordance with section 706(b), (2) finds no probable jurisdiction and dismisses the charge, or (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706 (c) or (d), the Commission has not either (i) issued a complaint in accordance with section 706(f), (ii) determined that there is not reasonable cause to believe the charge is true and dismissed the charge in accordance with section 706(b) or found no probable jurisdiction and dismissed the

charge, or (iii) entered into a conciliation agreement acceptable to the Commission and to the person aggrieved in accordance with section 706(f) or an agreement with the parties in accordance with section 706(i), the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission to intervene in such civil action if it certifies that the case is of general public importance. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto: *Provided*, That, upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

"(b) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this section. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, or in the judicial district in which the plaintiff would have been employed but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper.

"(c) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without backpay (payable by

the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any backpay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704 (a).

"(d) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (a), the Commission may commence proceedings to compel compliance with such order.

"(e) Any civil action brought under subsection (a) and any proceedings brought under subsection (d) shall be subject to appeal as provided in sections 1291 and 1292 title 28, United States Code.

"(f) In any action or proceeding under this section, the

court, in its discretion, may allow the prevailing plaintiff a reasonable attorney's fee as part of the costs."

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(55) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

SEC. 10. Sections 706 and 710 of the Civil Rights Act of 1964, as amended by this Act, shall not be applicable to charges filed with the Commission prior to the effective date of this Act.

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new sections:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment in the competitive service (as defined in section 2102 of title 5 of the United

States Code) or employees or applicants for employment in positions with the District of Columbia government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: *Provided*, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

"(c) Within thirty days of receipt of notice given under subsection (b), the employee or applicant for employment, if aggrieved by the final disposition of his complaint, may file a civil action as provided in section 715, in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 715 shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission

which the Director of the Bureau of the Budget determines relate to nondiscrimination in government employment are transferred to the Equal Employment Opportunity Commission.

"(f) All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order.

"EFFECT UPON OTHER LAW

"SEC. 718. Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

SEC. 12. New section 717, added by section 11 of this Act, shall become effective six months after the date of enactment of this Act.

92D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 92-238

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

JUNE 2, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY AND SEPARATE VIEWS

[To accompany H.R. 1746]

The Committee on Education and Labor, to whom was referred the bill (H.R. 1746) to further promote equal employment opportunities for American workers, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF LEGISLATION

The basic purpose of H.R. 1746 is to grant the Equal Employment Opportunity Commission authority to issue, through well established procedures, judicially enforceable cease and desist orders. The bill would transfer the functions and responsibilities of the Office of Federal Contract Compliance (now in the Department of Labor—pursuant to Executive Order 11246) to the Equal Employment Opportunity Commission; and transfer the Attorney General's authority in practice or pattern discrimination suits to the Equal Employment Opportunity Commission. The bill would broaden jurisdictional coverage by deleting the existing exemptions of State and local government employees and of certain employees connected with educational institutions. The bill would extend some protection to Federal employees. One year after enactment, coverage is extended to employers and labor unions with eight or more employees or members, a reduction from the present requirement of 25 employees or members.

BACKGROUND OF LEGISLATION

The Equal Employment Opportunity Commission was established under the authority of Title VII of the Civil Rights Act of 1964. Under that authority the Commission is not given the power to issue judicially enforceable orders but is limited essentially to the function of conciliation. In 1965 the Committee recommended passage of a bill supporting cease and desist authority. That bill (H.R. 10065) was acted on favorably in the House of Representatives but was not taken up by the Senate.

In the 91st Congress the Senate succeeded in passing S. 2453, a bill granting the Equal Employment Opportunity Commission self-enforcing cease and desist authority. This Committee, during the second half of the 91st Congress, favorably reported H.R. 17555, identical, with two exceptions, to H.R. 1746. Neither S. 2453 nor H.R. 17555 reached the House floor for debate.

Provisions in H.R. 1746 not found in H.R. 17555 relate to the transfer of the functions and responsibilities of the Office of Federal Contract Compliance (pursuant to Executive Order 11246) to the Equal Employment Opportunity Commission; and the transfer of the Attorney General's authority in "pattern or practice" discrimination suits to the Equal Employment Opportunity Commission.

Time and experience have re-enforced this Committee's strongly held view of the necessity of establishing the Equal Employment Opportunity Commission as a quasi-judicial agency with authority to obtain enforcement of orders. H.R. 1746 is an effort to implement in a meaningful way the national policy of equal employment opportunity for employees without discrimination because of race, color, religion, national origin, or sex.

SUBCOMMITTEE HEARINGS

The General Subcommittee on Labor held six days of public hearings on H.R. 17555 and related bills during the 91st Congress. The principal witnesses were: Honorable William H. Brown, III, Chairman, Equal Employment Opportunity Commission; Deputy Attorney General Richard G. Kleindienst; a panel representing the Leadership Conference on Civil Rights, headed by Clarence Mitchell, Washington Bureau, NAACP, including Thomas C. Harris, Associate Counsel, AFL–CIO; former Commission Chairman Clifford L. Alexander, Jr.; and Irving Kator, Director, Federal Equal Employment Opportunity, U.S. Civil Service Commission.

The subcommittee held hearings on H.R. 1746 on March 3, 4, and 18, 1971. These hearings were primarily concerned with the transfer of the Office of Federal Contract Compliance and the transfer of the Attorney General's practice or pattern discrimination authority to the Equal Employment Opportunity Commission. Witnesses, however, were free to and did submit statements and discuss other significant aspects of the proposed legislation. The principal witnesses were: Deputy Assistant Attorney General David L. Norman; Under Secretary of Labor Laurence Silberman; Assistant Secretary of Labor Arthur Fletcher; OFCC Director John Wilks; Commission Chairman

William H. Brown, III; Howard Glickstein, Staff Director, U.S. Commission on Civil Rights; U.S. Representative Shirley Chisholm; U.S. Representative Bella Abzug; Thomas C. Harris, Associate General Counsel, AFL–CIO; Clarence Mitchell, NAACP; Irving Kator, Assistant Executive Director, U.S. Civil Service Commission; Don White, American Retail Federation; Lucille Shriver, National Federation of Business and Professional Woman; Robert Nystrom, Motorola, Inc.; and Warren Anderson, The Black Committee, Maywood, Illinois.

The subcommittee concluded its consideration of the bill in executive session on April 7, 1971, voting to report the bill to the full Committee without amendment. The Committee on Education and Labor ordered H.R. 1746 by a rollcall vote of 21 to 12 on May 4, 1971.

NEED FOR THE BILL

A little more than 6 years ago, Congress enacted Title VII of the Civil Rights Act of 1964, Public Law 88–352, 42 U.S.C. 2000(e)–2000(e–15). That act recognized the prevalence of discriminatory employment practices in the United States and the need for Federal legislation to deal with the problem. Title VII of that Act, created the Equal Employment Opportunity Commission which became effective July 2, 1965. In the intervening 6 years, the Commission made an heroic effort to reduce discrimination in employment which was found to pervade our system.

Despite the commitment of Congress to the goal of equal employment opportunity for all our citizens, the machinery created by the Civil Rights Act of 1964 is not adequate.

Despite the progress which has been made since passage of the Civil Rights Act of 1964, discrimination against minorities and women continues. The persistence of discrimination, and its detrimental effects require a reaffirmation of our national policy of equal opportunity in employment. It is essential that seven years after the passage of the Civil Rights Act of 1964, effective enforcement procedures be provided the Equal Employment Opportunity Commission to strengthen its efforts to reduce discrimination in employment.

An examination of the statistics with respect to the progress of equal employment opportunities clearly shows that the voluntary approach currently applied has failed to eliminate employment discrimination. During the first 5 years of its existence, the Commission has received more than 52,000 charges. Of these, 35,445 were recommended for investigation. Of this number approximately 56% involved complaints of discrimination because of race, 23% discrimination on sex, and the remainder involved charges of discrimination because of national origin or religion.

The number of charges is increasing. The incidence of discrimination does not appear to be waning. In Fiscal Year 1969, the Commission received 12,148 charges; in Fiscal Year 1970, the Commission received 14,129 charges. In testimony before this Committee, William H. Brown, III, Chairman of the Equal Employment Opportunity Commission, stated that during the first seven and a half months of the current fiscal year, the Commission has received 14,644 charges, a greater number than the total charges received for all of last year.

With the steady growth in the number of cases filed with the Commission, an effective and suitable procedure and remedy become increasingly important. Effective remedies have not resulted from present practice. Of the 35,445 charges that were recommended for investigation, reasonable cause was found in over 63% of the cases, but in less than half of these cases was the Commission able to achieve a totally or even partially successful conciliation.

There is nothing that would lead anyone to expect that with the limited authority currently available to it the Commission might produce any higher degree of compliance in the future. With the increasing number of complaints it now receives, and in the absence of adequate cease and desist enforcement procedures, the Commission can only be expected to catalog an increasing number of complaints for which there is no reasonable expectation of an adequate remedy.

The impact of the Commission's inability to obtain relief from employment discrimination is reflected in an examination of statistics showing the distribution of minorities in occupational groups. While the tables show some improvement since 1964, minority groups are not obtaining their rightful place in our society.

PERCENT DISTRIBUTION OF TOTAL WORK FORCE BY OCCUPATIONAL GROUPS

Occupation	Nonwhites employed			White employed	
	1964	1969	1970	1969	1970
Professional technician	6.7	8.3	9.1	14.5	14.8
Farmer, farm manager	1.9	1.0	1.0	2.5	2.4
Managers, proprietors	2.6	3.0	3.5	11.1	11.4
Clerical	7.6	12.9	13.2	17.7	18.0
Sales	1.8	2.0	2.1	6.5	6.7
Craftsmen	7.0	8.5	8.2	13.6	13.5
Operatives	20.3	23.9	23.7	17.8	17.0
Private household	13.6	8.5	7.7	1.3	1.3
Service workers	18.7	18.2	18.3	9.2	9.4
Farmworkers	6.8	3.2	2.9	1.7	1.6
Laborers (nonfarm)	13.0	10.5	10.3	4.0	4.1

The situation of the working women is no less serious. Women currently comprise approximately 38% of the total work force of the Nation. There are approximately 30 million employed women.

Recent statistics released from the U.S. Department of Labor indicate that there exists a profound economic discrimination against women workers. Ten years ago, women made 60.8% of the average salaries made by men in the same year; in 1968, women's earnings still only represented 58.2% of the salaries made by men in that year. Similarly, in that same year, 60% of women, but only 20% of men earned less than $5,000. At the other end of the scale, only 3% of women, but 28% of men had earnings of $10,000 or more.

Women are subject to economic deprivation as a class. Their self-fulfillment and development is frustrated because of their sex. Numerous studies have shown that women are placed in the less challenging, the less responsible and the less remunerative positions on the basis of their sex alone.

Such blatantly disparate treatment is particularly objectionable in view of the fact that Title VII has specifically prohibited sex dis-

crimination since its enactment in 1964. The Equal Employment Opportunity Commission has progressively involved itself in the problems posed by sex discrimination, but its efforts here, as in the area of racial discrimination, have been ineffective due directly to its inability to enforce its findings.

In recent years, the courts have done much to create a body of law clearly disapproving of sex discrimination in employment.[1] Despite the efforts of the courts and the Commission, discrimination against women continues to be widespread, and is regarded by many as either morally or physiologically justifiable.

This Committee believes that women's rights are not judicial divertissements. Discrimination against women is no less serious than other forms of prohibited employment practices and is to be accorded the same degree of social concern given to any type of unlawful discrimination.

Enactment of this bill will not automatically end employment discrimination in this country. The bill offers no panaceas or guarantees of success. The experiences of the last 6 years under Title VII, while in many respects reflecting major advancements in securing equal opportunity for all Americans, nonetheless are disappointing in terms of what minorities and women in this country have a right to expect.

The time has come to bring an end to job discrimination once and for all, and to insure every citizen the opportunity for the decent self-respect that accompanies a job commensurate with one's abilities. The hopeful prospects that Title VII offered millions of Americans in 1964 must be revived.

Estimate of Costs

In an effort to secure an accurate estimate of the projected costs of this legislation to satisfy the requirements of clause 7 of rule XIII the General Subcommittee on Labor, through its chairman, the Honorable John H. Dent, sought the views of the Equal Employment Opportunity Commission. The response of the Commission to that inquiry is contained in the following letter:

Equal Employment Opportunity Commission,
Washington, D.C., April 22, 1971.

Hon. John H. Dent,
Chairman, General Subcommittee on Labor, Committee on Education and Labor, House of Representatives, Washington, D.C.

Dear Mr. Chairman: Thank you for your letter of March 26, 1971, requesting this Commission, pursuant to Rule XIII, clause 7 of the Rules of the House of Representatives, to submit to the Subcommittee estimated costs for carrying out the provisions of H.R. 1746. I have set out below our cost projections with respect to H.R. 1746, based upon available data and workload approximations for FY 1971 through FY 1976.

It is the Commission's view that the accompanying figures represent a reasonable estimate of minimum additional budgetary requirements for administration of the three new areas of the application of Title VII of the Civil Rights Act of 1964 heretofore not discharged by any Federal agency:

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[1] See e.g., *Weeks* v. *Southern Bell Telephone Co.*, 408 F. 2d 228 (5th Cir. 1969); *Bowe* v. *Colgate Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969); *Phillips* v. *Martin Marietta Corp.*, ——— U.S. ——, ——— S. Ct. ———, 3 FEP Cases 40 (S. Ct. 1971); *Diaz* v. *Pan American*, ——— F. 2d ———, 3 EPD 8166 (C.A. 5, 1971) and cases cited therein.

COST PROJECTIONS FOR H.R. 1746

[Figures in thousands]

	Fiscal year—					
	1971	1972	1973	1974	1975	1976
Cease and desist operations	501	9,431	11,912	12,081	12,123	12,151
Federal, State, county, and municipal jurisdiction		2,600	3,900	3,900	3,900	3,900
Extended jurisdiction to 8 or more employees		685	4,034	4,213	4,223	4,243
Total	501	12,716	19,846	20,194	20,246	20,294

In preparing the above figures, several assumptions have been made which are, I feel, extremely important for consideration of these projections. In the first instance, despite the Commission's desire to commence operations under its own enforcement powers, it is unlikely that any of the operations proposed in H.R. 1746 could be implemented in any significant manner in FY 1971. It will be necessary to develop administrative procedures to implement the bill, and this will require some time. For example, the writing and approval of rules to establish operating procedures and personnel recruitment to meet the additional operational requirements in H.R. 1746 will require several months. It is, therefore, realistic to assume that implementation of the cease and desist operations as well as the other aspects of enforcement contained in the bill would not begin until FY 1972, and that the first full year of operation would not be until FY 1973. Accordingly, the cost projections for FY 1971, and also for FY 1972, based upon a full year's operation as requested by the Subcommittee, are hypothetical, insofar as they assume that operations under H.R. 1746 will begin immediately upon its passage.

The cost projections for the cease and desist operations as proposed by H.R. 1746 have been derived from Commission caseload projections. Using these figures as a base, the staffing requirements for implementation of the hearing procedures encompassed by the cease and desist powers have been projected on the basis of an adjudication of 15 cases per year for each hearing examiner and the preparation and presentation of 20 cases per year for each trial attorney. From these figures, allowances have also been made for a *minimum* of supporting staff and expenses which will be involved in maintaining the hearing process. It is difficult for me to say at this time whether the cease and desist cost projections contained herein are accurate. The assumptions regarding the number of cases that a hearing examiner and a trial attorney will handle per year are based upon approximations of the average length of an adjudication of a Title VII violation based upon the estimated degree of complexity involved in such cases. It may well evolve that these approximations are not realistic; the estimates that each hearing examiner will be able to hear 15 cases per year and that each trial attorney can prepare 20 cases per year are derived from NLRB experience and may not hold true for Title VII litigation.

The extension of Title VII jurisdiction to include Federal, State, county and municipal employees will bring an additional 12,880,000 employees within the provisions of the Act. As there is currently no uniform Federal law which applies in this area, it is difficult to project, with any degree of accuracy, the impact of this extension of jurisdiction. However, due to the large number of employees which this will bring within the provisions of the Act, it can be safely assumed that this new availability of a Federal administrative forum, where none has been available, will generate a substantial number of complaints. The figures projected in the table above for this area of enforcement have been derived from existant Civil Service Commission estimates regarding Federal EEO complaint adjudication and upon an approximation, based upon the number of employees involved, for enforcement of complaints against State and local agencies.

The figures projected for the extension of Title VII jurisdiction to include all persons employed in establishments which employ eight or more full time employees have been derived from a projected 25% increase in the Commission's workload due to the extended coverage. The cost projections for this extended jurisdiction for FY 1972 assume that the jurisdictional expansion will only operate for the last few months of that year and will not be operational in FY 1971 as H.R. 1746 provides that this power will not become effective until one year after the Act is passed. Similarly, the cost projection for the extended

jurisdiction to Federal, State, county and municipal employees in FY 1972 is based upon less than a full year's operation, as the Act provides for a six-month's delay in instituting this function.

The other two areas of enforcement to be assigned to the Commission by H.R. 1746, transfer of OFCC functions and enforcement of pattern or practice suits, are currently administered by other Federal agencies, and do not, therefore, represent areas of Federal enforcement where new funds will be needed. As regards both the transfer of OFCC functions and the enforcement of pattern or practice suits by the EEOC, H.R. 1746 specifically provides that the functions of the respective agency currently administering these operations, together with "such personnel, property, records, and *unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred* . . ." (emphasis added) shall be transferred to the Commission. Accordingly, in projecting requirements for these operations, the Commission restricted its projections to using only the appropriation requirements proposed by these agencies, as set forth below:

[In thousands]

	Fiscal year—					
	1971	1972	1973	1974	1975	1976
OFCC functions	262	2,594	2,600	2,600	2,600	2,600
Pattern or practice enforcement	300	1,800	1,800	1,800	1,800	1,800

Once the above referenced operations have been transferred to the Commission, however, it may subsequently be necessary to modify these figures, dependent upon any change in the enforcement patterns which may become apparent after the consolidation of the enforcement of employment discrimination as proposed by H.R. 1746.

If I can be of any further assistance to you on this matter, please feel free to call on me.

Sincerely,

WILLIAM H. BROWN, III.

The estimate by the General Subcommittee on Labor of the costs of implementing H.R. 1746 vary somewhat from the views of the Commission and are contained in the following chart:

ESTIMATE BY THE GENERAL SUBCOMMITTEE ON LABOR OF THE COST OF IMPLEMENTING H.R. 1746

[In thousands]

	Fiscal year—					
	1971	1972	1973	1974	1975	1976
Cease and desist operations	300	7,431	9,912	10,081	11,123	11,151
Extension of jurisdiction to Federal employees		900	900	900	900	900
Extension of jurisdiction to State, county, and municipal employees		1,600	2,034	3,000	3,000	4,000
Transfer of OFCC functions	262	2,594	2,600	2,600	2,600	2,600
Transfer of pattern or practice functions	300	1,800	1,800	1,800	1,800	1,800
Extension of jurisdiction to 8 or more employees		3,034	3,213	3,223	3,223	4,243

It will be noted that the subcommittee estimates, in most cases, are lower than those of the Commission. With all due respect to the Commission, it is felt that staff recruitment and preparation of applicable implementing rules and regulations will require more time than anticipated by the Commission. Further, the mere existence of a law with enforcement authority will be a deterring factor; therefore it is highly speculative how many new cases will arise as a result of the extension of coverage. The subcommittee does not anticipate any significant costs based on this factor; though a large number of small employers

would be covered. Also, the law would not usurp the State agencies, and undoubtedly a large number of cases would still be settled at the State level.

The transfer of functions from OFCC, CSC, and Justice, will not require additional Federal expenditures because the transfers will also involve the conveyance of "unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred . . ."

Major Provisions of the Bill

CEASE AND DESIST ENFORCEMENT POWERS

During the preparation and presentation of Title VII of the Civil Rights Act of 1964, employment discrimination tended to be viewed as a series of isolated and distinguishable events, due, for the most part, to ill-will on the part of some identifiable individual or organization. It was thought that a scheme which stressed conciliation rather than compulsory processes would be more appropriate for the resolution of this essentially "human" problem. Litigation, it was thought, would be necessary only on an occasional basis in the event of determined recalcitrance. Experience, however, has shown this to be an oversimplified expectation, incorrect in its conclusions.

Employment discrimination, as we know today, is a far more complex and pervasive phenomenon. Experts familiar with the subject generally describe the problem in terms of "systems" and "effects" rather than simply intentional wrongs. The literature on the subject is replete with discussions of the mechanics of seniority and lines of progression, perpetuation of the present effects of earlier discriminatory practices through various institutional devices, and testing and validation requirements.[2] The forms and incidents of discrimination which the Commission is required to treat are increasingly complex. Particularly to the untrained observer, their discriminatory nature may not appear obvious at first glance. A recent striking example was provided by the U.S. Supreme Court in its decision in *Griggs* v. *Duke Power Co.*, —— U.S. ——, 91 S.Ct. 849, 3 FEP Cases 175 (S.Ct. 1971), where the Court held that the use of employment tests as determinants of an applicant's job qualification, even when nondiscriminatory and applied in good faith by the employer, was in violation of Title VII if such tests work a discriminatory effect in hiring patterns and there is no showing of an overriding business necessity for the use of such criteria.

It is increasingly obvious that the entire area of employment discrimination is one whose resolution requires not only expert assistance, but also the technical perception that a problem exists in the first place, and that the system complained of is unlawful.

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[2] See, e.g., Note.—80 Harv. L. Rev. 1260 (1967); Cooper and Sobol, "Seniority and Testing Under Fair Employment Laws: A General Approach To Objective Criteria of Hiring and Promotion," 82 Harv. L. Rev. 1623 (1969); Blumrosen, "The Duty of Fair Recruitment Under the Civil Rights Act of 1964," 22 Rutgers Law Review 465 (1968); "Legal Restraints on Racial Discrimination in Employment" (1966); "Bonfield, the Substance of American Fair Employment Practices Legislation I and II," 61 and 62 Northwestern Law Review 707 and 19 (1967). See also *Quarles* v. *Phillip Morris*, 279 F. Supp. 505 (E.D. Va. 1968); *United States* v. *Local 189, United Papermakers* 282 F. Supp. 39 (E.D. La. 1968) 416 F. 2d 980 (C.A. 5, 1969); *Asbestos Workers, Local 53* v. *Vogler*, 407 F. 2d 1047 (C.A. 5 1969) and cases cited therein.

This kind of expertise normally does not reside in either the personnel or legal arms of employers, and the result in terms of conciliation is often an impasse, with the respondent unwilling or unable to understand the problem in the way the Commission perceives it. As we have already noted, the Commission has been able to achieve successful conciliation in less than half of the cases in which reasonable cause was determined. It has been the emphasis on voluntariness that has proven to be most detrimental to the successful operation of Title VII. In cases posing the most profound consequences, respondents have more often than not shrugged off the Commission's entreaties and relied upon the unlikelihood of the parties suing them.

Facts, statistical evidence and experience demonstrate that employers, labor organizations, employment agencies and joint labor-management committees continue to engage in conduct which contravenes the provisions of Title VII. The existence of such practices demonstrates the immediate need to effectuate the purposes of the Civil Rights Act of 1964.

H.R. 1746 remedies the failure to include effective enforcement powers in Title VII by enacting a new section 706 (section 4 of the bill) which empowers the Commission, after it has exhausted the procedures for achieving voluntary compliance, to issue complaints and hold hearings, to issue cease and desist orders against discriminatory practices, and to seek enforcement of its orders in the Federal Courts. Comparable powers are now exercised by most Federal regulatory agencies, the Federal Communications Commission, the Federal Trade Commission, and the National Labor Relations Board, to name a few, as well as the vast majority of State Fair Employment Practice Commissions. By providing this expansion of Title VII authority, we will remove present shortcoming of the act and provide a quick and effective remedy against employment discrimination.

Under the new section 706, in the event of a violation of Title VII the Commission would proceed in the following manner:

1. Upon the filing of a charge, the Commission would serve a copy of the charge on the respondent and would investigate. If, after investigation, the Commission decides that there is no reasonable cause to believe that the charge is true, it would dismiss the charge and notify both the person claiming to be aggrieved and the respondent (sec. 706 (b)).

2. If the Commission finds reasonable cause, it would seek to eliminate the unlawful practice by informal methods of conference, conciliation, and persuasion (sec. 706(b)). An agreement for the elimination of the alleged unlawful practice may be entered into by the Commission any time between the filing of the charge and until the record is filed with the Court of Appeals (sec. 706(i)).

3. Existing law relating to actions filed under State or local law has been retained. In such cases, the Commission will not assume jurisdiction for sixty days after the commencement of the action under the State or local authority (sec. 706(c)).

4. If the Commission determines that it is unable to secure an acceptable agreement, the Commission will then issue and serve upon the respondent a complaint setting forth the facts upon which the allegation is based and a notice of hearing (sec. 706(f)). The respondent

and the party claiming to be aggrieved shall be the primary partie to the proceeding, but the Commission may grant any other persons th right to intervene, file briefs, or appear as amicus curiae (sec. 706(g)).

5. After completion of a hearing, if an unlawful employment prac tice is found to have occurred, the Commission is empowered to issue a order requiring the respondent to cease and desist from continuin such practices. The Commission may also prescribe such relief as th case may require (sec. 706(h)). Hearings conducted pursuant to thi section will be governed by the Administrative Procedure Act, 5 U.S.C § 551, et. seq.

6. Any person who has been affected by a decision of the Commissio may petition for a review of such order in the appropriate Unite States court of appeals (sec. 706(i)). All litigation to which the Com mission is a party or affecting the Commission, except litigation in th Supreme Court, shall be conducted by the Commission's attorneys litigation in the Supreme Court will be conducted by the Attorney General (sec. 706(n)).

7. Where the Commission feels that, as a result of its preliminary investigation, prompt judicial action is necessary, it may petition the appropriate United States district court for a preliminary injunctio or temporary restraining order, pending its final disposition of the charge (sec. 706(o)).

The Committee has considered various enforcement mechanisms. Ex perience demonstrates that of the enforcement mechanisms available cease-and-desist authority will achieve the fairest and most expedi tious results.[3]

Administrative tribunals are better equipped to handle the com plicated issues involved in employment discrimination cases. In em ployment discrimination litigation the District Courts increasingly have found themselves grappling with difficult problems of discrimina tory practices inherent in employers' basic methods of recruitment hiring, placement or promotions. Issues that have perplexed court include plant-wide restructuring of pay scales and progression lines seniority rosters and testing.

The sorting out of the complexities surrounding employment dis crimination can give rise to enormous expenditure of judicial resource in already heavily overburdened Federal district courts. For example Judge Allgood of the Federal District Court for the Northeastern Dis trict of Alabama, wrote an opinion 157 pages in length in *U.S.* v. *H. K*

[3] **The committee's view regarding the benefits of cease and desist authority for th** Commission has received support from public interest groups. Typical is a letter to th General Subcommittee on Labor, from David A. Brody, Director of the Washington, D.C. office of the Anti Defamation League, stating: "In our view, authority to issue cease and de ist orders after an administrative hearing will be more effective in bringing about compliance with the law than will the court enforcement approach. It is only through the administrative hearing procedure that regulatory agencies are able to handle ex peditiously, and dispose of, the multitude of cases coming before them. The administrative agency is better suited and better geared than the courts for carrying out the public rights which Congress has enacted into law. As the late Justice Frankfurter has stated: 'Unlike courts, which are concerned primarily with the enforcement of private rights although public interests may thereby be implicated, administrative agencies are predominantly concerned with enforcing public rights although private interests may thereby be affected. To no small degree administrative agencies, for the enforcement of public rights were established by Congress, because more flexible and less traditional procedures were called for than those evolved by the courts. It is therefore essential to the vitality of the **administrative process that the procedural powers given to these administrative agencies** not be confined within the conventional modes by which business is done in courts.' Dissenting opinion, *Federal Communications Commission* v. *National Broadcasting Co Inc.*, 319 U.S. 239,248 (1943).

Porter, a Title VII suit alleging employment discrimination in a single steel plant. Judge Allgood stated in his opinion that enough use was made of pre-trail discovery in that case to "fill several court files".

Administrative tribunals are better suited to rapid resolution of such complex issues than are Courts. Efficiency and predicability will be enhanced if the necessarily detailed case by case findings of fact and fashioning of remedy is performed by experts in the subject matter. Moreover, administrative tribunals are less subject to technical rules governing such matters as pleadings and motion practice—which afford opportunities for dilatory tactics—and are less constrained by formal rules of evidence—which give rise to a lengthier (and more costly) process of proof.

Further, congested Court calendars necessitate inordinate delays in bringing cases to trial. In fiscal 1970, in the Southern District of New York, the average wait from the time a case was ready for trial until conjury trial was 38 months. In the Eastern District of Louisiana the delay was 24 months. While delays also are encountered in administrative proceedings, the average amount of time from the filing of a charge until the issuance of the trial examiner's decision in an unfair labor practice case before the National Labor Relations Board is less than 7½ months. Approximately 95% of unfair labor practice cases are disposed of without further proceedings beyond this stage.

In addition, past experience with administrative hearings and court enforcement indicates that cease-and-desist would be more effective. Experience has shown that one of the main advantages of granting enforcement power to a regulatory agency is that the existence of the sanction encourages settlement of complaints before the enforcement stage is reached.

The NLRB disposes of approximately 95% of its cases at the administrative level. Information on State fair employment practice commissions indicates this is similarly effective cease-and-desist authority. For example, through 1969, the Pennsylvania Human Relations Commission pointed to the fact that while 47 cease-and-desist orders were issued in equal employment cases before the State agency, another 3,838 complaints were processed successfully and adjusted without the need for such order.

Cease and desist authority will assure greater consistency in the development of equal employment law since decisions will be rendered by one agency rather than by several hundred district court judges. The uniformity and predictability of rules and decisions are of significant importance to employers who must look to the Federal Government for guidance in equal employment practices and to individuals who look to the Federal Government for leadership and assurance that employment opportunity exists without regard to race, color, religion, sex or national origin.

PRIVATE ACTIONS

The bill retains the right of an individual to bring a civil suit under the Act in Section 715 (Section 6(j) of the bill). Section 715 provides that if the Commission finds no reasonable cause, fails to make a finding of reasonable cause, or takes no action in respect to a charge, or has not within 180 days issued a complaint nor entered into a con-

ciliation or settlement agreement which is acceptable to the perso aggrieved, it shall notify the person aggrieved. Within 60 days afte such notification the person aggrieved shall then have the right t commence an action under the provisions of the Act against the re spondent in the proper United States district court. Provision for th individual's right to sue is presently contained in Section 706(e) o Title VII. Section 715 in the bill retains this right and extends both th period of Commission action and the time period allowed for filing a action in the appropriate court.

In recent years regulatory agencies have been submerged with in creasing workloads which strain their resources to the breaking point The Commission has stated, in testimony before this committee, tha its caseload has increased even more rapidly than its projections had anticipated. The result of this increasing use of many of the Federa regulatory agencies has frequently affected those agencies' abilities t remain current on all of the matters for which they are responsible This has led to lengthy delays in the administrative process and ha frequently frustrated the remedial role of the agency. In the case o the Commission, the burgeoning workload, accompanied by insufficien funds and a shortage of staff, has, in many instances, forced a party t wait 2 to 3 years before final conciliation procedures can be instituted This situation leads the committee to believe that the private right o action, both under the present Act and in the bill, provides the ag grieved party a means by which he may be able to escape from th administrative quagmire which occasionally surrounds a case caugh in an overloaded administrative process.

In this respect, it is important to note that subsection 715(a) in th bill provides that where the individual has elected to pursue his actio in the court, the court may, in such circumstances as it deems just appoint an attorney for the complainant and authorize the commence ment of the action without the payment of fees, costs or security. By including this provision in the bill, the committee emphasizes that th nature of Title VII actions more often than not pits parties of unequa strength and resources against each other. The complainant, who is usu ally a member of a disadvantaged class, is opposed by an employer wh not infrequently is one of the nation's major producers, and who has a his disposal a vast array of resources and legal talent.

The committee was concerned about the interrelationship betwee the newly created cease and desist enforcement powers of the Com mission and the existing right of private action. It concluded tha duplication of proceedings should be avoided. The bill, therefore contains a provision for termination of Commission jurisdiction onc a private action has been filed (except for the power of the Commis sion to intervene in the private actions). It contains as well a provisio for termination of the right of private action once the Commissio issues a complaint or enters into a conciliation or settlement agreemen which is satisfactory to the Commission and to the person aggrieved If such an agreement is not acceptable to the aggrieved party, hi private right of action is preserved.

The bill provides that an aggrieved person's right to institute private action should be reactivated under certain circumstance where the Commission does not act promptly after issuing a complaint

Section 715(a) provides that an aggrieved person may bring an independent action against the respondent if the Commission has not issued its order within 180 days. The committee believes that aggrieved persons are entitled to have their cases processed promptly and that the Commission should develop its capacity to proceed rapidly to hearing and decision once the complaint is issued. The committee recognizes that it will not be possible to render a decision in all cases within the time limit prescribed. The complexity of many of the charges, and the time required to develop the cases, is well recognized by the committee. It is assumed that individual complainants, who are apprised of the need for the proper preparation of a complex complaint involving multiple issues and extensive discovery procedures, would not cut short the administrative process merely to encounter the same kind of delays in a court proceeding. It would, however, be appropriate for the individual to institute a court action where the delay is occasioned by administrative inefficiencies. The primary concern must be protection of the aggrieved person's option to seek a prompt remedy in the best manner available. It should be noted, however, that it is not the intention of the committee to permit an aggrieved party a chance to retry his case merely because he is dissatisfied with the Commission's action. Once the Commission has issued an order, further proceedings must be in the courts of appeals pursuant to subsection 706(1) of the bill.

"PATTERN OR PRACTICE" SUITS

Section 707 of the act has been amended by transferring the "pattern or practice" suit authority from the Department of Justice to the Commission.

"Pattern or practice" discrimination suits are currently handled in the Civil Rights Division of the Department of Justice. This Division, established some 15 years ago, and has had its responsibilities greatly increased by virtue of the civil rights legislation enacted in 1964, 1965, and 1968. It has been given authority to prosecute suits in a variety of areas including public accommodations, public facilities, schools, housing, and discrimination in Federally assisted programs. It has also received authority to deal with voting discrimination and to act against persons who interfere with the civil rights of others.

Unfortunately, the size of the Division has not kept pace with its vastly increased responsibilities. As a consequence the Division has been highly selective and very limited in the number and the nature of suits which it has filed. It has been unable to pursue title VII suits with the vigor and intensity needed to reduce the wide-spread prevalence of systemic discrimination. Indeed, for several years it has accorded the lowest priority to employment discrimination cases.

Those selected suits which the Division has been able to bring, however, have contributed significantly to the Federal effort to combat employment discrimination.[4]

[4] See e.g. *U.S.* v. *Local 189 United Papermakers & Paperworkers*, 282 F. Supp. 39 (E.D. La. 1968), *affirmed* 416 F. 2d 980 (5th Cir. 1969), *cert. denied* 397 U.S. 919 (1970); *U.S.* v. *Hayes International Corp.*, 415 F. 2d 1038, 1045 (5th Cir. 1969); *U.S.* v. *Hayes International Corp.*, 415 F. 2d 1038, 1045 (5th Cir. 1969); *U.S.* v. *Sheet Metal Workers International Association, Local 36*, 416 F. 2d (8th Cir. 1969); *U.S.* v. *Georgia Power Co.*, 301 F. Supp. 538 (N.D. Ga. 1969).

Unrelenting broad-scale action against patterns or practices of discrimination is, however, critical in combatting employment discrimination. The Committee believes these powers should be exercised by the Commission as an integral and coordinated part of the overall enforcement effort.

Pattern or practice discrimination is a pervasive and deeply imbedded form of discrimination. Specific acts or incidents of discrimination within the Commission's jurisdiction are frequently symptomatic of a pattern or practice which Title VII seeks to eradicate. The Commission has the basic responsibility to achieve the objectives of Title VII. Since the Commission is being vested with cease and desist enforcement authority, it is imperative that it be empowered also to deal with "pattern or practice" discrimination in order to deal comprehensively with systemic discrimination.

The Committee feels that the transfer of the "pattern or practice" jurisdiction to the Equal Employment Opportunity Commission would eliminate overlapping jurisdictions and unnecessary duplication of functions. It would promote uniformity in development of law, goals, policies, and procedures and promote economic use of governmental resources. "Pattern or practice" jurisdiction in the Department of Justice was justified at a time when the Commission did not have its own enforcement powers. However, with the acquisition of cease and desist powers, the Commission's operations are sufficiently broad to encompass "pattern or practice" violations as well as individual complaints of discrimination.

The Commission is best able to determine where "pattern or practice" litigation is warranted. It has access to the most current statistical computations and analyses regarding employment patterns and has the most extensive expertise in dealing with employment discrimination.

Most importantly, persons charged with unfair employment practices should not be answerable to several Federal agencies pursuing separate policies. Multifarious remedies cause undue burden and harassment by a multiplicity of simultaneous or successive procedures. An example is the *Crown Zellerbach Corp.* vs. *U.S.* (Supra. 5th cir. cuit, 1969) where the union and employer after negotiating a compliance agreement with the Commission were nevertheless subjected to litigation in the Federal court. Next the Office of Federal Contract Compliance entered the picture. Ultimately the Department of Justice filed suit. Such duplication and overlapping proceedings are burdensome and harassing and should be avoided.

TRANSFER OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE

Approximately one third of the Nation's labor force is employed by government contractors. Not infrequently these employers are the Nation's largest and most prestigious firms. Because of their size and standing in the business community, these employers are leaders in the employment practices of their respective industries. The policies they adopt, therefore, are frequently prototypes for the industry at large.

Section 717(f) of the H.R. 1746 transfers all the authority, functions, and responsibilities of the Secretary of Labor pursuant to Ex-

ecutive Order 11246 relating to contract compliance to the Equal Employment Opportunity Commission.

Pursuant to Executive Order 11246, the Secretary of Labor is responsible for the administration of the Federal Government's contract compliance program as prescribed by the executive order. He is responsible for adopting such rules and regulations and issuing such orders as he deems necessary and appropriate to achieve the purposes of the order. The Secretary of Labor through OFCC monitors, coordinates and evaluates the Government-wide contract compliance program and supervises the activities of the 15 Federal contracting agencies which have responsibility for contract compliance in their respective areas.

Despite the increasingly strong Presidential commitment to the goals of equal employment opportunity, despite the strength of the sanctions available to secure this goal, and despite the potential effectiveness of the Federal monitoring mechanisms, the contract compliance program has not been successful.

The Committee believes that the transfer will benefit both the administration of the contract compliance program and the Title VII program. The two programs are addressed to the same basic mission—the elimination of discrimination in employment.

The obligations imposed on the government contractor by the Executive Order would reinforce the obligations imposed by Title VII. The transfer would promote the centralized enforcement of all Federal employment non-discrimination programs. It would reduce administrative overlap and encourage coordination. Clarity, uniformity, and predictability in policy and practice are aided by having the definition of discrimination and the shaping of remedies developed by a single agency. More significantly, it will authorize a single agency with a full complement of enforcement mechanisms that can be coordinated in the attack on employment discrimination.

Studies have shown that current jurisdictional overlap between the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission have contributed to confusion, duplication and a general lack of coordination of equal employment opportunity enforcement programs.

Although administrative efforts have been made to coordinate the overlapping legal jurisdictions of the Commission and OFCC, such as the memorandum of understanding agreed to in May 1970, they have not been effective. Each agency has continued independently to develop its goals, policies and programs. As a result, the entire Federal effort to end employment discrimination in the private sector has suffered.

The U.S. Commission on Civil Rights in its report, *Federal Civil Rights Enforcement Effort* noted that OFCC has established industry-wide hiring goals without full consultation with the Commission which possesses substantial knowledge and expertise in this area. The Commission on the other hand, has held hearings to examine the patterns of industry-wide discrimination without consultation or effective participation of OFCC. Cases continue to be referred between the Commission and OFCC on an *ad hoc* basis.

The report concluded that "until an effective procedure is developed to assure that the Commission and OFCC act in coordination, prog-

ress in achieving the goal of equal employment opportunity will continue to be impeded." To achieve this end the report recommends that the contract compliance responsibilities of the Office of Federal Contract Compliance be transferred to the Equal Employment Opportunity Commission.

This conclusion corresponds with the recommendations made in an earlier publication of the U.S. Commission on Civil Rights, *Jobs and Civil Rights*, prepared by Richard P. Nathan, Associate Director of the Office of Management and Budget, then with the Brookings Institute. Mr. Nathan recommended that the contract compliance function of OFCC be transferred to the Equal Employment Opportunity Commission. The report underscored the fact that Title VII and the Executive Order 11246 are addressed to the same problem—identifying and remedying employment discrimination—and that there is not reasonable basis for continuing to have two duplicating mechanisms dealing with the same problem.

The Committee believes that the transfer would substantially increase the effectiveness of both the contract compliance and Title VII enforcement programs. Affirmative action is relevant not only to the enforcement of Executive Order 11246 but is equally essential for more effective enforcement of Title VII in remedying employment discrimination. H.R. 1746 would confer, cease-and-desist authority as well as contract termination and debarment authority on the Equal Employment Opportunity Commission. The availability of these complementary sanctions will enhance the administration of the Federal equal employment programs.

The Federal contract compliance program always has suffered from the great reluctance of administrators to use debarment and contract termination sanction.

Although contract termination could become an effective sanction if used properly, it is clear that the compliance program could be strength considerably if alternative remedies were made available. An effective way to accomplish this is to transfer the contract compliance effort to the Equal Employment Opportunity Commission while at the same time giving the Commission power to issue cease-and-desist orders to prevent unlawful employment practices. Cease-and-desist power exercised by the Equal Employment Opportunity Commission would prove to be an effective sanction supplementary or alternative to termination of a contract. Conversely, having the authority to direct that contracts be terminated and contractors debarred would enhance the Equal Employment Opportunity Commission's ability to ensure that its cease and desist orders are obeyed.

The transfer of OFCC's contract compliance program to the Equal Employment Opportunity Commission will not impair the procurement function of the Executive branch of the government nor will it interfere with the government's internal functions. Primary responsibility for compliance with still rest with the various compliance agencies. The Equal Employment Opportunity Commission will be responsible, however, for issuing basic guidelines to coordinate and give guidance to the compliance program. In addition, the Commision will provide an additional independent source of review and resource if the compliance agencies fail to meet their obligations.

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STATE AND LOCAL GOVERNMENT EMPLOYEES

Presently approximately 10.1 million persons are employed by State and local governmental units. This figure represents an increase of over 2 million employees since 1964. Indications are that the number of employees in State and local government will continue to increase, perhaps even more rapidly. Few of these employees, however, are afforded the protection of an effective forum to assure equal employment. The bill amends section 701 of the Civil Rights Act of 1964 (section 2 of the bill) to include State and local governments, governmental agencies and political subdivisions within the definition of an "employer" under Title VII. All State and local government employees would under the bill have access to the remedies available under the Act.

In a report released in 1969, the U.S. Commission on Civil Rights examined equal employment opportunity in public employment in seven urban areas located throughout the country—North as well as South. The report's findings indicate that widespread discrimination against minorities exists in State and local government employment, and that the existence of this discrimination is perpetuated by the presence of both institutional and overt discriminatory practices. The report cites widespread perpetuation of past discriminatory practices through *de facto* segregated job ladders, invalid selection techniques, and stereotyped misconceptions by supervisors regarding minority group capabilities. The study also indicates that employment discrimination in State and local governments is more pervasive than in the private sector. The report found that in six of the seven areas studied, Negroes constitute over 70 percent of the common laborers, but that most white-collar jobs were found to be largely inaccessible to minority persons. For example, in Atlanta and Baton Rouge, there were no blacks in city managerial positions.

In another report issued by the U.S. Commission on Civil Rights in 1970, *Mexican Americans and the Administration of Justice in the Southwest*, the Commission found, on the basis of a 1968 survey, that in the law enforcement agencies and district attorneys' offices in the five Southwestern States, Mexican Americans were generally underrepresented in proportion to their demographic distribution. The statistics in this report show that in the Southwestern States Mexican Americans, who constitute approximately 12 percent of the population, account for only 5.2 percent of police officers and 6.11 percent of civilian employers with law enforcement agencies.

The problem of employment discrimination is particularly acute and has the most deleterious effect in these governmental activities which are most visible to the minority communities (notably education, law enforcement, and the administration of justice) with the result that the credibility of the government's claim to represent all the people equally is negated.

This widespread discrimination is evidence that State and local governmental units have not instituted equal employment opportunity required by the national policy to eliminate discrimination in employment. In its 1969 report, *For All the People . . . By All the People*, the U.S. Civil Rights Commission concludes that:

> The basic finding of this report is that State and local governments have failed to fulfill their obligation to assure equal job opportunity. . . . Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job.

The Constitution is as imperative in its prohibition of discrimination in state and local government employment as it is in barring discrimination in Federal jobs. The courts have consistently held that discrimination by state and local governments, including job discrimination, violates the Fourteenth Amendment and is prohibited.[5]

While an individual has a right of action in the appropriate court if he has been discriminated against, the adequacy of protection against employment discrimination by state and local governments has been severely impeded by the failure of the Congress to provide Federal administrative machinery to assist the aggrieved employee. There are two exceptions. Federal Merit Standards provisions are applied to approximately 250,000 state employees where the Federal and state governments participate jointly in furnishing government services, and there are nondiscrimination requirements Department of Housing and Urban Development (HUD) contracts which are applicable to approximately 900 local urban renewal agencies and 2,000 local public housing authorities.

Otherwise, state and local governments constitute the only large group of employees in the nation who are almost entirely exempt from Federal nondiscrimination protections. Although the aggrieved individual may enforce his rights directly in the Federal district courts, this remedy, as already noted, is frequently an empty promise due to the expense and time involved in pursuing a Federal court suit. It is unrealistic to expect disadvantaged individuals to bear the burden.

The Committee feels that it is an injustice to provide employees in the private sector with an administrative forum in which to redress their grievances while at the same time, denying a similar protection to the increasing number of state and local employees. Accordingly, H.R. 1746 provides the administrative remedies available to employees in the private sector should also be extended to state and local employees.

In establishing the applicability of Title VII to State and local employees, the Committee wishes to emphasize that the individual's right to file a civil action in his own behalf, pursuant to the Civil Rights Act of 1870 and 1871, 42 U.S.C. §§ 1981 and 1983, is in no way affected. During the floor debate surrounding the passage of Title VII of the Civil Rights Act of 1964, it was made clear that the Act was not intended to preempt existing rights under the National Labor Relations Act or the Railway Labor Act. Title VII was envisioned as an independent statutory authority meant to provide an aggrieved individual with an additional remedy to redress employment dis-

[5] See e.g., *Shelly* v. *Kraemer*, 334 U.S. 1 (1948); *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

crimination. Two recent court decisions, *Young* v. *International Telephone and Telegraph Co.*, ——F. 2d ——, 3 FEP Cases 145 (3rd Cir. 1971) and *Saunders* v. *Dobbs House*, 431 F. 2d 1097 (5th Cir. 1970), have affirmed this Committee's belief that the remedies available to the individual under Title VII are co-extensive with the individual's right to sue under the provisions of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and that the two procedures augment each other and are not mutually exclusive. The bill, therefore, by extending jurisdiction to State and local government employees does not affect existing rights that such individuals have already been granted by previous legislation.

The expansion of Title VII coverage to State and local government employment is firmly embodied in the principles of the Constitution of the United States. The Constitution has recognized that it is inimical to the democratic form of government to allow the existence of discrimination in those bureaucratic systems which most directly affect the daily interactions of this Nation's citizens. The clear intention of the Constitution, embodied in the Thirteenth and Fourteenth Amendments, is to prohibit all forms of discrimination.

Legislation to implement this aspect of the Fourteenth Amendment is long overdue, and the committee believes that an appropriate remedy has been fashioned in the bill. Inclusion of state and local employees among those enjoying the protection of Title VII provides an alternate administrative remedy to the existing prohibition against discrimination perpetuated "under color of state law" as embodied in the Civil Rights Act of 1871, 42 U.S.C. § 1983. In extending Title VII coverage, the Committee recognizes that States frequently can best deal with violations which occur within their boundaries and has, accordingly, retained the provisions of Section 706(b) of the present Act (706(c) under the bill) whereby the Commission will defer to appropriate State agencies cases where the State or local agency can grant the complainant relief similar to that which he can obtain with the Commission under the provisions of this bill.

EDUCATIONAL INSTITUTION EMPLOYEES

The present Section 702 of Title VII exempts educational institution employees connected with educational activities from the equal employment requirements. The bill removes this exemption (Section 3 of the bill).

There is nothing in the legislative background of Title VII, nor does any national policy suggest itself to support the exemption of these educational institution employees—primarily teachers—from Title VII coverage. Discrimination against minorities and women in the field of education is as pervasive as discrimination in any other area of employment. In the field of higher education, the fact that black scholars have been generally relegated to all-black institutions, or have been restricted to lesser academic positions when they have been permitted entry into white institutions is common knowledge. Similarly, in the area of sex discrimination, women have long been invited to participate as students in the academic process, but without the prospect of gaining employment as serious scholars.

When they have been hired into educational institutions, particularly in institutions of higher education, women have been relegated to positions of lesser standing than their male counterparts. In a study conducted by Theodore Kaplow and Reece J. McGee, it was found that the primary factors determining the hiring of male faculty members were prestige and compatability, but that women were generally considered to be outside of the prestige system altogether.[6]

The committee feels that discrimination in educational institutions is especially critical. The committee can not imagine a more sensitive area than educational institutions where the Nation's youth are exposed to a multitude of ideas that will strongly influence their fuure development. To permit discrimination here would, more than in any other area, tend to promote misconceptions leading to future patterns of discrimination. Accordingly, the committee feels that educational institutions, like other employers in the Nation, should report their activities to the Commission and should be subject to the provisions of the Act.

EMPLOYERS AND LABOR UNIONS WITH EIGHT OR MORE EMPLOYEES OR MEMBERS

The bill amends section 701 of the Act, by changing the jurisdictional reach of Title VII to include all employers and labor unions with eight or more employees or members, effective one year after enactment (section 2 of the bill). The present coverage is 25 or more employees or members.

The committee feels that discrimination in employment is contrary to the national policy and equally invidious whether practiced by small or large employers. Because of the existing limitation in the bill proscribing the coverage of Title VII to 25 or more employees or members, a large segment of the Nation's work force is excluded from an effective Federal remedy to redress employment discrimination. For the reasons already stated in earlier sections of this report, the committee feels that the Commission's remedial power should also be available to all segments of the work force. With the amendment proposed by the bill, Federal equal employment protection will be assured to virtually every segment of the Nation's work force.

TESTING

Section 8 of the bill amends subsection 703(h) of the Act and perfects the Title VII provisions dealing with testing and apprenticeship training. Tests, while they are a useful and necessary selection device for management purposes, often operate unreasonably and unnecessarily to the disadvantage of minority individuals. General intelligence tests commonly used by employers as selection devices for hiring and promotion deprive minority group members of equal employment opportunities.[7] Culturally disadvantaged groups—groups

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[6] See generally, Kaplow and McGee, *The Academic Marketplace*, Anchor Edition (Garden City, 1966).

[7] See e.g., M. Culhane, "Testing the Disadvantaged," *The Journal of Social Issues* (April 1965); D. Goslin, *The Search for Ability: Standardized Testing on Social Perspective* (New York: Russell Sage Foundation, 1963); E. King, "The Problem of Cultural Bias in Selection," *Selecting and Training Negroes for Management Positions*, Princeton: Educational Testing Service (1965).

which because of low incomes, substandard housing, poor education, and other "atypical" environmental experiences—perform less well on these types of tests on the average than do applicants from middle class environments. The net result is that members from culturally disadvantaged groups are screened out of employment and training programs merely because of their failure to score well on such tests. Such tests are often irrelevant to the job to be performed by the individual being tested and uncritical reliance on test results may not aid management decisions and selection of personnel, but will screen out the disadvantaged minority individual.

In a report issued in 1970, *Personnel Testing and Employment Opportunity*, the Commission describes the ways in which employment tests can discriminate against minority groups. An aptitude test that fails to predict job performance in the same way for both minorities and whites, or fails to predict job performance at all is an invalid test. If such a test is weighted to differentiate between blacks and whites, it is similarly discriminatory. Tests may discriminate in the social sense if they deny equal opportunity for consideration. A test which tends to discriminate generally operates in the following manner: (a) when scores on it tend to differentiate between identifiable sub-groups where sub-grouping itself is not a relevant factor, and either (b) scores for the lower group underpredict performance on the job when the standards of the upper group are applied, or (c) scores on the test do not predict job performance of either group.

The Supreme Court recently examined the problem of employment testing and its relationship to employment discrimination in its decision in *Griggs* v. *Duke Power Co.*, ——— U.S. ———, 91 S. Ct. 849 (1971). In its decision, the court held that employment tests, even if valid on their face and applied in a non-discriminatory manner, were invalid if they tended to discriminate against minorities and the company could not show an overriding reason why such tests were necessary. At page 5 of its opinion, the Court stated:

> The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent cannot be maintained if they operate to "freeze" the status quo of prior discriminatory practices.

The Court stated further, on page 6 of its opinion, that:

> Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity only in the sense of the fabled offer of milk for the stork and the fox. On the contrary, Congress has now required that the posture and condition of the job seeker be taken into account . . . . The Act proscribes not only overt discrimination but also practices that are fair in form but discriminatory in operation. The touchstone is business neces-

sity. If an employment practice which excludes Negroes cannot be shown to be related to job performance, the practice is prohibited.

The provisions of the bill are fully in accord with the decision of the Court and with the testing guidelines established by the Commission. The addition of the requirement for a bona fide occupational qualification which is reasonably necessary to perform the normal duties of the position to which it is applied requires that employers, who use employment tests as determinants for qualifications of employees for a particular job, must determine whether the test is necessary for the particular position to which it is applied. Even after such determination, if the use of the test acts to maintain existing or past discriminatory imbalances in the job, or tends to discriminate against applicants on the basis of race, color, religion, sex or national origin, the employer must show an overriding business necessity to justify use of the test.

Section 8 perfects Title VII's provisions with respect to testing and apprenticeship training. With regard to testing, the amendment is limited to tests for particular positions; it is not intended to apply to tests given to ascertain potential ability to undertake apprenticeship or other learning capacities. Of course, tests given for apprenticeship and related status must satisfy the requirement that the test, its administration or action upon the results, is not designed, intended, used, or have the effect of discriminating because of race, color, religion, sex or national origin.

FEDERAL EMPLOYMENT

The bill adds a new section 717 (section 11 of the bill) which, in paragraphs (a) and (b), gives the Equal Employment Opportunity Commission the authority to enforce the obligations of equal employment opportunity in Federal employment.

The Federal service is an area where equal employment opportunity is of paramount significance. Americans rely upon the maxim, "government of the people," and traditionally measure the quality of their democracy by the opportunity they have to participate in governmental processes. It is therefore imperative that equal opportunity be the touchstone of the Federal system.

The prohibition against discrimination by the Federal Government, based upon the due process clause of the fifth amendment to the Constitution, was judicially recognized long before the enactment of the Civil Rights Act of 1964.[1] And Congress itself has specifically provided that it is "the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin. . . ." (5 U.S.C. § 7151 (Supp. II 1965, 1966)).

The primary responsibility for implementing this stated national policy has rested with the Civil Service Commission, pursuant to Executive Order 11246 (1964) as clarified by Executive Order 11478.

In his memorandum accompanying Executive Order 11478, President Nixon stated that "discrimination of any kind based on factors

[1] *See Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693 (1954), and cases cited therein.

ot relevant to job performance must be eradicated completely from ederal employment." Accordingly there can exist no justification for ıything but a vigorous effort to accord Federal employees the same ghts and impartial treatment which the law seeks to afford employees the private sector.

Despite some progress that has been made in this area, the record far from satisfactory. Statistical evidence shows that minorities ıd women continue to be excluded from large numbers of government bs, particularly at the higher grade levels. According to statistics leased by the Civil Service Commission, as of May 31, 1970, minor- ies accounted for 19.4 percent of the total number of government em- oyees and 14.4 percent of general schedule employees. An examina- on of the distribution of employees within the various levels of the ederal system shows that the majority of these employees are at the wer levels of government employment. Approximately 80% of the inority employees on the general schedule are in grades 1 through 8. grades GS-1 through 4 minorities account for 27.3 percent of all ıployees, and in grades GS-5 through 8 they represent 17.2 percent all employees. On the other end of the scale, in grades GS-14 rough 15, minorities represent only 3.3 percent of all employees, and grades GS-16 through 18 minorities account for 2.0 percent of all ıployees. These figures represent little improvement over the statis- s from the previous study done by the Civil Service Commission in ovember, 1969. In fact comparison of the two sets of figures shows perceptible change in the proportion of minorities in the Federal rvice during the 6 month period. Although minority representation positions above GS-14 has increased slightly the minority concen- ation in the lower level positions (GS-1-4) has also increased by % from 26.7%.

The figures for Spanish-surnamed employees reflect a similar pat- rn. For example, according to the 1970 statistics, only 2.9% of the ederal employees were Spanish-surnamed (this was an increase from 8% in November, 1969). Only .63% of the government executives GS-14—18) were Spanish-surnamed. Over 72% of the Spanish-sur- med employees on the General Schedule were in positions of GS-8 d below.

Moreover, figures show different levels of minority representation thin the different agencies. For example, although 15% of Federal ıployees are Negro, only 5.2% of the Department of Interior's em- oyees are Negro and 2.9% of NASA's employees are Negro. Ac- rding to 1967 figures, fewer than 550 of the Federal Aviation Ad- inistration's air traffic controllers out of a total of over 20,000 were inority. Only 13 out of the Administration's 1,612 supervisory and dministrative personnel (GS-14 to 18) were Negro.

This disproportionatte distribution of minorities and women roughout the Federal bureaucracy and their exclusion from higher vel policy-making and supervisory positions indicates the govern- ent's failure to pursue its policy of equal opportunity.

A critical defect of the Federal equal employment program has en the failure of the complaint process. That process has impeded ther than advanced the goal of the elimination of discrimination in

Federal employment. The defect, which existed under the old com
plaint procedure, was not corrected by the new complaint process. Th
new procedure, intended to provide for the informal resolution
complaints, has, in practice, denied employees adequate opportuni
for impartial investigation and resolution of complaints.

Under the revised procedure, effective July 1, 1969, the agency
still responsible for investigating and judging itself. Although th
procedure provides for the appointment of a hearing examiner fro
an outside agency, the examiner does not have the authority to condu
an independent investigation. Further, the conclusions and findings
the examiner are in the nature of recommendations to the agency hea
who makes the final agency determination as to whether discrimin
tion exists. Although the complaint procedure provides for an appe
to the Board of Appeals and Review in the Civil Service Commissio
the record shows that the Board rarely reverses the agency decision.

The system, which permits the Civil Service Commission to sit
judgment over its own practices and procedures which themselves ma
raise questions of systemic discrimination, creates a built-in conflic
of-interest.

Testimony reflected a general lack of confidence in the effectivene
of the complaint procedure on the part of Federal employees. Com
plainants were skeptical of the Civil Service Commission's record
obtaining just resolutions of complaints and adequate remedies. Th
has discouraged persons from filing complaints with the Commissio
for fear that it will only result in antagonizing their supervisors an
impairing any hope of future advancement.

Aside from the inherent structural defects the Civil Service Com
mission has been plagued by a general lack of expertise in recognizin
and isolating the various forms of discrimination which exist in th
system. The revised directives to Federal agencies which the Civ
Service Commission has issued are inadequate to meet the challenge
eliminating systemic discrimination. The Civil Service Commissio
seems to assume that employment discrimination is primarily a proble
of malicious intent on the part of individuals. It apparently has n
recognized that the general rules and procedures it has promulgate
may actually operate to the disadvantage of minorities and wome
in systemic fashion. All too frequently policies established at the polic
level of the Civil Service Commission do not penetrate to lower admi
nistrative levels. The result is little or no action in areas where unlawf
practices are most pronounced. Civil Service selection and promotio
requirements are replete with artificial selection and promotion r
quirements that place a premium on "paper" credentials which fr
quently prove of questionable value as a means of predicting actual jo
performance. The problem is further aggravated by the agency's use
general ability tests which are not aimed at any direct relationship
specific jobs. The inevitable consequence of this, as demonstrated b
similar practices in the private sector, and, found unlawful by th
Supreme Court, is that classes of persons who are culturally or educ
tionally disadvantaged are subjected to a heavier burden in seekin
employment.

To correct this entrenched discrimination in the Federal service,
is necessary to insure the effective application of uniform, fair an

trongly enforced policies. The present law and the proposed statute o not permit industry and labor organizations to be the judges of heir own conduct in the area of employment discrimination. There is o reason why government agencies should not be treated similarly. ndeed, the government itself should set the example by permitting its onduct to be reviewed by an impartial tribunal. Because the Equal Employment Opportunity Commission is the expert agency in the eld of employment discrimination and because it is an independent gency removed from the administration of Federal employment, it s the most logical place for the enforcement power to be vested.

Despite the series of executive and administrative directives on equal nployment opportunity, Federal employees, unlike those in the pri- ate sector to whom Title VII is applicable, face legal obstacles in otaining meaningful remedies. There is serious doubt that court re- iew is available to the aggrieved Federal employee. Monetary restitu- on or back pay is not attainable. In promotion situations, a critical rea of discrimination, the promotion is often no longer available. nformation and documents contained in Government files are not otainable since the Freedom of Information Act exempts internal ersonnel rules. Under the proposed law, court review, back pay, pro- notions, reinstatement, and appropriate affirmative relief is available employees in the private sector; also the Commission has broad owers to conduct an intensive investigation and obtain access to all ertinent records.

The Commission is established as a government administrative gency to protect employees against discrimination. This agency under ie proposed law assumes the burden and expense of litigation to obtain lequate redress for the employee. These substantial benefits and pro- ctions are not presently available to the Federal employee. Presently ie Federal employee is entirely dependent on his own resources and oes not have recourse to an impartial governmental agency with eveloped expertise.

The transfer of the civil rights enforcement function from the ivil Service Commission to the Equal Employment Opportunity ommission does not preclude the Civil Service Commission from aintaining its internal equal employment programs. Consistent with ederal law it is expected that the Civil Service Commission and the ederal agencies will continue their commitment to affirmative meas- es such as recruiting and training, specialized hiring programs, e training of compliance personnel and supervisory Federal per- nnel in equal employment, and the appointment of EEO officers. all these cases, the primary responsibility shall rest with the Civil ervice Commission and the other Federal agencies. The Equal Em- oyment Opportunity Commission will work closely with these gencies to aid the development and maintenance of programs which ill best serve the needs for equal employment in the government. is expected that the expertise of the Equal Employment Oppor- nities Commission will be utilized to review existing programs, to aluate new systems which will be established, and to issue guide- nes and standards where appropriate. The Equal Employment Op- rtunity Commission will be authorized by the statute to hear com-

plaints of discrimination in Federal employment and establish ap
propriate procedures for an impartial adjudication of the complaint
An employee of a Federal agency may have recourse to a civ
action, as provided in section 715 (discussed infra), if he is not satis
fied with the disposition of his complaint.

Section-by-Section Analysis

Section 1

This section contains the enacting clause and style of the Act.

Section 2, Jurisdiction

Section 701(a).—This subsection defines "person" to include Stat
and local governments, governmental agencies and politica
subdivisions.

Section 701(b).—This subsection would extend coverage of em
ployers to those with eight or more employees at the end of the firs
year. This subsection would broaden the meaning of "employer" t
include State and local governments and the District of Columbi
departments or agencies (except those subject by statute to procedure
of the Federal competitive service as defined in 5 USC 2102).

Section 701(c).—This subsection eliminates the exemption fo
agencies of the States or of political subdivisions of States from th
definition of "employment agency" in order to conform with th
expanded coverage of State and local governments in section 701(a
and (b).

Section 701(e).—This subsection is revised to include coverage o
labor organizations with eight or more members after the first year.

Section 701(h).—This subsection is revised to include "any govern
mental industry, business, or activity" in the definition of "industr
affecting commerce."

Section 3. Educational Institutions

Section 702.—Comparable to present Section 702. The exemptio
currently provided to certain employees (primarily teachers) of educa
tional institutions is deleted.

Section 4. Employment

Section 706(a).—New Section. The Commission is empowered t
prevent any person from engaging in any unlawful employment prac
tice as set forth in Sections 703 or 704.

Section 706(b).—Comparable to present Section 706(a). The require
ment that aggrieved person's charges be made under oath is deleted
Charges shall contain such information as the Commission requires
Charges may also be filed on behalf of persons aggrieved. The Com
mission shall make its finding as to reasonable cause as promptly a
possible, and so far as is practicable, not later than 120 days from th
filing of the charge, or when deferral is applicable under subsectio
(c) or (d), from the date on which the Commission is authorized t
take action with respect to the charge. If reasonable cause is not found
the Commission shall dismiss the charge, giving prompt notificatio
to the parties. The conciliation and confidentiality provisions ar
retained.

Section 706(c).—Comparable to present Section 706(b). Charges o
persons in FEPC States may be filed with the Commission, but the la

ter may take no action until 60 days after commencement of proceedings in the appropriate State or local agency (120 days if a new agency). The latter proceeding shall be deemed to have commenced at the time a written statement of the facts is sent to such agency by certified mail.

Section 706(d).—Comparable to present Section 706(c).

Section 706(e).—Comparable to present Section 706(d). The 90 day filing period is expanded to 180 days, and the 210 day period to 300 days (or 30 days after receiving notice of termination of proceedings, whichever comes earlier). Provision is added requiring that a copy of the charge be served on the respondent as soon as practicable after filing.

Section 706(f).—Comparable to present Section 706(e). After attempting to secure voluntary compliance under subsection (b), if the Commission determines (which determination is not reviewable in any court) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and the person aggrieved, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent of it, at a specified place not less than 5 days after service of the complaint and notice. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

Section 706(g).—New Section. Respondent has the right to file an answer to the complaint and with the Commission's permission, may amend his answer at any time if deemed reasonable. Respondent and the person aggrieved shall be parties and may appear at any stage of the proceedings with or without counsel. The Commission may grant others the right to intervene or file briefs or make oral arguments as amicus curiae, or for other purposes as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

Section 706(h).—New Section. If the Commission finds that respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served upon the respondent and aggrieved person an order requiring the respondent to cease and desist from such unlawful employment practice and take such affirmative action (including reinstatement or hiring with or without back pay) as will effectuate the policies of the Act. Interim earnings or amounts earnable with reasonable diligence operate to reduce the backpay otherwise allowable. Such order may further require the respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finding is that no unlawful employment practice occurred, it shall state its findings of fact and so notify the respondent and complainant of an order dismissing the complaint.

Section 706(i).—New Section. After a charge has been filed and until the record has been filed in court, the proceedings may at any time be ended by agreement between the Commission and the parties and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any order or finding issued or made by

it. An agreement approved by the Commission shall be enforceable un
der subsection (k).

Section 706(j).—New Section. Findings of fact or orders made or issued under subsection (b) or (i) shall be determined on the record

Section 706(k).—New Section. The Commission may petition any U.S. Court of Appeals wherein whose circuit the unlawful employment practice occurred or wherein respondent resides or transacts business, for enforcement of its order and for appropriate temporary relief or restraining order. The Commission shall file in the court the record of its proceedings as provided in section 2112 of title 28 of the U.S. Code. Upon serving notice on the parties, the court shall have jurisdiction and the power to grant such temporary relief, restraining order, or other order as it deems just and proper and enter upon the record a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part the order of the Commission. No objection that has not been urged before the Commission, its member or its agent shall be considered by the court except under extraordinary circumstances. The findings of the Commission with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The court may order additional evidence to be taken by the Commission, which may then modify its fact findings. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree final, subject only to review by the Supreme Court.

Section 706(l).—New Section. Any party aggrieved by a final order of the Commission may obtain review of such order in any U.S. Court of Appeals in the circuit wherein the unlawful employment practice was alleged to have been engaged in or wherein such person resides or transacts business, or in the D.C. Court of Appeals. Upon receiving a copy of such petition, the Commission shall file in the court the record of its proceedings, and the court shall then proceed in the same manner as in the case of a petition by the Commission under subsection (k). Commencement of proceedings under this subsection or subsection (k) shall not operate as a stay of the Commission's order.

Section 706(m).—New Section. The provisions of 29 U.S.C. 101-115 with respect to preliminary injunctions are made inapplicable to judicial proceedings under the Title.

Section 706(n).—New Section. The general counsel of the Commission shall conduct all litigation affecting it, or to which it is a party except that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court.

Section 706(o).—New Section. When after the filing of a charge the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief, it may bring an action for appropriate temporary or preliminary relief in the district court for the district where the unlawful employment practice is alleged to have been committed, or in the district where the aggrieved person would have been employed, or if the respondent cannot be found in these districts, in the district where the respondent has his principal office. Upon the bringing of such action, the district court may grant such injunctive relief or temporary restraining order as it deems just and proper as governed by Rule 65 of the Federal Rules of Civil Procedures.

Section 5. Records Required To Be Kept and Investigations

Section 707(c).—New Section. Any record or paper required by section 709(c) shall be made available to the Commission on written demand, for purposes of inspection and copying, but unless otherwise ordered by a court of the United States, the Commission shall not disclose any information thus obtained except to Congress or any committee thereof, a governmental agency, or in the presentation of any case or preceding before any court or grand jury. The appropriate district court may compel the production of such records or papers.

Section 707(d).—Transfers the function of the Attorney General with respect to patterns or practice of resistance to the full enjoyment of the rights secured by Title VII, together with personnel, property, records and funds, to the Commission.

Section 707(e).—Provides for continuation by the Commission of pending proceedings brought by the Attorney General under Section 707.

Section 707(f).—Assimilates procedures for new proceedings brought under Section 707 to those now provided for under Section 706 so that the Commission may provide an administrative procedure to be the counterpart of the present Section 707 action.

Section 6. State and Local Agencies, Recordkeeping

Section 709(b).—Comparable to present Section 709(b). The contracts to State and local agencies language is enlarged to include Commission contributions to research and other projects of mutual interest, and payment to State and local agencies may be made in advance as well as in reimbursement. The provisions concerning agreements whereby no civil actions may be brought is omitted. The power of the Commission to rescind any agreement no longer serving the interest of effective enforcement is retained.

Section 709(c).—The Section 709(d) reporting exemption is deleted, and the hardship language is changed to require that persons or organizations alleging hardship must exhaust the relief processes provided by the Commission before applying for relief in the district court.

Section 709(d).—Deletes the present subsection, and in its place provides that the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those of such other agencies. The Commission shall furnish information obtained pursuant to subsection (c) of this section without cost to any State or local FEPC on request, except that public disclosure of such information provided on the part of such State or local agency prior to the institution of a proceeding under State or local law shall be grounds for declining to honor subsequent requests pursuant to this subsection.

Section 7. Commission Investigations

Section 710.—Comparable to present Section 710. Incorporates the provisions of section 11 of the NLRA (29 U.S.C. 161). The Commission shall have access to and the right to copy evidence of a person being investigated or proceeded against that relates to the matter under investigation or in question. It shall issue subpenas to parties on application requiring the presence and testimony of witnesses and the

production of evidence as specified in such application. Within 5 days of service, the person served may petition the Commission to revoke its subpena on grounds that the evidence sought is not relevant to the matter in question. Attendance of witnesses and the production of evidence may be required from any place in the United States or its possessions, and any Federal court with jurisdiction may enforce such subpenas by order. Witnesses may not refuse to answer questions on grounds of self incrimination, but may not be subsequently proceeded against on the basis of information thus gained. Complaints, orders and other processes may be served personally or by registered mail or telegraph, or by leaving a copy at the principal office of the person to be served. No subpena shall be issued to any party to a proceeding before the Commission until after the respondent has been served a copy of the complaint and notice of hearing under section 706(f). Witnesses and persons making depositions shall receive the same mileage and fees as witnesses and persons making depositions in the district courts.

Section 8: Selection Procedures, Apprenticeship Programs, Commission Organization

Section 703(a)(2).—Comparable to present Section 703(a)(2). Adds "or applicants for employment" after "employees."

Section 703(c)(2).—Comparable to present Section 703(c)(2). Adds "or applicants for membership" after "membership."

Section 703(h).—Comparable to present Section 703(h). Retains the seniority and merit system language, but changes the testing provisions to stipulate that such tests must be directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned. The provision prohibiting tests designed or used to discriminate on the basis of race, color, religion, national origin, or sex is retained.

Section 704(a) and (b).—Comparable to present Section 704(a) and (b). Adds 'or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs"; after "employment agency."

Section 705(a).—Comparable to present Section 705(a). Amends the Section to include "members of the Commission shall continue to serve until their successors are appointed and qualified," provided that no such member shall continue to serve for more than 60 days when the Congress is in session unless a nomination to fill the vacancy has been submitted to the Senate, or after the adjournment sine die of the session of the Senate in which such nomination was submitted. The section also adds "hearing examiners" to the appointments the Chairman may make in accordance with title 5, U.S.C. on behalf of the Commission, and provides that assignment, removal and compensation of such hearing examiners shall be in accordance with sections 3105, 3344, 5362 and 7521 of title 5, U.S.C. Section 3105 provides for the appointment of the necessary number of hearing examiners, requires that they be assigned to cases in rotation, and stipulates that they may not be assigned duties that are inconsistent with their position as hearing examiners. Section 3344 authorizes an agency's use of hearing examiners from other agencies as selected by the Civil Service Commission if the borrowing agency is short staffed. Section 5362 states

that such hearing examiners are entitled to the pay prescribed by the Civil Service Commission for them independently of agency recommendations or ratings, in accordance with subchapter III and chapter 51 of title 5, U.S.C. Section 7521 allows removal of hearing examiners only for good cause established and determined by the Civil Service Commission on the record after hearing.

Section 705(g)(1).—Comparable to present Section 705(g)(1). Adds "and to accept voluntary and uncompensated services, notwithstanding that provisions of section 3679(b) of the Revised Statutes" after the word "individuals."

Section 705(g)(6).—Comparable to present Section 706(g)(6). Substitutes Section "715" for Section "706."

Section 713(c) and (d).—New subsections. Authorizes the Commission to delegate its powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting to such persons as the Commission may designate by regulation, with certain exceptions. The exceptions concern the power to issue cease and desist orders, the power to modify or set aside findings under subsections (i) and (k) of Section 706, certain aspects of the rule-making powers, and the power to enter into or rescind agreements with State and local agencies as provided in subsection (b) of Section 709. The Commission is specifically not authorized to provide for persons other than those referred to in section 556, subsection (b), clauses (2) and (3) of title 5, U.S.C. to conduct any hearing to which that section applies. New subsection (d) authorizes the Commission to delegate to any group of three or more of its members any or all of the powers which it may itself exercise.

Section 714.—Comparable to present Section 714. Adds section 1114 of title 18, U.S.C. (murder of Commission employees).

Section 715.—New Section, comparable in part to present Section 706. Deletes the provisions of the present Section 715, which called for a 1965 study of discrimination because of age, provides that if the Commission dismisses a charge after a preliminary investigation indicates no cause, or on grounds of lack of jurisdiction, or if after 180 days from the filing of a charge the Commission has not made a finding of no reasonable cause or entered into a conciliation agreement acceptable to the Commission and to the person aggrieved, the Commission shall notify the aggrieved party, and within 60 days of such notification such party may bring a civil action against the respondent named in the charge. The court may upon application appoint an attorney for such complainant, and may dispense with the payment of fees, costs, or security. It may also permit the Commission to intervene if it certifies that the cause is of general public importance. Upon the commencement of such action the Commission is divested of jurisdiction over the proceeding and may take no further action, except that the court may in its discretion stay further proceedings for not longer than 60 days pending termination of State or local proceedings, or the efforts of the Commission to obtain voluntary compliance. Subsections (b) and (c) retain the procedural provisions of present section 706, subsections (f) and (g), while subsections (d), (e), and (f) duplicate Section 706, subsections (i), (j) and (k), the latter subsection modified to delete the exceptions of the Commission and the

United States in regard to attorney's fees and to change the words "prevailing party" to "prevailing plaintiff." Present subsection (h) excepting such proceedings from the provisions of 29 U.S.C. 101–115 is retained with modified language at Section 706(m).

Section 9. Commissioner's Compensation.

Title 5, U.S.C. Add "Chairman, Equal Employment Opportunity Commission" at the end of section 5314 (Level III Positions). Add "Members, Equal Employment Opportunity Commission" to clause (72) of section 5315 (Level IV Positions). Repeal clause (111) of section 5316 (the Level V slot presently occuped by Members of the Commission).

Section 10. Pending Cases

Sections 706 and 710 of the Civil Rights Act of 1964, as amended by this Act, shall not be applicable to charges filed with the Commission prior to the effective date of this Act.

Section 11. Federal Employees, Federal Contractors

Section 717(a) and (b).—New Section. All personnel actions affecting employees of applicants for employment in the competitive service of the United States or in positions of the District of Columbia Government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.

The Equal Employment Opportunity Commission shall enforce the nondiscrimination provisions of subsection (a), and shall issue appropriate rules, regulations, orders, and instructions. The responsibilities of the Civil Service Commission with regard to nondiscrimination in Federal employment are transferred to the Equal Employment Opportunity Commission. This, of course, will not relieve the Civil Service Commission, the Federal agencies, or the District of Columbia, of their affirmative responsibilities to assure equal opportunity in government employment, nor transfer any functions relating thereto (as distinguished from enforcement functions).

Section 717(c).—Persons aggrieved by the final disposition of complaints may, within thirty days of receipt of notice, file a civil action in the same manner as in Section 715, in which action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

Section 717(d).—With respect to employment discrimination by government contractors and subcontractors and federally assisted construction contractors and subcontractors, this subsection, effectively, transfers those functions of the Secretary of Labor, established pursuant to Executive Order 11246, to the Equal Employment Opportunity Commission. Under the provisions of this bill the Commission assumes the statutory responsibility to carry out all such authority, functions, and responsibilities in order to enforce and implement the substantive requirements.

Section 718.—New Section. Reiterates the individual obligation of all Government agencies or officials to assure nondiscrimination in employment.

Section 12. Effective Date of Section 11

New Section 717, added by Section 11 of the Act shall become effective six months after the effective date of the Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *governments*, *governmental agencies*, *political subdivisions*, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has [twenty-five] *eight* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe or [a State or political subdivision thereof] *the District of Columbia*, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(e) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, [or an agency of a State or political subdivision of a State,] except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an

organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) [twenty-five] *eight* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provision of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of

the Labor-Management Reporting and Disclosure Act of 1959, *and further includes any governmental industry, business, or activity.*

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities [or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution].

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees *or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership *or applicants for membership*, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in these certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal opeartion of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test [provided that] *which is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned: Provided, That* such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency *or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs*, to discriminate against any individual, or for a labor organization to discriminate against any

member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, [or employment agency] *employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,* to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, *or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee* indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, *and all members of the Commission shall continue to serve until their successors are appointed and qualified: Provided, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.* The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the [civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended] *provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and*

ployees as he deems necessary to assist it in the performance of its nctions and to fix their compensation in accordance with the pro- ions of chapter 51 and subchapter III of chapter 53 of title 5, United ites Code, relating to classification and General Schedule pay rates: ovided, That assignment, removal, and compensation of hearing ex- iners shall be in accordance with sections 3105, 3344, 5362, and 7521 title 5, United States Code. The Vice Chairman shall act as Chair- n in the absence or disability of the Chairman or in the event of a cancy in that office.

(b) A vacancy in the Commission shall not impair the right of the naining members to exercise all the powers of the Commission and ree members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judi- lly noticed.

(d) The Commission shall at the close of each fiscal year report to Congress and to the President concerning the action it has taken; names, salaries, and duties of all individuals in its employ and the neys it has disbursed; and shall make such further reports on the se of and means of eliminating discrimination and such recom- ndations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 01–2209), is further amended—

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

"(32) Chairman, Equal Employment Opportunity Commission"; and

(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205(a)) the following: "Equal Employment Opportunity Commission (4)."

(f) The principal office of the Commission shall be in or near the strict of Columbia, but it may meet or exercise any or all its powers any other place. The Commission may establish such regional or te offices as it deems necessary to accomplish the purpose of this e.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals *and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));*

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectua-

tion by conciliation or such other remedial action as is provide by this title:

(5) to make such technical studies as are appropriate t effectuate the purposes and policies of this title and to make th results of such studies available to the public;

(6) to refer matters to the Attorney General with recommen dations for intervention in a civil action brought by an aggrieve party under section [706] *715*, or for the institution of a civ action by the Attorney General under section 707, and to advis consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the directio of the Commission, appear for and represent the Commission in an case in court.

(i) The Commission shall, in any of its educational or promotiona activities, cooperate with other departments and agencies in the pe formance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commi sion shall be subject to the provisions of section 9 of the Act of Augu 2, 1939, as amended (the Hatch Act), notwithstanding any exemptio contained in such section.

[PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

[SEC. 706. (a) Whenever it is charged in writing under oath by person claiming to be aggrieved, or a written charge has been file by a member of the Commission where he has reasonable cause t believe a violation of this title has occurred (and such charge se forth the facts upon which it is based) that an employer, employme agency, or labor organization has engaged in an unlawful employme practice, the Commission shall furnish such employer, employme agency, or labor organization (hereinafter referred to as the "respon ent") with a copy of such charge and shall make an investigation such charge, provided that such charge shall not be made public by th Commission. If the Commission shall determine, after such inves gation, that there is reasonable cause to believe that the charge is tru the Commission shall endeavor to eliminate any such alleged unlawf employment practice by informal methods of conference, conciliatio and persuasion. Nothing said or done during and as a part of suc endeavors may be made public by the Commission without the writte consent of the parties, or used as evidence in a subsequent proceedin Any officer or employee of the Commission, who shall make publ in any manner whatever any information in violation of this subsectio shall be deemed guilty of a misdemeanor and upon conviction there shall be fined not more than $1,000 or imprisoned not more than o year.

[(b) In the case of an alleged unlawful employment practice occu ring in a State, or political subdivision of a State, which has a Sta or local law prohibiting the unlawful employment practice alleg and establishing or authorizing a State or local authority to grant seek relief from such practice or to institute criminal proceedin with respect thereto upon receiving notice thereof, no charge may filed under subsection (a) by the person aggrieved before the expir tion of sixty days after proceedings have been commenced under th

ate or local law, unless such proceedings have been earlier termi-
ted, provided that such sixty-day period shall be extended to one
ndred and twenty days during the first year after the effective
te of such State or local law. If any requirement for the com-
ncement of such proceedings is imposed by a State or local author-
other than a requirement of the filing of a written and signed
tement of the facts upon which the proceeding is based, the pro-
ding shall be deemed to have been commenced for the purposes of
is subjection at the time such statement is sent by registered mail
the appropriate State or local authority.

[(c) In the case of any charge filed by a member of the Commission
eging an unlawful employment practice occurring in a State or
litical subdivision of a State, which has a State or local law pro-
biting the practice alleged and establishing or authorizing a State
local authority to grant or seek relief from such practice or to
stitute criminal proceedings with respect thereto upon receiving
tice thereof, the Commission shall, before taking any action with
pect to such charge, notify the appropriate State or local officials
d, upon request, afford them a reasonable time, but not less than
ty days (provided that such sixty-day period shall be extended
one hundred and twenty days during the first year after the effec-
e day of such State or local law), unless a shorter period is
quested, to act under such State or local law to remedy the practice
eged.

[(d) A charge under subsection (a) shall be filed within ninety days
er the alleged unlawful employment practice occurred, except that
the case of an unlawful employment practice with respect to which
person aggrieved has followed the procedure set out in subsection
), such charge shall be filed by the person aggrieved within two
ndred and ten days after the alleged unlawful employment practice
urred, or within thirty days after receiving notice that the State
local agency has terminated the proceedings under the State or
al law, whichever is earlier, and a copy of such charge shall be
d by the Commission with the State or local agency.

[(e) If within thirty days after a charge is filed with the Commis-
n or within thirty days after expiration of any period of reference
der subsection (c) (except that in either case such period may be
ended to not more than sixty days upon a determination by the
mmission that further efforts to secure voluntary compliance are
rranted), the Commission has been unable to obtain voluntary
mpliance with this title, the Commission shall so notify the person
grieved and a civil action may, within thirty days thereafter, be
ought against the respondent named in the charge (1) by the person
iming to be aggrieved, or (2) if such charge was filed by a member
the Commission, by any person whom the charge alleges was
grieved by the alleged unlawful employment practice. Upon
plication by the complainant and in such circumstances as the court
y deem just, the court may appoint an attorney for such com-
inant and may authorize the commencement of the action without
payment of fees, costs, or security. Upon timely application, the
rt may, in its discretion, permit the Attorney General to intervene
such civil action if he certifies that the case is of general public

importance. Upon request, the court may, in its discretion, sta
further proceedings for not more than sixty days pending the term
nation of State or local proceedings described in subsection (b) or th
efforts of the Commission to obtain voluntary compliance.

[(f) Each United States district court and each United State
court of a place subject to the jurisdiction of the United States sha
have jurisdiction of actions brought under this title. Such an actio
may be brought in any judicial district in the State in which th
unlawful employment practice is alleged to have been committed, i
the judicial district in which the employment records relevant to suc
practice are maintained and administered, or in the judicial district i
which the plaintiff would have worked but for the alleged unlawfu
employment practice, but if the respondent is not found within an
such district, such an action may be brought within the judicial distric
in which the respondent has his principal office. For purposes of sec
tions 1404 and 1406 of title 28 of the United States Code, the judicia
district in which the respondent has his principal office shall in al
cases be considered a district in which the action might have bee
brought.

[(g) If the court finds that the respondent has intentionally en
gaged in or is intentionally engaging in an unlawful employment prac
tice charged in the complaint, the court may enjoin the respondent
from engaging in such unlawful employment practice, and order suc
affirmative action as may be appropriate, which may include reinstate
ment or hiring of employees, with or without back pay (payable by th
employer, employment agency, or labor organization, as the case ma
be, responsible for the unlawful employment practice). Interim earn
ings or amounts earnable with reasonable dilligence by the person o
persons discriminated against shall operate to reduce the back pa
otherwise allowable. No order of the court shall require the admis
sion or reinstatement of an individual as a member of a union or th
hiring, reinstatement, or promotion of an individual as an employee
or the payment to him of any back pay, if such individual was refuse
admission, suspended, or expelled or was refused employment or ad
vancement or was suspended or discharged for any reason other tha
discrimination on account of race, color, religion, sex or national origi
or in violation of section 704(a).

[(h) The provisions of the Act entitled "An Act to amend th
Judicial Code and to define and limit the jurisdiction of courts sittin
in equity, and for other purposes," approved March 23, 1932 (29 U.S.C
101 115), shall not apply with respect to civil actions brought unde
this section.

[(i) In any case in which an employer, employment agency, o
labor organization fails to comply with an order of a court issued i
a civil action brought under subsection (e), the Commission may com
mence proceedings to compel compliance with such order.

[(j) Any civil action brought under subsection (e) and any pro
ceedings brought under subsection (i) shall be subject to appeal as pro
vided in sections 1291 and 1292, title 28, United States Code.

[(k) In any action or proceeding under this title the court, in it
discretion, may allow the prevailing party, other than the Commis
sion or the United States, a reasonable attorney's fee as part of th

osts, and the Commission and the United States shall be liable for osts the same as a private person.]

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) The Commission is empowered, as hereinafter pro-ided, to prevent any person from engaging in any unlawful employ-ent practice as set forth in section 703 or 704 of this title.

(b) Whenever a charge is filed by or on behalf of a person claiming be aggrieved, or by a member of the Commission, alleging that an mployer, employment agency, labor organization, or joint labor-anagement committee controlling apprenticeship or other training retraining, including on-the-job training programs has engaged in unlawful employment practice, the Commission shall serve a copy the charge on such employer, employment agency, labor organiza-on, or joint labor-management committee (hereinafter referred to the "respondent") and shall make an investigation thereof. harges shall be in writing and shall contain such information and in such form as the Commission requires. Charges shall not be ade public by the Commission. If the Commission determines after ch investigation that there is no reason to believe that the charge true, it shall dismiss the charge and promptly notify the person aiming to be aggrieved and the respondent of its action. If the Com-ission determines after such investigation that there is reasonable use to believe that the charge is true, the Commission shall endeavor eliminate any such alleged unlawful employment practice by in-rmal methods of conference, conciliation, and persuasion. Nothing id or done during and as a part of such informal endeavors may made public by the Commission, its officers or employees, or used evidence in a subsequent proceeding without the written consent of e persons concerned. Any person who makes public information in olation of this subsection shall be fined not more than $1,000 or prisoned not more than one year, or both. The Commission shall ke its determination on reasonable cause as promptly as possible d, so far as practicable, not later than one hundred and twenty days om the filing of the charge or, where applicable under subsection) or (d), from the date upon which the Commission is authorized take action with respect to the charge.

(c) In the case of a charge filed by or on behalf of a person claim-g to be aggrieved alleging an unlawful employment practice oc-rring in a State, or political subdivision of a State, which has a ate or local law prohibiting the unlawful employment practice al-ed and establishing or authorizing a State or local authority to ant or seek relief from such practice or to institute criminal pro-edings with respect thereto upon receiving notice thereof, the Com-ission shall take no action with respect to the investigation of such arge before the expiration of sixty days after proceedings have en commenced under the State or local law: Provided, That such ty-day period shall be extended to one hundred and twenty days ring the first year after the effective date of such State or local w. If any requirement for the commencement of such proceedings is posed by a State or local authority other than a requirement of the ing of a written and signed statement of the facts upon which the

proceeding is based, the proceeding shall be deemed to have been com
menced for the purposes of this subsection at the time such statemen
is sent by certified mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commissio
alleging an unlawful employment practice occurring in a State o
political subdivision of a State which has a State or local law prohi
iting the practice alleged and establishing or authorizing a State o
local authority to grant or seek relief from such practice or to inst
tute criminal proceedings with respect thereto upon receiving notic
thereof the Commission shall, before taking any action with respect t
such charge, notify the appropriate State or local officials and, upo
request, afford them a reasonable time, but not less than sixty days
Provided, That such sixty-day period shall be extended to one hun
dred and twenty days during the first year after the effective date o
such State or local law, unless a shorter period is requested, to ac
under such State or local law to remedy the practice alleged.

(e) A charge shall be filed within one hundred eighty days after th
alleged unlawful employment practice occurred and a copy shall b
served upon the person against whom such charge is made as soon a
practicable thereafter, except that in a case of an unlawful employ
ment practice with respect to which the person aggrieved has initiall
instituted proceedings with a State or local agency with authority t
grant or seek relief from such practice or to institute criminal pro
ceedings with respect thereto upon receiving notice thereof, suc
charge shall be filed by the person aggrieved within three hundre
days after the alleged unlawful employment practice occurred, or wit
in thirty days after receiving notice that the State or local agency ha
terminated the proceedings under the State or local law, whichever i
earlier, and a copy of such charge shall be filed by the Commissio
with the State or local agency.

(f) If the Commission determines after attempting to secure volun
tary compliance under subsection (b) that it is unable to secure from
the respondent a conciliation agreement acceptable to the Commissio
and to the person aggrieved, which determination shall not be reviewa
able in any court, the Commission shall issue and cause to be served
upon the respondent a complaint stating the facts upon which the
allegation of the unlawful employment practice is based, together wit
a notice of hearing before the Commission, or a member or agent there
of, at a place therein fixed not less than five days after the serving o
such complaint. Related proceedings may be consolidated for hearing
Any member of the Commission who filed a charge in any case shal
not participate in a hearing on any complaint arising out of such
charge, except as a witness.

(g) A respondent shall have the right to file an answer to the com
plaint against him and with the leave of the Commission, which shal
be granted whenever it is reasonable and fair to do so, may amend hi
answer at any time. Respondents and the person aggrieved shall be
parties and may appear at any stage of the proceedings, with or with
out counsel. The Commission may grant such other persons a right
to intervene or to file briefs or make oral arguments as amicus curiae
or for other purposes, as it considers appropriate. All testimony shal
be taken under oath and shall be reduced to writing.

(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: Provided, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

(i) After a charge has been filed and until the record has been filed in a court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice, approved by the Commission, and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsection (k) and the provisions of that subsection shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

(j) Findings of fact and orders made or issued under subsection (h) or (i) of this section shall be determined on the record.

(k) The Commission may petition any United States court of appeals within any circuit wherein the unlawful employment practice in question occurred or wherein the respondent resides or transacts business for the enforcement of its order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall cause notice thereof to be served upon the parties to the proceeding before the Commission, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. No objection that has not been urged before the Commission, its member, or agent, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material

and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to question of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(f) Any party aggrieved by a final order of the Commission granting or denying, in whole or in part, the relief sought may obtain a review of such order in any United States court of appeals in the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the Court to the Commission and to the other parties to the proceeding before the Commission, and thereupon the Commission shall file in the court the certified record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (k), the findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and the court shall have the same jurisdiction to grant such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The commencement of proceedings under this subsection or subsection (k) shall not, unless ordered by the court, operate as a stay of the order of the Commission.

(m) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (47 Stat. 70 et seq.; 29 U.S.C. 101–115), shall not apply with respect to (1) proceedings under subsection (k), (l), or (o) of this section, (2) proceedings under section 707 of this title, or (3) proceedings under section 715 of this title.

(n) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the General Counsel of the Commission.

(o) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding the Commission may bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a)(2) thereof, shall govern proceedings under this subsection.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the

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hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission, the Attorney General, or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the Commission, the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper.

(d) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (e) and (f) of this section.

(e) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the Attorney General or Acting Attorney General, as appropriate.

(f) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: Provided, That all

such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, *engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and* utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may [reimburse] *pay by advance or reimbursement* such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements [and under which no person may bring a civil action under section 706 in any cases or class of cases so specified,] or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

[(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor

organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.]

(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulation or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.

[(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.]

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish, upon request and without cost to any State or local agency charged with the administration of a fair employment practice law, information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

[INVESTIGATORY POWERS

[SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

[(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for per-

mission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with the provisions of section 709 (c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

[(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

[(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.]

INVESTIGATORY POWERS

SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply: Provided, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint ***and notice of hearing under subsection (f) of section 706.***

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i) and (k) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rule as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in

subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: Provided, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of [section 111] *sections 111 and 1114* title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

[SPECIAL STUDY BY SECRETARY OF LABOR

[SEC. 715. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.]

CIVIL ACTIONS BY PERSONS AGGRIEVED

SEC. 715. (a) If (1) the Commission determines that there is no reasonable cause to believe the charge is true and dismisses the charge in accordance with section 706(b), (2) finds no probable jurisdiction and dismisses the charge, or (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706 (c) or (d), the Commission has not either (i) issued a complaint in accordance with section 706(f), (ii) determined that there is no reasonable cause to believe the charge is true and dismissed the charge in accordance with section 706(b) or found no probable jurisdiction and dismissed the charge, or (iii) entered into a conciliation agreement acceptable to the Commission and to the person aggrieved in accordance with section 706(f) or an agreement with the parties in accordance with section 706(i), the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such

harge was filed by a member of the Commission, by any person whom he charge alleges was aggrieved by the alleged unlawful employment ractice. Upon application by the complaintant and in such circumtances as the court may deem just, the court may appoint an attorney or such complaintant and may authorize the commencement of the tion without the payment of fees, costs, or security. Upon timely pplication, the court may, in its discretion, permit the Commission intervene in such civil action if it certifies that the case is of geral public importance. Upon the commencement of such civil action, he Commission shall be divested of jurisdiction over the proceeding nd shall take no further action with respect thereof: Provided, That, pon request, the court may, in its discretion, stay further proceedings r not more than sixty days pending termination of State or local roceedings described in subsection (c) or (d) or the efforts of the ommission to obtain voluntary compliance.

(b) Each United States district court and each United States court a place subject to the jurisdiction of the United States shall have risdiction of actions brought under this section. Such an action may brought in any judicial district in the State in which the unlawful nployment practice is alleged to have been committeed, or in the dicial district in which the plaintiff would have been employed but r the alleged unlawful employment practice, but if the respondent not found within any such district, such an action may be brought ithin the judicial district in which the respondent has his principal fice. For purposes of sections 1404 and 1406 of title 28 of the United ates Code, the judicial district in which the respondent has his prinpal office shall in all cases be considered a district in which the action ight have been brought. Upon the bringing of any such action, the strict court shall have jurisdiction to grant such temporary or preminary relief as it deems just and proper.

(c) If the court finds that the respondent has intentionally engaged or is intentionally engaging in an unlawful employment practice arged in the complaint, the court may enjoin the respondent from gaging in such unlawful employment practice, and order such firmative action as may be appropriate, which may include reintement or hiring of employees, with or without backpay (payable the employer, employment agency, or labor organization, as the case ay be, responsible for the unlawful employment practice). Interim rnings or amounts earnable with reasonable diligence by the person persons discriminated against shall operate to reduce the backpay herwise allowable. No order of the court shall require the admission reinstatement of an individual as a member of a union or the hiring, instatement, or promotion of an individual as an employee, or the yment to him of any backpay, if such individual was refused admisn, suspended, or expelled or was refused employment or advancent or was suspended or discharged for any reason other than scrimination on account of race, color, religion, sex, or national origin in violation of section 704(a).

(d) In any case in which an employer, employment agency, or labor ganization fails to comply with an order of a court issued in a civil tion brought under subsection (a), the Commission may commence roceedings to compel compliance with such order.

(e) Any civil action brought under subsection (a) and any proceed
ings brought under subsection (d) shall be subject to appeal as pr
vided in sections 1291 and 1292, title 28, United States Code.

(f) In any action or proceeding under this section, the court, in i
discretion, may allow the prevailing plaintiff a reasonable attorney
fee as part of the costs.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after th
date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other tha
sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment
this title, convene one or more conferences for the purpose of enablin
the leaders of groups whose members will be affected by this title
become familiar with the rights afforded and obligations imposed b
its provisions, and for the purpose of making plans which will resu
in the fair and effective administration of this title when all of i
provisions become effective. The President shall invite the particip
tion in such conference or conferences of (1) the members of th
President's Committee on Equal Employment Opportunity, (2) th
members of the Commission on Civil Rights, (3) representatives
State and local agencies engaged in furthering equal employme
opportunity, (4) representatives of private agencies engaged in fu
thering equal employment opportunity, and (5) representatives
employers, labor organizations, and employment agencies who will b
subject to the title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717.[1] *(a) All personnel actions affecting employees or applican*
for employment in the competitive service (as defined in section 2102
title 5 of the United States Code) or employees or applicants for em
ployment in positions with the District of Columbia governme
covered by the Civil Service Retirement Act shall be made free fro
any discrimination based on race, color, religion, sex, or national origi

(b) The Equal Employment Opportunity Commission shall ha
authority to enforce the provision of subsection (a) and shall issue su
rules, regulations, orders, and instructions as it deems necessary an
appropriate to carry out its responsibilities hereunder, and the head
each executive department and agency and the appropriate officers
the District of Columbia shall comply with such rules, regulation
orders, and instructions: Provided, That such rules and regulatio
shall provide that an employee or applicant for employment shall
notified of any final action taken on any complaint filed by hi
thereunder.

(c) Within thirty days of receipt of notice given under subsectio
(b), the employee or applicant for employment, if aggrieved by th
final disposition of his complaint, may file a civil action as provide
in section 715, in which civil action the head of the executive depar

[1] Effective 6 months after date of enactment.

ment or agency, or the District of Columbia, as appropriate, shall be espondent.

(d) The provisions of section 715 shall govern civil actions brought ereunder.

(e) All functions of the Civil Service Commission which the Director of the Bureau of the Budget determines relate to nondiscrimination in government employment are transferred to the Equal Employment Opportunity Commission.

(f) All authority, functions, and responsibilities vested in the ecretary of Labor pursuant to Executive Order 11246 relating to ondiscrimination in employment by Government contractors and ubcontractors and nondiscrimination in federally assisted costruction ntracts are transferred to the Equal Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds nployed, used, held, available or to be made available in connection ith the functions transferred to the Commission hereby as may be cessary to enable the Commission to carry out its functions pursuant this subsection, and the Commission shall hereafter carry out all ich authority, functions, and responsibilities pursuant to such order.

EFFECT UPON OTHER LAW

SEC. 718. Nothing contained in this Act shall relieve any government ency or official of its or his primary responsibility to assure nondisimination in employment as required by the Constitution, statutes, nd Executive orders.

5316. Positions at level V.

Level V of the Executive Schedule applies to the following positions, r which the annual rate of basic pay is $36,000:

* * * * * * *

[(111) Members, Equal Employment Opportunity Commission (4).]

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MINORITY VIEWS ON H.R. 1746

We all agree that, if equal employment opportunity for all Amer cans is to become a reality, the Equal Employment Opportunit Commission should be given enforcement powers. We are convince however, that H.R. 1746 will not accomplish this goal, and thus w must oppose it.

First and foremost, on the premise that anyone charged with viola ing the law is innocent until proven guilty, we believe that enforce ment of our laws can best be effectuated through our courts.

Additionally, we fear that, in view of the estimated 18-month t two-year backlog that currently exists at the EEOC, the intent o H.R. 1746 to expand the EEOC's jurisdiction will serve only to retar and frustrate the purposes and objectives of the Equal Employmen Opportunity Act.

Under the procedures of the Committee bill, upon receipt of charge, the Commission is required to investigate and to find reason able cause before issuing a formal complaint. In effect, this finding is presumption of the guilt of the defendant, which subtly shifts th burden of proof from the plaintiff to the defendant. Thus, in practice if not by law, the defendant is faced with the burden of proving hi innocence.

During Committee sessions, we offered amendments to assure tha title VII of the Civil Rights Act would be enforced, and that enforce ment would be fair and impartial. Our amendments, which were re jected, would permit the EEOC attorneys, if they are unsuccessful i their conciliation and if they found reasonable cause to believe that violation of the law has taken place, to seek enforcement in Federa district courts.

I. The Major Issue

As indicated above, the most significant issue that separates th majority of the committee from the minority is not whether the EEO should be given enforcement authority. Rather, the issue is: What pro cedures will insure the most effective enforcement of the substantiv provisions of title VII of the Civil Rights Act of 1964.

By providing the EEOC with authority to issue cease and desist an other remedial orders, the Committee bill would transform this agency into a quasi-judicial body very similar to the National Labor Rela tions Board.

In the next section we explain and justify our belief that the cour approach will be more effective and more expeditious than the admin istrative approach. We are compelled, however, to point out as wel that the authority provided in H.R. 1746 ignores and denies basi American principles.

Under our system of justice, a person charged with violating the aw is presumed innocent until proved guilty. In practical effect the 'ommittee bill creates a system that presumes persons charged with ertain law violations are guilty until proved innocent. We contend hat the EEOC has attained an image as an advocate of civil rights, nd properly so. For this very reason, we submit that it cannot be an mpartial arbiter of the law. An advocate, by nature, represents one ide of an issue. How can he then be asked to apply the law without rejudice?

THE JUDICIAL APPROACH

The direct judicial approach offers greater advantages than the administrative cease and desist approach. While both methods would involve an adversary proceeding before a finder of fact, in the judicial pproach the original finder of fact would be the federal district court udge as compared to a hearing officer who is a civil service employee, nder the administrative approach.

There are substantial reasons for supporting direct resort to the ourts. They include:

. *Timeliness of Relief and Remedy*

Contrary to the proponents of the "cease and desist" approach, the istrict court approach is clearly preferable because relief can be more uickly granted. The pertinent yardstick is the amount of time an aggrieved person must wait before he is afforded relief. Empowering the EOC to bring court suits will greatly facilitate its ability to implement the law without delay and to bring effective relief to victims of iscrimination. If the EEOC prevails before the court, it is entitled an immediate injunction and other relief to bring about a rapid end the discriminatory practices. In many instances a relatively simple roof would allow the EEOC to obtain a preliminary injunction pending a full trial of the case.

A close examination of the time factors involved in processing harges before the National Labor Relations Board (which was the odel for formulating the enforcement powers given to the EEOC by he Committee bill) and the district courts conclusively establishes hat quicker relief can be achieved when the direct court approach is ilized.

It is significant that the Special Subcommittee on Labor opened earings on May 6, 1971, on a bill (H.R. 7152) to expedite the processes of the National Labor Relations Board, and in the explanatory heet it distributed it discussed the delay incurred in the six stages of he administrative process which culminated in a court enforced order the Court of Appeals. The delay was summarized as follows:

> In sum, it can easily take 2½ years from the time a worker walks into a regional Labor Board office with a charge that he has been discharged illegally until the time a court of appeals finally issues an order that he be reinstated to his job with back pay.

Even the 2½ year figure cited appears unduly optimistic in light of cent testimony given before the Special Subcommittee on Labor on

H.R. 7152, on May 12, 1971, by Frank W. McCulloch, former Chairman of the NLRB, about the length of delay between the issuance of a Board decision and a court order. He stated:

> In operation, the lack of such a provision [referring to a self-enforcing provision] has resulted in the build-up of a median time interval of 630 days in enforcement cases, as previously noted, from Board decision to a Court order which for the first time applies the sanctions of the law to a non-complying respondent.

When these time factors are added up, the 18–24 month backlog currently existing at EEOC, the time needed for an administrative proceeding and review by the Commission, plus the 630 day figure currently required to get court enforcement (using the NLRB figure) 3½ to 4 years would appear to be a more correct approximation of the time involved in getting enforcement through the administrative cease and desist approach.

In striking contrast, the 1970 Annual Report of the Director of the Administrative Office of the United States Courts states that ten months was the median time interval from issue to trial for non-jury trials completed in United States District Courts in 1970. Even assuming time for issuance of a decision such forum would clearly be quicker. Moreover, the district courts located in those states which have most of the charges of employment discrimination often have better time records in case handling.

An examination of the Fourth Annual Report of the Equal Employment Opportunity Commission, submitted on July 30, 1970, shows that the top ten states in terms of the number of charges of employment discrimination recommended for investigation are: Texas (1232 charges), Louisiana (1007), Florida (1000), Alabama (734), Tennessee (672), California (546), Georgia (519), Pennsylvania (501), Illinois (354) and New Jersey (306). As federal district courts in such metropolitan areas as New York City and Philadelphia would obviously be much busier than those in less populolus areas, the case handling time factor should therefore, be correlated with the areas where most charges originate.

The median time interval in months for non-jury trials in such states discloses the following:

Texas:

Northern District, 4 months, Dallas.
Eastern District, 5 months, Beaumont.
Southern District, 12 months, Houston.
Western District, 3 months, San Antonio.

Louisiana:

Eastern District, 13 months, New Orleans.
Western District, 13 months, Shreveport.

Florida:

Northern District, 8 months [1], Tallahassee.
Middle District, 12 months, Jacksonville.
Southern District, 9 months, Miami.

[1] Jury and non-jury trials total.

Alabama:
Northern District, 8 months, Birmingham.
Middle District, 3 months,[1] Montgomery.
Southern District, 11 months, Mobile.
Tennessee:
Eastern District, 4 months, Knoxville.
Middle District [2], Nashville.
Western District, 8 months, Memphis.
California:
Northern District, 23 months, San Francisco.
Eastern District, 21 months,[1] Sacramento.
Central District, 10 months, Los Angeles.
Southern District [3], San Diego.
Georgia:
Northern District, 4 months, Atlanta.
Middle District, 4 months, Macon.
Southern District, 1 month, Savannah.
Pennsylvania:
Eastern District, 36 months, Philadelphia.
Middle District, 21 months [1], Scranton.
Western District, 12 months, Pittsburgh.
Illinois:
Northern District, 11 months, Chicago.
Eastern District, 12 months [1] East St. Louis.
Southern District, 11 months [1], Peoria.
New Jersey: 1 month, Newark.

Of the 29 district courts represented in the above statistics, 21 courts d a median time of 12 months or less; 8 courts had median trial mpletion times of 6 months or less.

In hearings last April before the House Committee on Appropria-ns, discussing the EEOC budget request for FY 1971, Chairman rown noted that EEOC's backlog "now means an average delay of months to 2 years before the Commission can complete action on omplaint." How much longer would this interval be extended if at e end thereof, the Commission then had to begin its administrative oceedings followed by resort to the appellate courts? In his testi-ny before the General Subcommittee on Labor recently, Chairman own noted that "during the first seven and a half months of this scal Year, 14,644 charges were filed with the Commission, *a number ater than the number received in all of last Fiscal Year.*" (Em-asis supplied.) He also stated that as of February 20, 1971, the klog of charges pending before the Commission numbered 25,195. The increased caseload and backlog of EEOC alone not only under-nes but clearly refutes the contention that the administrative proc-would bring quicker relief. Add to this backlog the increased work-d that would be generated by the additional jurisdiction bestowed EEOC by the Committee bill (jurisdiction over state and local

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Jury and non-jury trials—total.
No figure given: only one jury trial reported completed in fiscal year 1970.
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employees, transfer of the Office of Federal Contract Compliance t
EEOC, transfer of pattern and practice suits to EEOC from th
Justice Department, transfer of authority over discrimination among
federal employees to EEOC from the Civil Service Commission, juris
diction extended to employers with 8 employees as compared to th
present 25 employee limitation) conclusively establishes that claim
of quicker remedies through the administrative "cease and desist
process are more fiction than fact.

Finally, we suggest that a further impediment to timely action is
presented by virtue of the fact that under the administrative approach
the decision to grant relief can be made only by the Commission. An
EEOC attorney in the field could investigate, and he could attempt
conciliation; but there would be only one facility available to issue a
cease and desist order—the Commission in Washington. Through the
judicial approach, EEOC attorneys would have access to our 93 Fed
eral district courts for enforcement.

It seems eminently more sensible to us to proceed in a forum where
not only can preliminary relief be made available at the outset, but, if
circumstances warrant, further relief can be obtained as the case pro
ceeds, with *permanent relief* embodied in a self-enforcing decree issu
ing at the culmination of trial. Thus we will have avoided the multi
plicity of opportunities for delay that are inherent in the cease-and-
desist approach, and aggrieved parties will have their remedy at the
earliest possible moment.

This alternative saves the best features of the independent agency
approach—expertise and political autonomy—while avoiding the
problems that arise when an active enforcement stance must be accom
modated within a structure that contemplates quasi-judicial neutrali
ty. The problem title VII seeks to correct is not one susceptible to the
kind of policy balancing that is usual in the administration of law
regulating utilities or other situations involving competing interests.
Racial discrimination does not occupy the status of an "interest" under
our system of law. It is a grave injustice which should be eliminated
in as quick and efficient a manner as possible.

B. Greater Prestige of Federal Judges

The appropriate forum to resolve civil rights questions, questions of
employment discrimination as well as such matters as public accom
modations, school desegregation, fair housing, and voting rights, is a
court. Civil rights issues usually arouse strong emotions. United States
district court proceedings provide procedural safeguards: Federal
judges are well known in their areas and enjoy great respect; the
forum is convenient for the litigants and is impartial; the proceedings
are public, and the judge has power to resolve the problem and fashion
a complete remedy.

C. Evidentiary Matters

The district court approach has a great advantage over an adminis
trative hearing procedure in securing the needed evidence. The Fed
eral Rules of Civil Procedure with respect to discovery, would greatly
facilitate the collection of evidence for trial. Under a cease and desist
approach, the rather cumbersome method of enforcing subpoenas se
verely inhibits the acquisition of evidence for trial, making the hearing

very dependent upon the investigation. Experience has shown that investigations, which are aimed simply at developing enough evidence to find reasonable cause, fall short of providing adequate evidence for obtaining a decision where the standard, as it is in the courts, is a preponderance of evidence on the record. Discovery procedures take less time than administrative fact-gathering techniques, and the contempt powers of the court operate to inhibit any intimidation of witnesses, which is a rather difficult problem that is often real, but seldom apparent.

II. Detrimental Provisions and Critical Omissions in the Committee Bill

A. As elaborated or hereafter, we conclude that those provisions in the Committee bill dealing with the transfer of the Office of Federal Contract Compliance (OFCC), the extension of EEOC jurisdiction to state and local employees, and the transfer of pattern and practice suits from the Justice Department to the EEOC are detrimental to the major objective of this bill, which is to provide an enforcement power to effectuate appropriate and timely remedies for discriminatory employment conditions.

1. Section 11 of the Committee bill would transfer the function of the Office of Federal Contract Compliance under Executive Order 11246 from the Department of Labor to the Equal Employment Opportunity Commission. We oppose this transfer because: OFCC has made commendable progress in achieving the Executive Order's goal of equal employment opportunity by government contractors; the transfer would create a hiatus in the administration of these crucial programs and add an insurmountable administrative burden to an already overburdened agency; and the administration of the programs will prove unworkable because the EEOC would be assuming dual role of contract compliance and the regulatory function of processing complaints of employment discrimination.

OFCC is charged with the administration of the nondiscrimination and affirmative action provisions of the Executive Order which relate to Federal contractors and Federally-assisted construction contractors. We feel that this function falls logically within the Department of Labor. The present location of OFCC permits it to benefit directly from the experience gained by the Labor Department in the administration of other workplace standards and anti-discrimination programs which are enforced by similar sanctions as well as its general expertise in labor-management relations. The Department also includes the Manpower Administration, thus making it possible for OFCC to include job training efficiently in the development of useful affirmative action programs.

While OFCC and EEOC share the goal of promoting the civil rights of minority workers, the programs they are presently administering are considerably different. EEOC acts, following an individual complaint, to redress instances of actual job discrimination. OFCC works with Government contractors to insure equal employment opportunity. The merging of these two distinct functions in a single agency will create serious problems, and such combination will

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undoubtedly work to the detriment of both programs. Incidentally, it should be pointed out, that once EEOC is given enforcement powers, federal contractors will be, just as other employers, subject to the processes and remedies of the EEOC in addition to those exercised by OFCC.

The EEOC presently has a tremendous backlog of pending charges. The addition of some form of enforcement powers will greatly increase its administrative responsibilities. We feel that it is simply unrealistic to expect EEOC simultaneously to shoulder the burden of OFCC's program. If the Committee's bill is enacted, we foresee a significant disruption of the compliance program. Regarding such transfer Chairman Brown of the EEOC appeared before the General Subcommittee on Labor and stated:

> Given the tremendous backlog of charges pending now with the Commission—25,195 as of February 20, 1971—the additioanl work which would have to be undertaken by the Commission if it gets enforcement powers, the difficulty of obtaining adequate funding for the Commission, and finally, the tremendous administrative difficulties embodied in such a transfer, I am doubtful as to the desirability of transferring OFCC at this time. Specifically, the administrative difficulties are by far the greatest in my view; almost insurmountable.

The primary responsibility for the implementation of the Executive Order as it relates to government procurement rests and must remain, with the individual Executive agencies. The coordination of the goals of equal employment opportunity with the needs of these agencies to obtain goods and services can be most effectively accomplished from within the Executive Branch of Government. Indeed, the experience of the various Presidential Committees formerly charged with the compliance program indicates the inherent difficulties in placing the operations of the agencies under the control of a separate body, such as the EEOC.

2. The Extension of Coverage to State and Local Employees. Apart from adding to the EEOC's already swollen workload which is treated in more detail in other portions of this report, we believe this area helps substantiate our earlier conclusion that the Federal courts are the proper forum. If its jurisdiction is thus extended, we will have the anomaly of a federal administrative agency interposing itself in the internal administration of state and local government. The NLRB does not have such jurisdiction over employees of state and local governments in matters involving discrimination in employment and we see no justification for extending such jurisdiction to the EEOC. It would be inconsistent with our system of division of governmental powers to subject state and local authorities to the cease-and-desist power of a federal commission.

3. Transfer of Pattern and Practice Suits to EEOC. We oppose the provisions of the Committee bill which would transfer from the Department of Justice to the EEOC the authority to try pattern and practice suits because it involves not only the transfer of authority from one agency to another, but also the elimination of the judicial remedies now provided by Section 707 of the Civil Rights Act. It will

unquestionably hinder the achievement of equal employment opportunity. In effect, the Committee bill, will merely delay the achievement of any remedy to groups of discriminatees by interposing yet another obstacle, the additional forum of the EEOC, which after reaching its conclusion in such matters, under its hearing and cease and desist procedures, must ultimately petition a Federal Circuit Court of Appeals for enforcement. Certainly, it is in this area, that suits are frequently initiated as class actions because of the numbers of employees involved and the amounts of backpay due, which will usually require the authority of a Court enforced decree.

Between July, 1965, when title VII took effect and April 2, 1971, the Civil Rights Division of the Department of Justice filed some 60 suits on the basis of Section 707. The Division has had a high degree of success in litigating these cases, and principles established in them, at the trial or appellate level, have been useful to complaining private litigants and to other federal agencies. Six Circuit Courts have rendered decisions favorable to the Division's position and to date the Division has prevailed in each pattern and practice suit that has come to final decision. Such a record warrants a retention of pattern and practice suits in the Department of Justice. Some of the reasons for its success are the fact that it has access to the investigative resources of the Federal Bureau of Investigation—resources which have proved invaluable in ascertaining the facts and marshaling them for evidence in pattern or practice suits. Moreover, the United States Attorneys, who are the Department's field representatives located in every judicial district in the nation, have a thorough knowledge of local situations and are in a position to render valuable counsel and assistance.

4. Recovery of Court Costs Limited to "Prevailing Plaintiff." Under existing law, the Court has the discretion to allow the "prevailing party" a reasonable attorney's fee as part of the costs for litigation proceeding under this title. The Committee bill eliminated the term "prevailing party" and substitutes the term "prevailing plaintiff". No justification for such change was presented in hearings on the bill; it is contrary to the rule in most jurisdictions; and it may constitute an incentive for harassment suits and a "disincentive" to respondents not to resist ill-founded claims.

B. Critical Omissions of the Committee Bill. At the subcommittee and committee levels, we attempted to amend the Committee bill because it lacked certain procedural and due process safeguards. These deficiencies include: failure to provide for a reasonable statute of limitations on backpay; failure to provide for service of a charge on the named respondent within a reasonable time; failure to provide that title VII, as amended, shall be the exclusive remedy. We believe these omissions are critical and should be called to the attention of the House for we expect to make further attempts on the House floor to provide minimal due process standards in the Committee bill.

1. Statute of Limitations. Under the Committee bill, the time period in which individual charges of employment discrimination must be filed has been extended from 90 days to 180 days from the date of the alleged discriminatory conduct; this is identical to the statute of limitations under the National Labor Relations Act. We concur in such extension. However, testimony in the hearings indicates that pattern or practice suits now brought by the Justice Department are not sub-

ject to such limitation. Civil suits in most jurisdiction are subject to statutes of limitations ranging usually between two or three years. Under existing law, recovery of backpay in such pattern or practice suits can extend back to 1965, the effective date of enactment of the Civil Rights Act of 1964. Thus potential respondents whether they be employers, labor organizations or employment agencies may be subject to enormous monetary penalties in the absence of a definite limitation. To avoid the litigation of stale charges and to preclude respondents from being subject to indefinite liabilities, it is clear that a precise statute of limitations is needed. In view of the tremendous backlog currently existing at the EEOC, and the failure to require a prompt serving of the charge on named respondents as discussed hereafter, equitable principles require a limitation on liability.

Our amendment, which failed by a tie vote, inserted language which provided that no order shall include backpay or liability which accrued more than two years prior to the filing of a charge with the Commission. In view of the equitable principles on which such amendment is based, it is deserving of bipartisan support.

2. Service of the Charge. At the hearings of this bill, it was brought out that in most cases, employers were not notified about the filing of a charge until months later, not uncommonly a year or more. As the Committee bill failed to remedy this problem, we sought to amend it to require service on the named respondent within 5 days after the filing of a charge. In the discussion that ensued it was emphasized that the 5 day figure was not a magic number and that any reasonable time period would be acceptable. Nevertheless, the Committee rejected the 5 day requirement and no reasonable alternative was offered.

It seems patent that failure to require timely notice violates all concepts of due process. Under the National Labor Relations Act, a charge is not deemed effectively filed for purposes of the 6 months statute of limitation *until* service of a copy of the charge on the respondent. In view of specific abuses regarding service of charges under title VII, a specific requirement for service on the respondent within a specified time period (5 to 7 days) is a prerequisite to maintaining minimum standards of due process.

3. Failure to Make Title VII an Exclusive Federal Remedy. Despite the enactment of title VII of the Civil Rights Act, charges of discriminatory employment conditions may still be brought under prior existing federal statutes such as the National Labor Relations Act and the Civil Rights Act of 1866. In view of the comprehensive prohibitions against discrimination contained in title VII, and the intent of the Committee bill to consolidate procedures and remedies under one agency, it would be consistent to make title VII the exclusive remedy. No public interest is served in continuing to permit a multiplicity of statutes or forums to deal with discrimination in employment. However, our attempt to amend the Committee bill to make title VII an exclusive remedy (except for pattern or practice suits) was rejected. In our view, the failure to make this an exclusive remedy merely encourages an individual who has lost his case in one forum under one statute to relitigate his case in still another forum under another federal statute. Under NLRB procedures and the proposed

EEOC procedures, the burden as well as the cost of prosecuting charges is borne by the respective agencies, and therefore, the taxpayer.

CONCLUSIONS

In essence, the Committee bill will result in interposing an additional obstacle in the nature of an administrative forum, between the aggrieved party and the effective judicial relief which can be achieved by a court enforced order. For the reasons previously documented, direct judicial relief can be obtained more quickly and thus more effectively through the federal district courts.

Secondly, and equally as important, the massive expansion of jurisdiction and the transferring of various programs to the EEOC at a time when the agency is struggling to control a burgeoning backlog of cases, will further hamstring efforts to bring meaningful and timely relief to persons aggrieved by discriminatory employment conditions. At a time when Congress should be directing its efforts solely to helping the EEOC become a more effective agency by giving it access to judicial enforcement, the committee bill represents a step backward and will thrust the EEOC into an administrative quagmire which can only delay the attainment of a reasonable standard of operational efficiency that Congress should expect and demand.

Lastly, the failure of the committee bill to include such minimal due process requirements as the prompt notification to named respondents, a reasonable statute of limitations as to backpay and other liability, and failure to make this an exclusive remedy, are critical omissions whose inclusion we deem vital to meet due process standards.

ALBERT H. QUIE.
JOHN N. ERLENBORN.
JOHN DELLENBACK.
MARVIN L. ESCH.
EDWIN D. ESHLEMAN.
WILLIAM A. STEIGER.
ORVAL HANSEN.
EARL B. RUTH.
EDWIN B. FORSYTHE.
VICTOR V. VEYSEY.
JACK F. KEMP.

SEPARATE VIEWS OF REPRESENTATIVE GREEN OF OREGON

I should like to dissent to one provision in the bill.

The new section 717(f), in connection with the transfer of the Office of Federal Contract Compliance to the EEOC, provides that all authority, functions and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the EEOC . . . and the Commissioner shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order.

The EEOC will operate under two authorities—Executive Order 11246 as adopted by subsection (f), and Congressional enactment amended title VII of the Civil Rights Act. Those authorities are divergent in important ways. For example:

(1) Under title VII an individual may sue the offending party after his complaint has been with the EEOC for 60 days.

Under the Executive Order an individual may not sue but may seek debarment of the contract.

(2) Under title VII, EEOC can initiate an investigation only after the filing of a discrimination complaint. The company is entitled to judicial review if it should feel that the investigation is unwarranted.

Under the Executive Order contract review can be conducted at will. A decision to investigate is not subject to judicial review.

(3) Under Title VII EEOC is specifically prohibited from public disclosure of a complaint.

Under the Executive Order there is authority to publish the names of persons accused of discrimination.

(4) Under title VII (Sec. 703(j)) EEOC is expressly prohibited from imposing racial quota requirements.

Under the Executive Order there is authority to require an affirmative action plan including the imposition of racial quotas. In my view, the Philadelphia plan is such a quota plan.

These contradictions place the EEOC in the intolerable situation of being compelled to select between contradictory expressions of Congressional intent. It is unreasonable to ask the EEOC to decide which intention we really mean.

I am particularly concerned that the EEOC may decide that it can under the Executive Order authority, impose racial quotas which it is forbidden to do under direct Congressional statute. Such artificial quotas, unrelated to competence, are a distortion of civil rights and a disservice to our working people. Personal rights are individual rights, and the imposition of quotas infringes on them.

In our committee consideration of the bill, I offered an amendment for the single purpose of removing the contradiction. It would have made the present authority of title VII of the Civil Rights Act take precedence in any conflict situation. The EEOC deserves such guidance.

EDITH GREEN.

INDIVIDUAL VIEWS OF REPRESENTATIVE MAZZOLI

I favor equal employment opportunity for all Americans and support all realistic legislative measures directed toward this goal. However, because of significant provisions contained in, and omitted from, the Committee version of H.R. 1746, I cannot support this legislation in the form in which it has been reported. It requires major amendment in order to become, in my opinion, realistic and appropriate legislation to end job discrimination.

My objections to H.R. 1746 conform generally to the objections raised in the Minority Views printed in this Report.

Basically, I prefer the stability, expedition and protection to plaintiff and defendant alike offered by judicial enforcement of equal employment rights over the administrative cease and desist approach contained in H.R. 1746.

I also prefer that a choice of remedies be incorporated into this legislation. A multiplicity of remedies and of forums, except in pattern and practice suits, is inconsistent with the intent of this legislation which is to consolidate and coordinate all efforts to eliminate discrimination in employment.

There ought also, in my opinion, to be a two-year statute of limitations incorporated into H.R. 1746. I concur with the Minority Views on this matter as set forth elsewhere in this Report.

Likewise, I concur in the conclusion and the reasoning of the minority in opposing the shift of the Office of Federal Contract Compliance to the Equal Employment Opportunities Commission.

On these groups and on others, most of which are discussed in the Minority Views printed in this Report, I cannot support the Committee version of H.R. 1746, and will support amendments or substitutes thereto.

ROMANO L. MAZZOLI.

SUPPLEMENTAL VIEWS OF REPRESENTATIVES JOHN M. ASHBROOK AND EARL F. LANDGREBE

We generally agree with the views expressed in the Minority report. However, we do not conclude as they do that the EEOC should be given enforcement authority.

JOHN M. ASHBROOK.
EARL F. LANDGREBE.

INDIVIDUAL VIEWS OF REPRESENTATIVE REID OF NEW YORK

Since 1965, I have authored, supported, and fought for legislation to strengthen the Equal Employment Opportunity Commission by giving it cease and desist powers. In 1965, such a bill passed the House and in 1970 a similar measure was approved by the Senate. I very much hope that in 1971 both houses of the Congress will agree that the right to equal employment opportunity is dependent upon a strong EEOC with judicially enforceable cease and desist powers.

The Commission's powers under present law are limited to conciliation and it is apparent that this authority is grossly inadequate to obtain meaningful action in the cases before it. Reasonable cause has been found in 63 percent of the 27,000 cases brought before the EEOC and recommended for investigation between 1965 and 1970. But in only less than half of these cases was the Commission able to achieve a totally or even partially successful conciliation.

Based on my experience as Chairman of the New York State Commission for Human Rights in 1961 and 1962, I deeply believe that only cease and desist powers will give the EEOC the strength it needs to be effective. Redress through the courts, instead of cease and desist powers, will not be as effective, will not be as expeditious, and will not result in prompt equal employment opportunity for all Americans.

H.R. 1746 also expands the jurisdiction of EEOC to cover state and local government employees and to cover employers and labor unions with 8 or more employees or members instead of the present 25, and transfers equal employment functions of the Civil Service Commission to the EEOC. These amendments fill a critical need and they will make the protection of a strong Federal law available to government workers in almost 20 states which lack meaningful legislation in this field.

Transfers of authority to the EEOC from the Civil Service Commission, the Department of Labor (in the case of Federal contract compliance) and the Department of Justice (in the case of pattern or practice discrimination suits) will centralize the equal employment functions of the Federal government. Hopefully, this will result in a more vigorous pursuit of these rights than now is the case by certain

these agencies. In particular, adequate staff and resources must be ovided to the EEOC to handle its increased responsibilities. Otherise, these transfers of authority will have the effect of reduced, rather an strengthened, compliance. This is especially important with reard to the transfer of Federal Contract Compliance pursuant to xecutive Order 11246 from the Department of Labor to EEOC.

Equal employment opportunity legislation with effective enforceent is now the law in over 30 states. Support for this bill is nationide among educational, religious, civic, labor, and civil rights groups. know of no black, Spanish-American, Chicano, American Indian, or omen's organization that does not totally support cease and desist wers. Indeed, the most persistent opposition to cease and desist mes from those who do not really want the Federal government to force effectively the right of all Americans to equal employment portunity now.

The plain hard fact of the matter is that we should have enacted this ll in 1965, instead of wasting six years conjuring up legal niceties to ade our constitutional responsibilities. To delay still longer the actment of cease and desist powers for the EEOC would be a grave reliction of duty by the Congress. To dilute this legislation by the bstitution of authority weaker and less effective than cease and sist would be a callous and empty gesture and a cynical failure to lfill a right due all Americans regardless of color or sex.

Finally, I hope that the Rules Committee, unlike its past performce, will grant a rule for H.R. 1746 promptly so that Members will ve a chance to debate and vote on the bill. Amendments will doubtss be offered on the Floor to weaken this legislation, and I hope that l Members will join in defeating them. Justice demands nothing less.

OGDEN R. REID.

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92D CONGRESS
1ST SESSION

H. R. 6760

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1971

Mr. ERLENBORN (for himself, Mr. QUIE, Mr. BELL, Mr. DELLENBACK, Mr. ESCH, Mr. STEIGER of Wisconsin, Mr. HANSEN of Idaho, Mr. FORSYTHE, and Mr. VEYSEY) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(f)(6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for

the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has oc-

curred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an employer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within 5 days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respond-

ent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) are redesig-

nated as subsections (g) through (l), respectively, and the following new subsection is added after section 706(e) thereof:

"(f) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful

employment practice, and order such affirmative action may be appropriate, which may include reinstatement hiring of employees, with or without back pay (payab by the employer, employment agency, or labor organizatio as the case may be, responsible for the unlawful employmen practice). Interim earnings or amounts earnable with rea sonable diligence by the person or persons discriminate against shall operate to reduce the back pay otherwis allowable. No order of the court shall require the admissio or reinstatement of an individual as a member of a union o the hiring, reinstatement, or promotion of an individual a an employee, or the payment to him of any back pay, i such individual, pursuant to section 706(a) and withi the time required by section 706(d), neither filed a charg nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

(f) Section 706 of the Civil Rights Act of 1964 (42

U.S.C. 2000e–5) is amended by adding to the end thereof of the following new subsections:

"(m) In any case in which it is found that there has been discrimination on account of race, color, religion, sex or national origin in the establishment or operation of an exclusive or preferential system for referral of applicants for employment (in addition to any other remedies provided in this Act), the United States Training and Employment Service shall establish and maintain a non-discriminatory system for the referral of such applicants. Any person required to use such exclusive or preferential system, whether by contract or practice, shall also utilize the system established and maintained by the United States Training and Employment Service and shall give preference in employment to applicants referred by the Service if such applicants are competent to perform the required work.

"(n) In any case in which it is found that there has been discrimination on account of race, color, religion, sex or national origin in the establishment, admission into, or operation of an apprenticeship or training program in a trade or craft (in addition to any other remedies provided in this Act), the United States Training and Employment Service shall establish and maintain such additional or alternative

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apprenticeship and training programs in the locality involved as may be required to assure that no applicant for apprenticeship or training shall be discriminated against on account of race, color, religion, sex or national origin."

92D CONGRESS
1ST SESSION

H. R. 9247

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1971

Mr. ERLENBORN (for himself and Mr. MAZZOLI) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 (f) (6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General

under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an em-

ployer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within five days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the re-

spondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 200e–5) are redesignated as subsections (g) through (l), respectively,

and the following new selection is added after section 706 (e) thereof:

"(f) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative

action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

[From the Congressional Record—House, July 15, 1971]

REPORT OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MADDEN. Committee on Rules, House Resolution 542, a resolution providing for the consideration of H.R. 1746. A bill to further promote equal employment opportunities for American workers (Rep. No. 92–360). Referred to the House Calendar.

House Calendar No. 12

92D CONGRESS
1ST SESSION

H. RES. 542

[Report No. 92–360]

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1971

Mr. MADDEN, from the Committee on Rules, reported the following resoluti
which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Resolved, That upon the adoption of this resolution
shall be in order to move that the House resolve itself in
the Committee of the Whole House on the State of the Uni
for the consideration of the bill (H.R. 1746) to further pr
mote equal employment opportunities for American worker
all points of order against said bill for failure to comply wi
the provisions of clause 3, rule XIII, and all points of ord
against section 11 of said bill for failure to comply with t
provisions of clause 4, rule XXI, are hereby waived. Aft
general debate, which shall be confined to the bill and sha
continue not to exceed three hours, to be equally divide
and controlled by the chairman and ranking minority mem

ber of the Committee on Education and Labor, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider without the intervention of any point of order the text of the bill (H.R. 9247) as an amendment in the nature of a substitute for the bill. At the conclusion of the consideration of H.R. 1746 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

92D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REP
No. 92

CONSIDERATION OF H.R. 1746

JULY 15, 1971.—Referred to the House Calendar and ordered to be print

MR. MADDEN, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 542]

The Committee on Rules, having had under consideration H Resolution 542, by a nonrecord vote, report the same to the H with the recommendation that the resolution do pass.

[From the Congressional Record—Senate, Sept. 14, 1971]

EQUAL EMPLOYMENT OPPORTUNITIES ACT OF 1971

By Mr. Byrd of West Virginia (for Mr. Williams, Mr. Bayh, Brooke, Mr. Case, Mr. Church, Mr. Cranston, Mr. Eagleton, Gravel, Mr. Harris, Mr. Hart, Mr. Hartke, Mr. Hughes, Mr. mphrey, Mr. Inouye, Mr. Jackson, Mr. Javits, Mr. Kennedy, Mr. gnuson, Mr. McGovern, Mr. Metcalf, Mr. Mondale, Mr. Mon-a, Mr. Moss, Mr. Muskie, Mr. Nelson, Mr. Pell, Mr. Percy, Mr. oxmire, Mr. Ribicoff, Mr. Scott, Mr. Schweiker, Mr. Stevenson, l Mr. Tunney):

S. 2515. A bill to further promote equal employment opportunities American workers. Referred to the Committee on Labor and Pub-Welfare.

Mr. Byrd of West Virginia. Mr. President, at the request of the dis-guished Senator from New Jersey (Mr. Williams), I offer on his alf for introduction a bill entitled "Equal Employment Opportu-es Act of 1971."

Mr. President, I ask unanimous consent, at his request, that the text he bill and a section-by-section analysis be printed in the Record; I further ask unanimous consent that a statement by the Senator n New Jersey be printed in the Record in conjunction with the in-duction of the bill.

also ask unanimous consent that a statement by the Senator from ssachusetts (Mr. Kennedy) be printed in the Record.

There being no objection, the bill, analysis, and statements were ered to be printed in the Record.

(A copy of S. 2515 as introduced may be found on p. 157.)

TRODUCTORY REMARKS OF SENATOR HARRISON A. WILLIAMS

Mr. Williams. Mr. President, on behalf of myself and other Sena-, I introduce a bill that would strengthen and broaden the enforce-nt powers of the Equal Employment Opportunity Commission.

Title VII of the Civil Rights Act was enacted by Congress in 1964. s Act, signed into law just a little more than seven years ago, rec-ized the prevalence of discriminatory employment practices in the ited States and the need for Federal legislation to deal with the blem of such discrimination. The goal of assuring equal employ-nt opportunity for all of our citizens was made a national commit-nt by that Congressional Act. Unfortunately, however, the machin-we created for achieving this goal was not in all respects equal to commitment.

The deficiency in the 1964 Act was that the Equal Employment Op-tunity Commission, which was established to administer Title VII, not given the authority to issue judicially enforceable orders to

back up its findings of discrimination based on race, color, relig
sex, or national origin. Its authority in such cases has been limite
conciliation efforts.

As a consequence, unless the Department of Justice concludes
a pattern or practice of discrimination is involved, the burden of
taining enforceable relief rests upon each individual victim of disc
ination, who must go into court as a private party with the resul
expense that entails, in order to secure the rights promised him u
the law.

Thus, those persons whose economic disadvantage was a prime
son for enactment of the Equal Employment Opportunities provis
find that their only recourse in the face of unyielding discrimina
is one that is financially prohibitive.

A further consequence is that the Commission's lack of enforcem
authority reduces its ability to achieve compliance and conciliat
efforts. Obviously respondents are less willing to cooperate in arriv
at a satisfactory resolution of a discrimination complaint when t
know that the Commission's power is merely exhortive. The exp
ence of the Commission has substantiated this conclusion for the fa
that conciliation efforts have been unsuccessful in more than hal
the cases in which it has found that discrimination has occurred.

The economic consequences to those whom the Act was designe
help have been extreme. The statistics are vivid and I would lik
recite just a few of the more significant results. Last month the
tion's overall unemployment was six percent of the labor force.
unemployment rate for Negroes and other minorities was 9.8 perc
By comparison, the rate of white unemployment was 5.6 percent.
unemployment rate of nonwhite teenagers at this time last year
28.7 percent. This horrendous figure has increased to 31.3 percent c
pared with 15.4 percent for white teenagers.

Moreover, the burden of unfair employment practices does not
fall on our minority citizens. A major area of compliance ignored
employers is the rights of female workers.

About 40 percent of all workers are women. Current figures indi
that two-thirds of all working mothers are either widowed, divor
or separated from their husbands, or had husbands whose incomes w
below $7,000.

The discrimination against women in employment continues part
larly with regard to earnings. The average American woman
works full time earns only $60.50 for each $100 earned by the aver
American man.

Unfortunately, it must also be noted that discrimination, prima
in the executive suite, is still practiced on the basis of religion
nationality.

The time has come to bring an end to job discrimination once
for all and to insure to every American the decent self-respect t
goes with a job commensurate with one's abilities.

The hopeful prospects that Title VII offered millions of Americ
in 1964 must be made a reality in fact if we are to maintain a heal
society and a Nation dedicated to justice.

Last year I introduced similar legislation as S. 2453. That bill, a

ensive deliberation by the Senate, was passed providing the needed forcement machinery for equal employment opportunity for the st time. Unfortunately, the House of Representatives did not act on bill before adjournment.

Our bill provides the Equal Employment Opportunity Commission h the power to conduct administrative hearings if conciliation orts fail after a complaint and to issue cease and desist orders that uld eliminate discriminatory employment practices.

Similar procedures have long been available to other administrative encies, and there is clearly no valid reason for any longer depriving s Commission of similar machinery for performing its assigned re-nsibilities. To ensure due process, the Commission's orders will be ject to judicial review in the United States Courts of Appeal upon ition by any party to the proceedings.

n addition, the bill consolidates three areas of Federal civil rights ivities in the Equal Employment Opportunity Commission. Since enactment of the Civil Rights Act of 1964 there has been increased vity by the Federal Government in eliminating employment dis-nination through its procurement power under Presidential Execu-Order. In addition, the Federal Government has moved to elimi-e employment discrimination within its own house through the sident's authority over the Civil Service Commission.

n its most recent report, the Civil Rights Commission commented the need for consolidation of Federal Government anti-discrimina-y efforts:

In October 1970, the Commission concluded that only by trans-ring OFCC's contract compliance responsibilities and Justice's gation responsibilities to EEOC could effective coordination of Fed-l equal employment efforts be achieved. In the light of continued ffective coordination, the Commission continues to believe that con-dation of equal employment opportunity functions is necessary."

'onsequently, the bill provides that the present authority of the orney General to bring cases involving a pattern or practice of stance to Title VII would be transferred to EEOC. Second, the vity under Executive Order 11246 relating to equal employment portunity by government contractors would be transferred from Secretary of Labor to the Commission. Third, the overall super-on for Equal Employment Opportunity for Federal employees uld be transferred from the Civil Service Commission to the Equal ployment Opportunity Commission.

'he bill also contains other significant provisions. The Commis-n's jurisdiction would be extended to include employers and unions h eight or more employees and members. State and local govern-nt employees, and teachers.

'inally, the bill makes a number of changes relating to the organi-on of the Commission recordkeeping requirements and the pro-ures involved in administrative enforcement.

believe that by enacting this bill we will be able to finally make Commission a truly effective instrument for preventing discrimina-n in employment and fulfilling the Congressional commitment to al employment opportunity made several years ago.

STATEMENT BY SENATOR EDWARD M. KENNEDY

Mr. KENNEDY. Mr. President, I am cosponsoring the Equal E
ployment Opportunities Enforcement Act of 1971 because I belie
that its grant of cease and desist power to the EEOC is vital to t
accomplishment of the national goal of equal access to jobs for
Americans, and because we have waited too long to extend the p
visions of the 1964 Equal Employment Act to state and local gove
ment and to additional private employers.

I wish to express, however, my serious concern that the bill's tra
fer of all equal employment functions from Department of Lab
Department of Justice and the Civil Service Commission to the EE
at this point in time may impose an unmanageable burden on th
already overworked and underfunded agency. Moreover, this transf
may place all of the equal employment eggs in one basket—a bask
that might turn out to be a weak one if a majority of the Commissi
members is not enthusiastic and courageous about implementing t
mandate of the 1964 Civil Rights Act.

But, I am confident that these concerns will receive full consider
tion in the hearings and debate on the bill, and that the final versi
of the legislation will reflect such changes or protections as may a
pear necessary. I therefore am pleased to cosponsor the bill at th
time as evidence of my desire for its speedy processing and its passa
at the earliest possible time.

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 1971

Mr. BYRD of West Virginia (for Mr. WILLIAMS) (for himself, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MCGOVERN, Mr. MAGNUSON, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. SCOTT, Mr. SCHWEIKER, Mr. STEVENSON, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1971".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, govern-

mental agencies, political subdivisions," after the word "individuals".

(2) In subsection (b) strike out all before "*Provided further*", and insert in lieu thereof the following:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (c) strike out between "(A)" and "and such labor organization", and insert in lieu thereof

"twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, or (B) eight or more thereafter,"

(5) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e–2) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its religious activities."

SEC. 4. (a) Subsections (a) through (e) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5(a)–(e)) are amended to read as follows:

"(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a

person claiming to be aggrieved, or by a member of the Commission upon the request of any person claiming to be aggrieved, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') as soon as practicable thereafter and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used

as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after

the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered or certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days: *Provided,* That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful

employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less

than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other person a right to intervene or to file briefs or make oral arguments an amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure for the district courts of the United States.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such un-

lawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organizations, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: *Provided*, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsections (l) through (n) and the provisions

of those subsections shall be applicable to the extent appro-
priate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsections (h) or (i) of this section shall be determined on the record. Section 554, 555, 556, and 557 of title 5 of the United States Code shall apply to such proceedings.

"(k) Any party aggrieved by a final order of the Commission granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals for the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days after the service of such order, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to any other party to the proceeding before the Commission, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant to the petitioner or any other party, including the Commission, such temporary relief or restraining order as it

deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall

file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) The Commission may petition any United States court of appeals for the circuit in which the unlawful employment practice in question occurred or in which the respondent resides or transacts business, for the enforcement of its order and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that its order be enforced and for appropriate temporary relief or restraining order. The Commission shall file in court with its petition the record in the proceeding as provided in section 2112 of title 28, United States Code. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the Commission. Upon the filing of such petition, the court shall have jurisdiction of the proceeding and of the question determined therein and shall

have power to grant to the Commission, or any other party, such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. No objection that has not been urged before the Commission, its members, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and

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be exclusive and its judgment and decree shall be fi
except that the same shall be subject to review by
Supreme Court of the United States as provided in sec
1254 of title 28, United States Code. Petitions filed u
this subsection shall be heard expeditiously.

"(m) If no petition for review, as provided in subs
tion (k), is filed within sixty days after service of the C
mission's order the Commission's findings of fact and or
shall be conclusive in connection with any petition for
forcement which is filed by the Commission under subsec
(l) after the expiration of such sixty-day period. The cl
of the court of appeals in which such petition for enforcem
is filed shall forthwith enter a decree enforcing the orde
the Commission and shall submit a copy of such decree to
Commission, the respondent named in the petition, and
any other parties to the proceeding before the Commissi

"(n) If within ninety days after service of the Co
mission's order, no petition for review has been filed as p
vided in subsection (k), and the Commission has not sou

enforcement of its order as provided in subsection (l), any person entitled to relief under the Commission's order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the unlawful employment practice in question occurred, or in which a respondent named in the order resides or transacts business. The provisions of subsection (m) shall apply to such petitions for enforcement.

"(o) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by attorneys appointed by the Commission.

"(p) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding, the Commission shall, after it issues a complaint, bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, or until the filing of a petition under subsections (k), (l), (m), or (n) of this section, as the case may be, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judi-

cial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection.

"(q) (1) If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has neither issued a complaint under subsection (f) nor entered into an agreement under subsection (f) or (i) which is acceptable to the Commission and to the person aggrieved, the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil

action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto, except that, upon timely application, the court in its discretion may permit the Commission to intervene in such civil action if the Commisson certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

"(2) The right of an aggrieved person to bring a civil action under paragraph (1) of this subsection shall terminate once the Commission has issued a complaint under subsection (f), or has entered into an agreement under subsection (f) or (i) which is acceptable to the Commission and to the

person aggrieved: *Provided*, That if after issuing a complaint the Commission has not issued an order under subsection (h) within a period of one hundred and eighty days of the issuance of the complaint, the Commission shall so notify the person aggrieved and a civil action may be brought against the respondent named in the charge at any time prior to the Commission's issuance of an order under subsection (h): *Provided further*, That if the person aggrieved files a civil action against the respondent during the period from one hundred and eighty days to one year after the issuance of the complaint such person shall notify the Commission of such action and the Commission may petition the court not to proceed with the suit. The court may dismiss or stay any such action upon a showing that the Commission has been acting with due diligence on the complaint, that the Commission anticipates the issuance of an order under subsection (h) within a reasonable period of time, that the case is exceptional, and that extension of the Commission's jurisdiction is warranted."

(b) Subsections (f) through (k) of section 706 of such Act and references thereto are redesignated as subsections (r) through (w), respectively.

(c) Section 706(r) of such Act, as redesignated by this section, is amended by adding at the end the following sentence: "Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper."

(d) Section 706(n) and (v) of such Act, as redesignated by this section, are amended (1) by striking out "(e)" and inserting in lieu thereof "(q)", and (2) by striking out "(i)" and inserting in lieu thereof "(u)".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(c) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (d) and (e) of this section.

"(d) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substi-

tuted as a party for the United States of America or t
Attorney General or Acting Attorney General, as appr
priate.

"(c) Subsequent to the date of enactment of the Equ
Employment Opportunities Enforcement Act of 1971, t
Commission shall have authority to investigate and act
a charge of a pattern or practice of discrimination, whethe
filed by or on behalf of a person claiming to be aggrieve
or by a member of the Commission: *Provided*, That all suc
actions shall be in accordance with the procedures set fort
in section 706, including the provisions for enforcement an
appellate review contained in subsections (k), (l), (m)
and (n) thereof."

SEC. 6. (a) Subsections (b), (c), and (d) of sectio
709 of the Civil Rights Act of 1964 (78 Stat. 263; 4
U.S.C. 2000e–8(b)–(d)) are amended to read as follows

"(b) The Commission may cooperate with State and
local agencies charged with the administration of State fai
employment practices laws and, with the consent of such
agencies, may, for the purpose of carrying out its functions
and duties under this title and within the limitation o
funds appropriated specifically for such purpose, engage in
and contribute to the cost of research and other projects o
mutual interest undertaken by such agencies, and utiliz
the services of such agencies and their employees, and, not-

withstanding any other provision of law, may pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class or persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this

title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commis-

sion, have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

(b) Section 709 of the Civil Rights Act of 1964 is amended by: (1) redesignating section 709(e) as 709(f) and (2) by adding immediately after section 709(d) as amended, the following subsection (e):

"(e) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the

Commission or its representative, or to the Attorney Gene
or his representative, upon demand in writing directed to t
person having custody, possession, or control of such reco
or paper. Unless otherwise ordered by a court of the Unit
States, neither the members of the Commission nor its re
resentative, or the Attorney General, nor his representati
shall disclose any record or paper produced pursuant to th
title, or any reproduction or copy, except to Congress or an
committee thereof, or to a governmental agency, or in th
presentation of any case or proceeding before any court
grand jury. The United States district court for the distri
in which a demand is made or in which a record or pape
so demanded is located, shall have jurisdiction to compel h
appropriate process the production of such record or paper.

SEC. 7. Section 710 of the Civil Rights Act of 196
(78 Stat. 264; 42 U.S.C. 2000e–9) is amended to read a
follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investi
gations conducted by the Commission or its duly authorize
agents or agencies, section 11 of the National Labor Rela
tions Act (49 Stat. 455; 29 U.S.C. 161) shall apply
Provided, That no subpena shall be issued on the applicatio
of any party to proceedings before the Commission unti
after the Commission has issued and caused to be serve

upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703 (a) (2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–2 (a) (2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703 (c) (2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c) (1) Section 704 (a) of such Act is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704 (a).

(2) Section 704 (b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) (1) The second sentence of section 705 (a) is amended by inserting before the period at the end thereof a

comma and the following: "and all members of the Comm
sion shall continue to serve until their successors are appoin
and qualified: *Provided*, That no such member of the C
mission shall continue to serve (1) for more than sixty d
when the Congress is in session unless a nomination to
such vacancy shall have been submitted to the Senate, or (
after the adjournment sine die of the session of the Senate
which such nomination was submitted".

(2) The fourth sentence of section 705(a) of su
Act is amended to read as follows: "The Chairman sh
be responsible on behalf of the Commission for the a
ministrative operations of the Commission, and shall a
point, in accordance with the provisions of title 5, Unit
States Code, governing appointments in the competitive ser
ice, such officers, agents, attorneys, hearings examiners, a
employees as he deems necessary to assist it in the perfor
ance of its functions and fix their compensation in accor
ance with the provisions of chapter 51 and subchapter I
of chapter 53 of title 5, United States Code, relating
classification and General Schedule pay rates: *Provid*
That assignment, removal, and compensation of hearing e
aminers shall be in accordance with sections 3105, 334
5362, and 7521 of title 5, United States Code."

(c) Section 705(g)(1) of such Act is amended b
inserting at the end thereof the following: ", and to acce

voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))".

(f) Section 705(g)(6) of such Act is amended to read as follows:

"(6) to intervene in a civil action brought by an aggrieved party under section 706."

(g) Section 713 of such Act is amended by adding at the end thereof the following new subsections:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i), (k), and (l) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and pow-

ers with respect to hearing, determining, ordering, certify
reporting or otherwise acting as to any work, business
matter: *Provided*, That nothing in this subsection author
the Commission to provide for persons other than those
ferred to in clauses (2) and (3) of subsection (b) of sec
556 of title 5 of the United States Code to conduct any he
ing to which that section applies.

"(d) The Commission is authorized to delegate to
group of three or more members of the Commission any
all of the powers which it may itself exercise."

(b) Section 714 of such Act is amended by striking
"section 111" and inserting in lieu thereof "sections 111 a
1114".

SEC. 9. (a) Section 5314 of title 5 of the United Sta
Code is amended by adding at the end thereof the followi
new clause:

"(55) Chairman, Equal Employment Opportun
Commission."

(b) Clause (72) of section 5315 of such title is amend
to read as follows:

"(72) Members, Equal Employment Opportuni
Commission (4)."

(c) Clause (111) of section 5316 of such title
repealed.

SEC. 10. Section 715 of the Civil Rights Act of 196

(78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended to read as follows:

"SEC. 715. All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Rights Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5,

United States Code, in executive agencies (other than t
General Accounting Office) as defined in section 105 of ti
5, United States Code (including employees and applicar
for employment who are paid from nonappropriated funds
and in those portions of the government of the District
Columbia, and the legislative and judicial branches of th
Federal Government having positions in the competitiv
service, shall be made free from any discrimination based o
race, color, religion, sex, or national origin.

"(b) The Equal Employment Opportunity Commissio
shall have authority to enforce the provision of subsectio
(a) and shall issue such rules, regulations, orders, and in
structions as it deems necessary and appropriate to carry ou
its responsibilities hereunder, and the head of each executiv
department and agency and the appropriate officers of th
District of Columbia shall comply with such rules, regula
tions, orders, and instructions: *Provided*, That such rule
and regulations shall provide that an employee or applicar
for employment shall be notified of any final action take
on any complaint filed by him thereunder.

"(c) Within thirty days of receipt of notice, given pur
suant to subsection (b), of final action taken on a complain
of discrimination based on race, color, religion, sex, or na
tional origin, or after ninety days from the filing of the initia
charge until such time as final action may be taken, an

employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 706 (q) through (w), as applicable, shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission which the Director of the Office of Management and Budget determines relate to nondiscrimination in Government employment are transferred to the Equal Employment Opportunity Commission.

"(f) This section shall become effective six months after the date of enactment of this Act.

"(g) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

SEC. 12. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall not be applicable to charges filed with the Commission prior to the enactment of this Act.

[From the Congressional Record—House, Sept. 14, 1971]

ROPOSED AMENDMENTS TO THE EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

(Mr. Dent asked and was given permission to address the House 1 minute, to revise and extend his remarks, and to include extraous matter.)

Mr. DENT. Mr. Speaker, the Equal Employment Opportunities Enrcement Act of 1971—H.R. 1746—will be brought up for considern tomorrow. It is my understanding that we will be engaged in neral debate on the bill at that time, and read it for amendment on ursday.

Mr. Speaker, although the bill was reported by the Committee on ucation and Labor some time ago by a rather substantial vote, I uld be less than realistic if I did not recognize the deep concern ny Members have with certain of its provisions. Unfortunately, the has been the object of considerable—and often unfair—criticism at least one large employer association. In spite of our explanations, fact remains that some provisions appear onerous to a majority ny colleagues.

n an effort to make the bill conform to the will of a majority, I pose to offer three significant amendments on Thursday. I will be ned by colleagues who previously found H.R. 1746 unacceptable. For the benefit of all Members, I now include the amendments and rief description in the record:

No. 1—AMENDMENT TO H.R. 1746

(SECTION 4)

n page 8, line 3, after the word "allowable.", add the following new sentence: *Provided further*, That no order made hereunder shall include backpay or reinement liability which has accrued more than two years before the filing of a rge with the Commission. Such order may further require such respondent ake reports from time to time showing the extent to which he has complied the order. If the Commission finds that the respondent has not engaged in unlawful employment practice, the Commission shall state its findings of fact shall issue and cause to be served on the respondent and the preson or peralleged in the complaint to be aggrieved an order dismissing the complaint."
n page 26, line 3, after the word "practice).", insert the following new sene:
No order made hereunder shall include backpay or reinstatement liability ch has accrued more than two years before the filing of a charge with the mission."

No. 2—AMENDMENT TO H.R. 1746

(SECTION 11)

n page 29, at the end of line 18, add the following new sentence:
The Commission shall be prohibited from imposing or requiring a quote or erential treatment with respect to numbers of employees, or percentage of loyees of any race, color, religion, sex, or national origin."

No. 3—AMENDMENT TO H.R. 1746

(SECTION 4)

On page 5, strike lines 21 through 25, and on page 6, strike lines 1 throu
and substitute the following:

"(e) A charge shall be filed within one hundred eighty days after the a
unlawful employment practice occurred except that in a case of an unlawfu
ployment practice with respect to which the persons aggrieved has initiall
stituted processings with a State or local agency with authority to grant or
relief from such practice or to institute criminal proceedings with respect th
upon receiving notice thereof, such charge shall be filed by the person aggr
within three hundred days after the alleged unlawful employment practice
red, or within thirty days after receiving notice that the State or local agenc
terminated the proceedings under the State or local law, whichever is earlier
a copy of such charge shall be filed by the Commission with the State or
agency. The Commission shall within ten days of the filing of the charge
a copy of such charge upon the person against whom the charge is made.

My first amendment would impose a 2-year "statute of limitati
on the awarding of backpay and reinstatement under title VII. T
if the EEOC or, in the case of an individual action, the Court, fo
that an unlawful employment practice existed, backpay liability c
not be extends further than 2 years from the time the charge was
with the Commission. I would also like to point out that the exis
law requires a setoff from any award of the amount which the
plainant did, or reasonably could have, earned.

My second amendment would forbid the EEOC from imposing
quotas or preferential treatment of any employees in its administra
of the Federal contract-compliance program. This responsibi
which is now vested in the Office of Federal Contract Compliance
the Department of Labor, would be transferred by H.R. 1746 to
Commission. Such a prohibition against the imposition of quota
preferential treatment already applies to actions brought under
VII. My amendment would, for the first time, apply these restrict
to the Federal contract-compliance program.

My final amendment would require that copies of charges brou
before the Commission be served upon respondents within 10 days.
existing law only requires that notice be given "as soon as practical

[From the Congressional Record—House, Sept. 15, 1971]

QUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

Ir. Bolling. Mr. Speaker, by direction of the Committee on Rules. all up House Resolution 542 and ask for its immediate consideration. The Clerk read the resolution as follows:

See p. 151 for copy of H. Res. 542.)

The Speaker. The gentleman from Missouri is recognized for 1 hour.

Ir. Bolling. Mr. Speaker, I am not aware of any great controversy r this rule, more or less agreed upon as a way in which to give the sides of the issue a fair opportunity to present their point of view l then have a decisive vote. The rule does waive points of order inst the Ramseyer rule and against section 11 of the bill, which does comply with clause 4 of rule 21, in that it involves a transfer of ds.

The rule also makes in order consideration without the interven- of any point of order H.R. 9247 as an amendment in the nature of ubstitute. Points of order are obviously waived against that. That ans that the so-called Erlenborn amendment may be offered and e will be joined directly. Therefore, Mr. Speaker, I reserve the ance of my time.

Ir. Martin. Mr. Speaker, I yield myself 5 minutes.

Mr. Martin asked and was given permission to revise and extend remarks.)

Ir. Martin. Mr. Speaker, House Resolution 542, as the gentleman m Missouri has explained, provides for 3 hours of debate, under an n rule, on H.R. 1746, a bill to provide additional powers to the Equal ployment Opportunity Commission. As the gentleman has ex- ined, there are three waivers of points of order, and the so-called enborn bill would be made in order as a substitute.

This legislation would amend Title VII of the Civil Rights Act of 4, which set up the Equal Employment Opportunity Commis- n. That Commission considers complaints from employees based on or, race, creed, religion, sex, and national origin. Unfortunately, ever, Title VII of the Civil Rights Act of 1964 did not give enforce- nt powers to the Commission, at least complete enforcement powers, as a result they have been somewhat handicapped in carrying out ir findings.

The committee bill as reported provides for substantial increases in erage of the act. For instance, all Federal, State, and local em- yees would be subject to the act itself. In addition, the present law ers only employers or companies who employ 25 or more employees. der the committee bill they would be reduced to eight or more em- yees. In addition, currently those engaged in teaching or in the edu- on profession, both in private and public schools, are exempt from law. Those would be brought in under coverage of the committee . It is estimated that a total of 22 million Americans would be ught under this act who are currently exempt.

n addition, the committee legislation would transfer from the De- tment of Justice power in "practice or pattern" discrimination

suits. That would be transferred, under the committee bill, to EEOC. Additionally, the Office of Federal Contract Compli which is currently operating in the Department of Labor, woul transferred to the EEOC.

The argument has been made by the committee in the committe port that the Erlenborn bill, which would transfer the prosecutio these cases from the Equal Employment Opportunity Commissio the Federal courts, would delay proceedings. Yet, if we take a loo the committee report on page 64, in the testimony of Mr. Brown Chairman of the EEOC, we will find they have a tremendous bac of cases thus far. In the 5 years during which this bill has bee operation, the Commission has had over 52,000 cases presented t In the first 7 months of the fiscal year 1971, the total amounted cording to the Chairman, to 14,129, a considerable increase over vious years. With the addition, Mr. Speaker, of 22 million Ameri to come under the umbrella of this act, the increase in the workloa the Commission would be tremendous.

I would like to quote from the testimony of Chairman Brown of EEOC, when he appeared before the general Subcommittee on La

> Given the tremendous backlog of charges pending now with the Commissi 25,195 as of February 20, 1971—the additional work which would have to be un taken by the Commission if it gets enforcement powers, the difficulty of obtai adequate funding for the Commission, and finally, the tremendous admini tive difficulties embodied in such a transfer, I am doubtful as to the desirab of transferring OFCC at this time. Specifically, the administrative difficu are by far the greatest in my view: almost insurmountable.

The committee bill, Mr. Speaker, would set up this five-man EE board to be the investigator, the prosecutor, the judge, and the jur these cases. An employer would be considered guilty until he pr himself innocent—which is opposite the manner in which our co have operated ever since our founding almost 200 years ago. In courts a man is considered innocent until proven guilty.

This would give tremendous powers to the Equal Employment portunity Commission, comparable to those which the NLRB rently has.

In 1963, Senator GRIFFIN, of Michigan, then a member of the ucation and Labor Committee of the House, and the distinguished tleman from Georgia (Mr. Landrum) made a complete study and vestigation of the operation of the NLRB. I was interested in subject and worked with these gentlemen on the matter. I recall tha 1963, from the studies that Mr. Griffin and Mr. Landrum made, it discovered that the NLRB up to that point had reversed previous cisions by the board 171 times.

Why did that occur? A new administration came in 1961. New m bers were appointed to the NLRB whose philosophy was somew different from those who had served under the administration President Eisenhower. They were more inclined, let us say, tow the labor viewpoint than the management viewpoint. As a result of change in the personnel and background, and as a result of this fu mental philosophy of the new appointees of the NLRB, 171 decisi were overridden by the NLRB which had been made prior to t point.

Since then, I imagine, the number is a great deal larger than 17

That is the grave danger, Mr. Speaker, in the committee legislat we have before us today. The Equal Employment Opportunity C

ssion will be given unlimited powers, and any eligible employee in United States may file a complaint with the Commission. They are ing to be overwhelmed with work down there. There are five mem- s of the Commission, each appointed for a 5-year term. If there is hange in the administration we are going to get new men appointed that Commission, and again we are going to have a repetition of at has occurred in the NLRB over the past several years.

This is a very, very dangerous piece of legislation. I shall not go into tail with regard to the Erlenborn substitute, but shall only say that power of being investigator, prosecutor, judge and jury of these es is given to the Commission by the committee bill, and some of ose powers would be taken away from them, and the matters would handled in the Federal courts, which is the proper place to handle es of this nature, rather than in a Commission.

The charge is made in the committee report that if this is handled the Federal courts great delay will ensue. Let me refer again to report itself. Chairman Brown of the Commission testified they currently running 18 to 25 months behind in the handling of these es and have over a 25,000 backlog.

Let us take a look at how the Federal courts are operating. We can e a look at pages 60 and 61 of the report.

The most complaints come from Texas, Louisiana, Florida, Ala- na, and so on.

The median time interval in months for nonjury trials in such States closes the information set forth there. There is given the number of nths of delay in the various courts in these 10 States.

In summary, of the 29 district courts represented in the above statis- s, 21 courts had a median time of 12 months or less and eight courts d median trial completion times of 6 months or less.

The SPEAKER. The time of the gentleman from Nebraska has again pired.

Mr. MARTIN. Mr. Speaker, I yield myself 2 additional minutes.

In other words, by handling this through the Federal courts rather n through the Commission these cases will be decided a great deal re expeditiously than is proposed under the committee bill.

There is one other point I should like to make, Mr. Speaker, in clos- . The Commission is composed of five men or women who are ap- nted by the President of the United States. Under the committee , as I have explained, these five appointees have great power in w of the fact that they are—and I repeat this point—investigator, osecutor, judge and jury. In view of the fact that these are appoint- nts made by the President, and the administration can change from ne to time from one party to another, we are not going to get con- ent decisions made by boards appointed under different Presidents. These men or women have such great power that it is a good illus- tion of a nation being governed by men rather than by laws, when have this sort of thing, a Commission with these extensive powers. do not believe we want a further extension of government by men, her than by law in the United States.

support the rule, Mr. Speaker. I hope that when the substitute of gentleman from Illinois (Mr. Erlenborn) is presented to the use, the Members will be on the floor and that it will be adopted by overwhelming vote.

Mr. BOLLING. Mr. Speaker, I move the previous question on the olution.

The previous question was ordered.

The resolution was agreed to.

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 1746) to further promote equal employment opportunities for American workers.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of Whole House on the State of the Union for the consideration of bill H.R. 1746, with Mr. Adams in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispen with.

The CHAIRMAN. Under the rule, the gentleman from Kentucky (Perkins) will be recognized for 1½ hours and the gentleman fr Illinois (Mr. Erlenborn) will be recognized for 1½ hours.

The Chair now recognizes the gentleman from Kentucky (Perkins).

Mr. PERKINS. Mr. Chairman, I yield myself 10 minutes.

(Mr. Perkins asked and was given permission to revise and ext his remarks.)

Mr. PERKINS. Mr. Chairman, 7 years ago Congress enacted the C Rights Act of 1964. Title VII of that act for the first time establis Federal machinery to deal with the problem of discriminatory empl ment practices.

Title VII provided informal methods of conciliation and persua as the primary mechanism for obtaining compliance. Only whe "pattern or practice" of resistance to the statutory mandate was fo did it make provision for enforcement by the Government and t only by the Attorney General.

Title VII established the Equal Employment Opportunity C mission as an independent agency charged with administration of policy of equal opportunity but provided no effective enforcem authority. Such enforcement as an individual might require ha be secured by a private suit in the district courts. At the time it widely felt that litigation would be necessary only on an occasi basis to meet determined resistance.

The experience of the past 6 years, however, has shown this vie be incorrect. Title VII is not a total failure but neither is it the gl ing success that was expected.

Discrimination in employment continues to pervade the Un States.

Only 6.9 percent of professional and technical workers; 3.6 per of managerial employees; 6.8 percent of craftsmen and foremen; 3.7 percent of sales personnel are minority persons. During 1970, unemployment rate among blacks was almost twice that among wh While these figures are improvements over those of a decade ag is nonetheless clear that minorities are not very rapidly reaching t rightful place in society—this despite 7 years experience under a which outlawed discrimination of any kind.

The situation of the working woman is just as disappointing. C 30 million women are employed in the United States, comprising

imately 38 percent of the Nation's work force. Ten years ago, en earned 60.8 percent of the average salaries earned by men. In however, women's earnings only represented 58.2 percent of the ies made by men. In that same year, 60 percent of women, but only rcent of men earned less than $5,000 while, at the other end of the only 3 percent of women, but 28 percent of men had earnings of 00 or more.

fective remedies for these situations have not, and it is now clear, ot result from the present statutory scheme. During its first 5 the Equal Employment Opportunity Commission received more 52,000 charges, of these 35,145 were recommended for investiga- Each year the number of charges brought before the Commission ncreased. In fiscal year 1969 the Commission received 12,148 ges; in fiscal year 1970, 14,129 charges; and in fiscal year 1971, 0 charges. The figures for the current fiscal year are expected to an even sharper rise.

the 35,145 charges that were recommended for investigation, the nission found reasonable cause to find that a discriminatory prac- xisted in 63 percent of them. In less than half of these cases, how- was the Commission able to achieve a totally or even partially ssful conciliation.

ENFORCEMENT AUTHORITY

correct these deficiencies, H.R. 1746 provides for significant revi- in the primary enforcement mechanisms of Title VII. The Equal loyment Opportunity Commission would continue to seek volun- esolution of disputes, but if conciliation efforts were unsuccessful, ommission would be authorized to issue complaints, hold hear- nd, where unlawful employment practices are found, issue ap- iate cease and desist orders. These orders would, of course, be ct to review by the courts.

e bill also makes provision for individual recourse to the Federal ct courts if the Commission dismisses a charge, or if it has not a complaint or entered into a conciliation attempt within a ied period of time.

members of the Committee on Education and Labor recognized ed for some method of adjudication of charges of unfair employ- practices, as indeed, did all witnesses who testified at the com- e hearings. The only disagreement has been whether this enforce- power should be through administrative proceedings or through tion in the courts.

alternative of providing court enforcement for Title VII, in- of administrative cease-and-desist proceedings, was given full areful consideration throughout the hearings and in discussions h the subcommittee and full committee levels.

e type of enforcement chosen by the committee is the very same of authority which has been given to virtually all other Federal atory agencies including the Federal Trade Commission, the In- te Commerce Commission, the Securities and Exchange Com- on, and the National Labor Relations Board. In addition, the and-desist method of enforcement is the same as that adopted by the 38 States which have equal employment opportunity laws.

e same considerations which led to the adoption of administrative cement in other areas are equally applicable here. Perhaps the

most important of these is the need for the development and app
tion of expertise in the recognition and solution of employmen
crimination problems—particularly as these problems are present
their more complex, institutional forms.

The development of case law in the area of employment disc
nation in recent years has made it increasingly clear that the
difficult problem encountered is not whether discrimination ha
curred but what the appropriate remedy is to be. The questio
remedies is further complicated when discriminatory practice
found to be inherent in basic methods of recruitment, hiring, p
ment, or promotion.

The very nature of the issues arising under Title VII indicates
reliance upon the expertise developed by trial examiners and Com
sioners is just as important for this subject matter as it is in the eq
complex fields of securities regulation and deceptive trade practic

Enforcement through an administrative proceeding will insu
speedy adjudication of issues and will result in a more uniform
predictable body of law.

Agency litigation is less subject to technical rules governing ma
such as pleadings and motions—matters which can and very ofte
provide opportunity for delaying tactics. Administration tribunal
less constrained by formal rules of evidence which give rise to a le
ier—and, therefore, a more costly—process of proof.

The experience of other agencies indicates that an additional be
of cease-and-desist authority is that the mere availability of an ad
istrative sanction encourages settlements, usually even before the
examiner stage is reached. The NLRB, for instance, disposes o
proximately 95 percent of its cases at the administrative level. I
mation on State Fair Employment Practice Commissions indi
similar tendencies toward settlement. For example, the Pennsylv
Human Relations Commission issued 47 cease-and-desist orde
equal employment cases through 1969. During that same period,
ever, 3,838 complaints were successfully disposed of without nee
an order.

PRIVATE SUITS

H.R. 1746 retains the right of an individual to bring a civil suit u
the act. Section 715 provides that if the Commission finds no reaso
cause, fails to make a finding of reasonable cause, takes no actio
respect to a charge, or has not issued a complaint nor ent
into an acceptable conciliation or settlement agreement within 180
after a charge is filed, it shall notify the person aggrieved. That
son then has the right to bring, within 60 days, an action in the pr
U.S. District Court. Such a provision is a necessary protection fo
rights of the individual.

To prevent duplication of proceedings under Title VII, H.R.
makes provision for the termination of Commission jurisdiction o
private action has been filed. The Commission would, however, r
a right to intervene in private actions. Once the Commission iss
complaint or enters into a conciliation or settlement agreement w
is acceptable to all parties, the right of private action would be
minated.

PATTERN OR PRACTICE CASES

ction 707 of the Civil Rights Act would be amended to transfer 'pattern or practice" suit authority which is now vested in the At- ey General to the Equal Employment Opportunity Commission. transfer of "pattern or practice" jurisdiction to the Commission d eliminate overlapping jurisdictions and unnecessary duplica- of function. This is especially important in view of the Commis- s acquisition of cease-and-desist authority, an authority broad gh to cover most of the same violations as formerly reached ugh "pattern or practice" suits. Persons charged with unfair em- nent practices should not have to account to several Federal agen- each of which pursue separate policies. Such duplication is not burdensome but also harassing.

OFFICE OF CONTRACT COMPLIANCE

r this same reason, H.R. 1746 would also transfer to the Commis- all authority, functions, and responsibilities of the Secretary of r pursuant to Executive Order 11246 relating to requirements of iscrimination and affirmative action for Federal contractors. Cur- y, the Secretary of Labor through the Office of Federal Contract pliance—OFCC—monitors, coordinates, and evaluates the Gov- ent-wide contract compliance program and supervises the com- ce enforcement activities of the 15 Federal contracting agencies. ty, uniformity, and predictability, in policy and practice will un- tedly result when a single agency, rather than a multitude of . is responsible for enforcing the national policy of equal em- nent opportunity.

ore important, the compliance program will be greatly strength- if alternative remedies are made available. The only remedy cur- y available to the OFCC is contract debarment, a penalty so dras- at it has never been used.

STATE AND LOCAL GOVERNMENT EMPLOYEES

esently, there are more than 10 million persons employed by State ocal governmental units, an increase of over 2 million in less than ade and, by all indications, these numbers will increase signifi- y in the decade ahead. Very few of these employees, however, remedies sufficient to eliminate and deal with discriminatory oyment practices. H.R. 1746 amends section 701 of the act to in- State and local governments, governmental agencies, and polit- ubdivisions within the definition of "employer" under Title VII. would effectively provide the employees of America's second larg- nployer—the State and local governments—the full protection of VII.

its 1969 report on equal employment opportunity in State and governments, the U.S. Civil Rights Commission found that mi- ies are frequently denied equal access to jobs through both institu- l and overt discriminatory practices. In this respect, there was difference between State and local governments as employers and rivate sector. Perpetuation of past discriminatory practices gh de facto segregated job ladders, invalid selection techniques, tereotyped supervisory opinions as to the capabilities of minori-

ties as a class were found to be widespread, and, if anything, even pervasive than in the private sector.

PREFERENCE FOR STATE ACTION

Under H.R. 1746, every effort is made to give State fair em ment practice agencies, where they exist, the first opportunity t The history of State FEPC activity since 1964 suggests that the up of Federal power in the event of a failure of local action to r a discrimination complaint would substantially strengthen the tiveness of the State and local agencies. Thus, the increased cov contemplated by this bill should provide more than ample opport and incentive for States to resolve their own problems of discri tion, before it becomes necessary to pass them on to the Fe Government.

EDUCATIONAL INSTITUTIONS EXEMPTION

The present Section 702 of Title VII exempts employees of e tional institutions from the protection of the act. H.R. 1746 re this exemption—Section 3 of the bill. Discrimination against m ities and women is as pervasive in the field of education as discri tion in any other area of employment. In light of our national of equal employment, there is no reason to perpetuate this exem

JURISDICTION LIMITS

H.R. 1746 expands coverage of Title VII to all employers with or more employees and labor unions with eight or more members. ently, the act sets a jurisdictional limit of 25 employees or mo This amendment to the act will assure Federal equal employment tection to virtually every segment of the Nation's work force.

TESTS

H.R. 1746 includes a provision requiring that all ability tests are to be relied on be directly related to bona fide occupational fications. Tests, while often useful and necessary, frequently op unreasonably to the disadvantage of minority groups. Such tes often irrelevant to the job to be performed by the individual tested and uncritical reliance on tests are not only of little help in agement personnel decisions, but also screen out the disadvan minority applicant.

The Supreme Court recognized this problem in its recent de in *Griggs* v. *Duke Power Company* (91 S. Ct. 849, 1971). The held in that case that employment tests, even if valid on their fac applied in a nondiscriminatory manner, were invalid if they t to discriminate against minorities and the company could not an overriding reason why such tests were necessary. The Cour business necessity as the touchstone of the issue. If an employ practice which excludes minorities cannot be shown to be relat job performance, the Court concluded, the practice is prohibited. amendment to the act alters the language of Title VII to better the congressional intent as interpreted by the Court in the *Griggs*

nally, H.R. 1746 would allow a new section to Titl
-giving the EEOC authority to enforce the oblig
oyment opportunity in Federal employment.
ice Americans traditionally measure the quality o
by the opportunity they have to participate in
esses, equal employment opportunity is of critical portance in
Federal service.

esently, responsibility for implementing the national policy of
employment rests in the Civil Service Commission pursuant to
utive Orders 11246 and 11478. Despite some progress in this
the record is far from satisfactory. Statistical evidence shows
minorities and women continue to be excluded from large num-
of Government jobs. They continue to be excluded from higher
policymaking, supervisory positions.

e transfer of the civil rights enforcement function from the Civil
ce Commission to the Equal Employment Opportunity Commis-
loes not preclude the Civil Service Commission from continuing
vn equal employment programs. Rather, it is expected that the
Service Commission and the Federal agencies will continue their
itment to affirmative measures such as recruiting and training,
alized hiring programs, the training of compliance personnel
supervisory personnel in equal employment, and the appoint-
of EEO officers. In all cases the primary responsibility will rest
Civil Service Commission and the other Federal agencies. It is
ted that the EEOC will work closely with them in the develop-
and maintenance of their various programs. It will, however,
rm a useful function in reviewing these new programs.

THE COMPROMISE AMENDMENTS

R. 1794 was reported by the Committee on Education and Labor
bstantial majority. It is a bill imminently fair in its treatment of
roblem. The bill has in the meantime, however, been subject to
sive and often unfair criticisms. Some opponents of the measure
charged that it lacks "due process" procedures as will be evident
debate. H.R. 1746 contains more meaningful elements of due
ss than does the substitute which is being urged on the House,
9247. The committee recognizes, however, that concern exists
minds of some Members because of the questions raised. To re-
that concern and to remove any doubts that may remain, the
ittee will undertake some amendments to the measure. Briefly
l, they are:

st. There will be an amendment to impose a 2-year "statute of
tions" on the liability of the employer for back pay or rein-
nent.

ond. The second amendment will prohibit the EEOC from im-
g quotas or requiring preferential treatment. There is no such
sion in the substitute proposal.

rd. The third amendment will require notification within 10
to the employer, union or employer agency whenever an unlaw-
nployment practice charge is filed with the Commission.

urth. The fourth amendment will insure that the informal pro-
e under the Office of Contract Compliance authority are confi-

ties ~ntial. Giving publicity to such action will be prohibited an
r ishable.

These amendments substantially improve the committee bill. W
all be grateful to the distinguished Chairman of the Subcom
the gentleman from Pennsylvania (Mr. Dent), for proposing

I urge all my colleagues to support the committee bill as m
by these amendments and to defeat the Erlenborn substitute.

Mr. ERLENBORN. Mr. Chairman, I yield 10 minutes to the
man from Minnesota (Mr. Quie).

(Mr. Quie asked and was given permission to revise and
his remarks.)

Mr. QUIE. Mr. Chairman, as ranking minority member of the
mittee on Education and Labor I was an active participant in h
to develop what I regard as the most effective approach to outl
racial and other forms of arbitrary discrimination in the v
aspects of the employment relationship. This approach is ful
flected in the substitute bill now before the House, H.R. 9247,
duced on a bipartisan basis by two members of our committee, I
sentatives Erlenborn and Mazzoli.

During the deliberations of the committee there was neve
question that the EEOC—Equal Employment Opportunity Co
sion—created by the Civil Rights Act of 1964 sadly needed ef
authority to enforce the law, an authority which it does not pre
possess. Virtually all of our committee members were agreed on t
disagreement arose only as to which method of enforcement wo
not only most effective but, expeditious, fair and equitable as

The committee bill resorts to what has become popularly kno
the cease-and-desist approach. This means giving the Commissi
power to hold hearings and to issue cease-and-desist orders enfor
in the Federal circuit courts of appeal. The National Labor Rel
Board is a striking example of an agency utilizing that approac
all of us are aware how frequent a target of criticism, from ma
ment as well as labor, that agency has become.

The substitute bill, on the other hand, would in no wise chan
existing structure of the EEOC. It would continue to have the au
ity to investigate charges of unlawful discrimination, to mediat
conciliate such controversies, and to seek their voluntary settle
But added to these would be the power to bring suit directly i
Federal district courts against the parties whom the Commissi
the basis of its investigation, believed had engaged in unlawfu
crimination.

The advantages of this judicial approach over the cease-and-
procedure provided in the committee bill are immediately app
A decision in favor of the Commission by the district court wo
immediately enforceable—a cease-and-desist order by the Comm
would not; enforcement would require resort by the Commissi
the appropriate Federal court of appeals. Thus the committe
would require two procedural steps for enforcement—the subs
only the one.

Moreover, under the substitute, the district court could, if a
priate, grant relief at the commencement of the proceedings bef
In order to secure such immediate relief under the committee bi
Commission would be compelled to seek it, not from the co
appeals which would ultimately enforce the Commission's ceas
desist orders, but from a separate and distinct Federal district

h would have no other function or authority under the committee

ıd in any event, despite the elimination of an intervening step—
ıearing by the Commission—in the judicial approach of the sub-
:e, the procedural, evidentiary and due process safeguards for all
›arties involved would be far more adequately assured under the
t court approach than they would be in the administrative hear-
onducted by the Commission, acting as investigator, prosecutor,
e, and ultimately appellant, as provided in the committee bill.
e considerations alone would be sufficient to convince me that the
interest not only of the victims of discrimination in employment,
f the general public as well, would be best served by the enactment
e substitute bill.
though this issue of the "judicial" versus the cease-and-desist
od of enforcement is the major issue which separates their respec-
›roponents in the committee, it is not the only point of difference
:en them. It is my considered judgment that there are several
aspects of the substitute which make it superior to the committee

e latter fails to place any time limit on liability for back pay
te the universal existence of a time limitation on such liability not
in private civil litigation but in other Federal administrative
:edings as well, including back-pay orders of the National Labor
:ions Board. The substitute provides such a limitation.
our American system of justice, virtually without exception, a
charged with violating the law is entitled to notice of the
ge and some information concerning the nature of such charge
n a specifically limited time period. The committee bill contains
ch specific time limitation—the substitute does.
e Civil Rights Act of 1964, Title VII of which deals with discrimi-
n affecting employment, and which both bills are designed to
d, does not apply to public employees at any governmental level,
ıer local, State, or Federal, and is similarly inapplicable to em-
:rs and unions with fewer than 25 employees or 25 members
ctively.
far as public employees are concerned, a majority of the States
ıave their own laws prohibiting discrimination in State and local
e employment, and the U.S. Civil Service Commission similarly
:rying out its own program to eliminate such discrimination in
Federal service. If all of these public employees together with the
›yees of the small employers having less than 25 workers are
ght under the law, it is estimated that well over 20 million addi-
l employees will be added to the huge number over which the
C already exercises jurisdiction. It is impossible even to project
›ximately the increase in the Commission's present enormous
og of cases which would result, a backlog which could mean a
:down in the investigation and enforcement activities of the
mission.
der the existing act, situations which present a discernible prac-
:r pattern of discrimination in employment, and not merely in-
ual cases of it, are handled by the Department of Justice by
: directly to the Federal District Courts. The committee bill
l transfer this function to the EEOC and it would be handled by
:ease-and-desist procedure. The same defects would obviously

exist as those I have already described in my comparison betw
judicial and the cease-and-desist approach. But these defect
be compounded not only by the loss of the accumulated expe
the Department of Justice in this area, but of the enormous l
sources including the investigative machinery of the FBI, as

The committee bill transfers the functions of the OFCC—
Federal Contract Compliance—from the Department of Labo
EEOC. The OFCC acts under the authority of a Presidential
tive order for the purpose of eliminating discriminatory empl
practices on the part of Federal Government contractors. Th
tions for violation of the Executive Order are refusal to a
Federal Government contract to an offending employer or canc
of such a contract if it has already been awarded.

The OFCC does not operate under the provisions of the Civil
Act and its procedures and sanctions are completely differen
those of that act, and cannot administratively and pragmatic
brought within its present statutory scheme. Nevertheless, th
mittee bill does not expressly supersede the Executive Order n
it incorporate its provisions into the act.

This raises a serious question as to whether the EEOC can
its own procedures to the administration of the OFCC functio
creates legal ambiguities resulting from the failure expressly to
sede the Executive Order and to incorporate its provisions as an
ment to the Civil Rights Act. These difficulties would arise fr
fact that OFCC has imposed requirements on Federal Gover
contractors which it is questionable may be imposed under the

The present law requires that a party who charges that he h
discriminated against unlawfully must resort to his State antid
ination agency if one exists in his State before resorting to the
The latter may not take the case for a limited period while it is
ing before the State agency. Neither of the bills pending be
in any way modify this requirement of the existing law.

But it should be noted that the proponents of the committ
while asserting that the 32 States which have antidiscriminatio
operate effectively with the cease-and-desist procedure, they
theless support the provision bringing State employees under th
eral jurisdiction of the EEOC. In my opinion they thereby d
strate a lack of faith in the effectiveness of these State laws to
inate job discrimination in their own jurisdictions.

In conclusion, let me reiterate that those of us on our com
who support the substitute bill are just as dedicated to the erad
of the evils of employment discrimination as are the propone
the committee bill, and are convinced that our solution will pro
more satisfactory in every significant respect.

Mr. DENT. Mr. Chairman, I yield 15 minutes to the gentleman
California (Mr. Hawkins).

(Mr. Hawkins asked and was given permission to revise and
his remarks.)

Mr. HAWKINS. Mr. Chairman, a few minutes ago a member
Rules Committee, in referring to this matter, indicated this
rather dangerous proposal being sponsored by the gentleman
New York (Mr. Reid) and me and several other coauthors.

May I simply remind Members that 32 States have simila
which prevail at the present time. If the gentleman is referring
States which have adopted this dangerous law as their own

uld like to point out the following States are included among those ich have such a law: Alaska, Arizona, California, Colorado, Conticut, Delaware, Hawaii, Indiana, Illinois, Iowa, Kansas, Kenky, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, w Mexico, New York, Oklahoma, Ohio, Oregon, Pennsylvania, ode Island, Utah, Washington, West Virginia, Wisconsin, and oming.

So just consider that those States, too, have moved into this rather ngerous area to impose the cease-and-desist administrative prore on the American people.

There are other misstatements which I believe should be corrected he very beginning, in terms of us who seek to implement the Civil ghts Act of 1964. We should remember that the national policy is of equal employment opportunity, and that the rights which we k to secure under H.R. 1746 are well founded in our law and in our erican traditions.

While discrimination because of race, color, religion, national origin ex is a thing which is specifically prohibited by Title II of the Civil ghts Act of 1964, this law protects every individual in this country. ite no less than black workers may, in some instances, be discrimied against. That is, there may be so-called reverse discrimination in ny instances.

Discrimination in employment violates our conception of justice and ality as expressed in the Declaration of Independence, our Conution, and the Civil Rights Act of 1964.

The only room for disagreement in the matter before us is the means mplementing the national policy. H.R. 1746 seeks to incorporate a l-established and effective procedure by granting cease-and-desist hority to the Equal Employment Opportunity Commission. Nurous other Federal regulatory agencies already have this author—the NLRB, Federal Trade Commission, Securities and Exchange nmission, just to name a few of the numerous agencies that aldy have the power which we seek to give to this Commission under R. 1746

This procedure was recommended by the Congress in the Administive Procedure Act which we adopted in 1946, and under which st administrative agencies have operated for some 25 years.

Also, in 32 of our States, as I have already enumerated, the fair ployment laws they have adopted follow this same procedure.

As a matter of fact, the only effort being made by anybody or any ividual is on this one particular question. The substitute seeks to n the Equal Employment Opportunity Commission into a legal nstrosity by denying it the same enforcement authority enjoyed by ilar agencies and by requiring it to go into the already overcrowded rts to seek enforcement.

Can anyone imagine what 10,000, 15,000, or 20,000 additional cases ld mean in the already overcrowded courts of our land?

Those who advocate this approach may say that they differ only to the means of enforcing the policy of this Nation. Their position, vever, is weakened by the support they receive from those who ier deny the existence of discrimination or seek no legislation at all. Outside of court enforcement itself, which is of doubtful value, no er provision of the substitute would add strengthening protection those against whom discrimination is rampant.

There are those who would make H.R. 1746 appear as a sch
allow blacks to leapfrog over others at the expense of white w
Not only does this ignore the entire issue of sex discrimination,
involves more white than black women, but it overlooks entir
experiences already recorded in the 32 States with cease-and
enforcement power where past dire predictions have been prov
tirely false.

Again some say that this bill seeks to establish quotas and st
crimination in reverse. Not only does Title VII prohibit this,
establishes beyond any doubt a prohibition against any indi
white as well as black being discriminated against in employm
only seeks to insure that persons will be treated on their indi
merits and in accordance with their qualifications. To assert th
hiring of a black employee without discrimination implies the
tion of a qualified white employee is pure sophistry, as the court
said. I cite the United States Court of Appeals, the Third Circ
Pennsylvania, before which the appeal from the case in Pennsyl
involving the so-called Philadelphia Plan was taken. Such a c
sion also ignores the viable and fluid character of the labor forc
it assumes an entirely static economy.

Perhaps the wildest charge of all is the constant charge that
1746 somehow denies a fair trial or due process of law. This a
the Administrative Procedure Act, the act on which the proce
established by this bill are founded. It attacks the NLRB, the
the CAB, the Federal Trade Commission, and the other Federal
cies which operate under the same Administrative Procedure Ac
this assertion attacks 32 State laws as unconstitutional as if the
denied a fair trial or due process, as H.R. 1746 is claimed to d

Mr. REID of New York. Mr. Chairman, will the gentleman y

Mr. HAWKINS. I yield to the coauthor of the bill, the gentl
from New York (Mr. Reid).

Mr. REID of New York. Mr. Chairman, I am very happy to
with the distinguished gentleman from California in coauthor
this bill.

I would say very simply at the outset that this bill and the acti
it today will be a test of Republican principle on the one hand
Democratic leadership on the other. It will be unconscionable i
House fails to act affirmatively. Having once passed this bill in 19
will almost be beyond belief to recognize by inaction that this Con
will not take meaningful steps to end discrimination in employ
through appropriate Federal action after 32 States have already a
This is not a case of the Congress having led but of the Con
having followed. I deeply hope that all Members, at least on this
tion, will see the merits of providing minimal cease-and-desist pow
powers that work eminently well in two-thirds of our States
clearly, powers that cannot be provided in any other way.

One of the arguments that will be raised ad infinitum, if no
nauseam, in this debate I am sure will be the question of time la
before relief is obtained. The plain fact of the matter is that i
New York State Commission for Human Rights and other State
missions possessing cease and desist authority enforceable in
courts less than 1 percent of the cases ever had to go into court proc
ings. The way to deal with this problem promptly, fairly, and equit
is to strengthen the Equal Employment Opportunity Commis
through cease-and-desist powers.

wish to commend the gentleman in the well for his thoughtfulness, sistence, and continued vision in this matter.

deeply hope that the House will act in the interests of all Ameri- s rather than be sidetracked by some side issues which would uinely weaken the opportunities for equal employment for all ericans.

Ir. Hawkins. I thank the gentleman. I would simply respond by ing that in the other body an identical bill has been introduced with support of both the Republican and Democratic leadership and I ld hope that that same kind of cooperation and bipartisan support ld be followed in this House.

Ir. Conyers. Mr. Chairman, will the gentleman yield?

Ir. Hawkins. I yield to the gentleman from Michigan.

Mr. Conyers asked and was given permission to revise and extend remarks.)

Ir. Conyers. I thank the gentleman for yielding.

Ir. Chairman, I want to commend the gentleman from California the work that he has done to bring this present bill to the floor of House, and also to remember that it was in the 91st Congress that lso performed yeoman service, along with the leadership of the tleman from New York (Mr. Reid). I am reminded that in the Congress there was a great deal of confusion over the processes of House that would have brought this bill to the floor. I am sure the tleman in the well recalls it very well. We were trying to find per- who would help us to get the bill through the committees in this y. We were unsuccessful. However, I remember being assured and ssured that in the 92d Congress we would do what had ought to e been done many years before.

want to now, Mr. Chairman, call upon all of those who gave me se assurances to please be sure to produce them during the discussion resolution of this bill.

say again that the gentleman from California has been most patient most generous on behalf of the Americans for whom he has put h his efforts for all working people across this country who feel the ter of discrimination, who know what it is like not to be afforded al opportunity in this very important area, and I pledge my con- ued support to pass this bill.

Ir. Hawkins. I thank the gentleman.

While discrimination because of race, color, religion, national origin, ex is the thing specifically prohibited, the existing law (Title VII of Civil Rights Act of 1964) protects every individual in this country. ites, no less than black workers, may in some instances be discrimi- ed against as is alleged in "reverse discrimination" on men as well women. The prohibited acts may not be committed against "any vidual" as the law specifies throughout Title VII.

Discrimination in employment violates our concepts of justice and ality as expressed in the Declaration of Independence, our Con- ution, and the Civil Rights Act of 1964. The only legal room for greement is the means of implementing the national policy.

.R. 1746 seeks to incorporate a well-established and effective pro- ure by granting "cease-and-desist" authority to the Equal Employ- nt Opportunity Commission. Numerous other Federal regulatory ncies have this authority—the NLRB, FTC, SEC, to name a few. s procedure was recommended by Congress in the Administrative cedure Act (1946) under which most administrative agencies have

operated for 25 years. Also in 32 of our States similar fair en
ment bodies have adopted this approach.

The substitute seeks to turn the Equal Employment Opport
Commission into a legal monstrosity by denying it the same en
ment authority other similar agencies enjoy and requiring it
into already overcrowded courts to seek enforcement.

Those who advocate this approach say they differ only in the
of enforcing the law. Their position, however, is weakened by th
port they receive from those who either deny the existence o
crimination or who seek no legislation at all. Outside of court en
ment itself, which value may be doubtful, no other provision of th
stitute would add strengthening protection for those against
discrimination is rampant.

There are those who would make H.R. 1746 appear as a sche
allow blacks to leapfrog over others at the expense of white wo
Not only does this ignore the entire issue of sex discrimination
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periences already recorded in 32 States with cease-and-desist enf
ment power where such dire results have been proved entirely

Again, some say H.R. 1746 seeks to establish quotas, special t
ment, and discrimination in reverse. Not only does Title VII
hibit this—it establishes, beyond any doubt—a prohibition against
individual, white as well as black, being discriminated against in
ployment. It seeks only to insure that persons will be treated on
individual merit and in accordance with their qualifications. To a
that the hiring of a black employee without discrimination implic
rejection of a qualified white employee is pure sophistry, as the c
have said--U.S. Court of Appeals, Third Circuit of Pennsylv
Such a conclusion ignores the viable and fluid character of the
force and assumes an entirely static economy.

Perhaps the wildest claim of all, however, is the constant ch
that H.R. 1746 denies "a fair trial" or "due process." This attack
Administrative Procedure Act of 1946, a host of other Federal a
cies—NLRB, SEC, CAB, FTC, and so forth—and 32 State law
corporating "cease-and-desist" authority.

The bedrock upon which this legislation is founded is education
conciliation not punitive action. The Administrative Procedure
approach is being used to avoid cumbersome and costly court ac
except as a final resort.

If direct court action were more desirable the existing law
minor changes is entirely adequate. Already the individual may s
conciliation fails and the Attorney General already may interven
such suit as well as initiate practice or pattern suits. It is not c
enforcement which is the main purpose of the Erlenborn substi
but changes in the existing law which will limit, if not emasculate T
VII of the Civil Rights Act of 1964.

A major purpose of H.R. 1746 is a consolidation of the var
agencies dealing with job discrimination. Three agencies in partic
the EEOC, the Employment Section of the Attorney Generals' o
and the Office of Federal Contract Compliance have jurisdiction,
with its own goals, policies, guidelines and programs.

By centralizing these in a single agency we achieve coordinat
clarity, and consistency in defining discrimination and in shapi
proper remedy. And we free litigants from a multiplicity of suits,

ion over the intent and requirements of the law, and duplication of
pection and recordkeeping.
ome fear has been expressed that the transfer of the Office of
leral Contract Compliance from the Labor Department to the
OC would weaken this agency.
he Labor Department's enforcement of Federal contract compliance
been a dismal failure. Its sanction, contract termination or debar-
t of contractors, has never been used. As a matter of fact, about
f of all charges filed with the EEOC involve Federal contractors
o are ignoring the Executive Order which created the contract
pliance procedure.
recent report of the EEOC on employment of Spanish-speak-
persons in the Southwest revealed that fewer were employed by
ernment contractors being monitored by OFCC than companies
iout contracts.
The main concentration of the OFCC has been on the construction
ustry, notably the "Philadelphia plan." This emphasis has ignored
nen almost altogether as well as the welfare of male workers not
olved in the building trades. As a matter of fact, among the major
criminators against women are educational institutions of higher
ning, which although exempted under Title VII, are covered by the
cutive Order No. 11375 and, therefore, as Federal contractors
hable by the OFCC.
f the OFCC were to be judged on its track record, it would cer-
ly not rate among the favorites. No discrimination is worse than
of those who do business with the Federal Government supported
ax dollars. We ask merely that "those who dip their hands into the
lic till should not object if a little democracy sticks to their fingers."
ocial justice is never a one-way love affair. In asking minorities and
nen to be patient a little while longer in the realization of their
c constitutional and human rights, we seek to establish a forum for
r just grievances which is at least capable of shaping an effective
edy.
The alternative is a proposal which seeks to clamp the lid on a boil-
pot of frustration and discontent. Minorities and women seek per-
nance, not rhetoric and delay. The economically disadvantaged
justice and fair play, not redtape and more sophistry. The time to
is now as Father Theodore Hesburgh summed up his views in the
l Civil Rights Commission report:

> ersonally, I don't care if the United States gets the first man on the moon, hile this is happening on a crash basis, we dawdle along here on our corner ie earth, nursing our prejudices, flouting our magnificent Constitution, ignor- the central moral problem of our time, and appearing hypocrites to all the d.

nd in still another report of the Commission are these words:

> ie tragedy is that there still are millions of minority group citizens who be- e Congress meant what it said when it enacted an Equal Employment Oppor- ty law.

think now is the time that this Congress can restore the faith of se millions of individuals and revitalize the faith of the people of world in the democratic process of our American way of life, and ope that we will not dally around again, as Father Hesburgh has l, but will meet this issue squarely and head-on.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. HAWKINS. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yiel
Mr. Chairman, the gentleman in his remarks mentioned that
identical to H.R. 1746 was introduced in the Senate, I believe tha
yesterday; is that correct?
Mr. HAWKINS. I think it was several days ago but, yes. I did
reference to a bill that was introduced in the other body.
Mr. ERLENBORN. Is that identical to the bill before the House,
1746?
Mr. HAWKINS. Almost identical. There are a few minor change
basically it is the same bill. It is a cease-and-desist administrativ
cedure bill, and it has the same coverages, and also goes to the
type of consolidation.
The CHAIRMAN. The time of the gentleman from Californi
again expired.
Mr. ERLENBORN. Mr. Chairman, I yield 2 additional minutes t
gentleman from California (Mr. Hawkins) so that I may ask
gentleman another question.
Mr. HAWKINS. I thank the gentleman for the additional time.
Mr. ERLENBORN. Mr. Chairman, would the gentleman yield furt
Mr. HAWKINS. I yield further to the gentleman from Illinois.
Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yie
further.
Is the gentleman aware of the statement that was put in the Re
of the House yesterday by the chairman of the subcommittee, the
tleman from Pennsylvania (Mr. Dent), relative to three amendm
to H.R. 1746? And if the gentleman is aware of those amendm
does the gentleman support them?
Mr. HAWKINS. The amendments were discussed with me, I am
well aware of them, and I support all three. I have indicated that I
no actual punitive feelings, if this reasonable compromise will be m
I do not think that all of the amendments personally would b
ceptable to me, but in the context of trying to work out a reasonable
satisfying compromise I do accept and will support all three o
amendments.
Mr. ERLENBORN. Could the gentleman tell me, are those amendm
included in the version of the bill considered in the Senate?
Mr. HAWKINS. I am not aware of whether they are or not.
Mr. ERLENBORN. Will the gentleman in the well yield further?
Mr. HAWKINS. I do yield further to the gentleman from Illinois.
Mr. ERLENBORN. I would state to the gentleman that two of
amendments that the gentleman from Pennsylvania (Mr. Dent) p
the Record yesterday are somewhat similar to amendments offere
the minority, and were rejected in the committee, and one of them
an amendment that would deny the OFCC jurisdiction, the rig
establish goals and quotas. I would ask the gentleman from Calif
if that is not an absolute slap at the Philadelphia plan, in that
would be isolating from the OFCC, if they should get jurisdic
the authority to exercise as a governmental agency the problem
has been exercised in the Philadelphia plan which was supporte
the floor of this House when it was challenged recently?
Mr. HAWKINS. I want to say to the gentleman that I supported
Philadelphia plan, the same as I think he did also. In my opinion
amendment does not in any way contravene the intent of the Ph
delphia plan.
Mr. ERLENBORN. How can the gentleman say that?

Mr. HAWKINS. May I explain?
Mr. ERLENBORN. I certainly would be glad to hear the gentleman's
lanation.
Mr. HAWKINS. Under the current law, a quota of preferential treat-
t is denied. That is a part already of Title VII of the Civil Rights

he CHAIRMAN. The time of the gentleman from California has ex-
d.
Mr. ERLENBORN. Mr. Chairman, I yield the gentleman from Cali-
ia 2 minutes.
Mr. Chairman, would the gentleman yield at this point?
ou just said that the law prohibits the establishment of quotas. You
referring to Title VII of the Civil Rights Act of 1964?
r. HAWKINS. Yes.
r. ERLENBORN. You are not referring to the Executive order of the
sident from which the authority for the OFCC was derived?
r. HAWKINS. I have read the Attorney General's opinion and I as-
e you did also. As you no doubt saw, the Attorney General says
. in his opinion, the provisions of the Philadelphia plan do not con-
ene the law of the prohibitions in Title VII.
o as I read the amendment, the amendment does not prohibit
hing that the law does not already prohibit. It was never the intent,
ie present Attorney General states in his opinion, that an Executive
r should contravene what the law prohibits. So squaring this, it
is to me when we talk about prohibiting quotas and talk of pref-
tial treatment, we are merely reflecting what is in the present law.
ile this amendment clarifies things, it does not do anything that is
already prohibited.
r. ERLENBORN. Mr. Chairman, will the gentleman yield further?
r. HAWKINS. I yield further.
r. ERLENBORN. Let me recall to the attention of the gentleman as
as to the membership of the House that, in fact, only a circuit
t of appeal of our judiciary has upheld the Philadelphia plan.
n my opinion, the proposed amendment that is going to be offered by
gentleman from Pennsylvania is nothing but a blatant attempt to
ercut the authority of the OFCC for the Philadelphia plan. As was
ted out by the gentlewoman from New York (Mrs. Chisholm)
ur hearings when she called for the support of the AFL–CIO for
ill supported by our committee which is under consideration now
this is a disingenuous attempt to undercut the Philadelphia plan
an attempt to bring equal employment opportunities in the con-
ction industry.
think the proposed amendment is nothing but a confirmation of
gentlewoman's opinion.
he CHAIRMAN. The time of the gentleman from California has
red.
r. DENT. Mr. Chairman, I yield to the gentleman from California
. Hawkins) such time as he may consume.
rs. GREEN of Oregon. Mr. Chairman, will the gentleman yield?
Mr. HAWKINS. I yield to the gentlewoman.
rs. GREEN of Oregon. Mr. Chairman, I thank my colleague for
ling. Mr. Chairman, on this very point I want to ask the gentleman
n California a question.
itle VII of the Civil Rights Act has always prohibited the estab-
nent of quotas. During the legislative history of the Civil Rights

Act, it was clearly the congressional intent not to bring abou
rights for some by denying civil rights to others. We had seen th
decades. We were trying to end it. The legislative history of the
Rights Act—the debate in the Senate and the House shows that
not the congressional intent to establish quotas of any kind i
struggles to bring about equality of opportunity.

The Executive Order 11246 under which the Philadelphia pla
put into effect, in my judgment clearly did establish quotas. But
not want to talk about the Philadelphia plan this afternoon. I
to talk about situations of which I have personal knowledge.

I talked to the chairman of the committee and to others and
that it would be impossible for me to support the committee bil
we are considering today without some amendments—and this
of them—a congressional prohibition against establishing any
system—a prohibition against preferential treatment for some
expense of others, a prohibition against "reverse discriminatio
you will.

Let me tell you of three instances, and I think these can be multi
by the thousands across the country.

In my own city of Portland, we have a ship conversion plant.

In the Portland area we have, perhaps, 5 or 6 percent black po
tion. This ship conversion plant has records to prove they hav
ployed 15 percent minority people. As a matter of fact they ca
on an active recruitment program—seeking out members of mi
groups.

The Contract Compliance Office in San Francisco came into
land, and they said that they would not be eligible for any Fe
contracts unless they would have 15 percent minority employe
every single job category.

It was not sufficient to have 15 percent minority employees i
plant itself. They required 15 percent of the electricians to be
minority race: 15 percent of the welders must be of the mi
groups; 15 percent of the secretarial help and so on right down th
every single category.

There was absolutely nothing that this ship conversion plant
do to satisfy the Office of Contract Compliance in San Francisco
they followed their orders. This also required the "dumping" of
contracts of negotiations which had been made; seniority rights
ignored. All this was never the intent of the Civil Rights Act, a
was never the intent of the Congress, so far as I am concerned. Th
the reason the amendment will be offered by the distinguished
man of the subcommittee, the gentleman from Pennsylvania, this a
noon: To give this House the right to decide whether or not we
to amend the Civil Rights Act and to say whether we are goi
establish quotas by law. H.R. 1746, the committee bill, on pag
freezes Executive Order 11246 into the law. If this were passed wi
amendment, we would be giving our approval to the quota system

In many instances this creates reverse discrimination, which I
just as inexcusable and just as despicable as any kind of discrimina
I want all people to have equal rights, equal opportunities in e
tion, in housing, in jobs. This does not mean special preference for
at the expense of others.

Let me give you two other instances. A year ago last Decem
group of Oregon parents who are stationed in Washington, D.C

epartment of military came into my office to talk about the situa-
in the schools which their children attend. They had many com-
its—in fact, 10 pages of incidents that had happened—but one
ne things which seems to me relevant to our debate today was
tatement by one of the parents: "I have a son in the fourth grade.
September—" and this was in December that they came to see
"Since September my son has had seven substitute teachers: he
r has had a regular teacher."
aid, "Well, how can that be?"
e said, "Under the Skelly Wright decision we had to have a quota
ack and white teachers and as a regular teacher we cannot hire a
e teacher. We must hire as a regular teacher a black teacher." No
fied black teacher is available for this position. They are already
ing in other schools, and a qualified white teacher cannot be hired
regular teacher in this position. In my judgment, this is reverse
imination, and it is doing great damage. It is counterproductive.
reates tension; it increases prejudices that might not otherwise
ce.
third instance: A teacher here in the District schools—whom I
very well and who is in the top five of the qualified social science
ers here in the District as a result of examinations and recom-
lations—asked for a transfer to another high school because they
noved out close to another high school. She applied, and the prin-
of the school who received her application said that they could
ire her.
e said, "Be very candid with me. Is my race against me?"
id the principal said, "Yes, to be very candid, this is true. A quota
been set up and we must observe that quota in this high school.
annot hire a white teacher."
ave given you these three instances. They are not the Philadelphia
, but they are instances where preferential treatment has been
, where reverse discrimination has been practiced, where injustice
occurred, and that is why the amendment will be offered this
noon: To prevent preferential treatment, to prevent reverse dis-
ination, to prevent quotas being established as far as either race
ncerned.
lo not think that that is the way to run the country. We ought to
t people on the basis of their qualifications, on the basis of their
ation, whether they are white or black, red, brown or yellow, or
ever their sex is, and not establish preferential quotas that are
g great harm to our country, that are tearing the people apart,
are not accomplishing our objectives. This is the reason I cannot
ort the committee bill this afternoon in its present form.
ere are four amendments which I think are going to add sub-
ially to the quality—to the effectiveness of this legislation—and
gentleman from Pennsylvania will offer those amendments. They
put into the Record last night.
r. CONYERS. Mr. Chairman, will the gentleman yield?
r. HAWKINS. I yield to the gentleman from Michigan.
r. CONYERS. I thank the gentleman for yielding. I am sorry we
going to have to apparently, in the course of discussion of this bill,
ise the issue so thoroughly that many people are going to end up
ng the tail before the horse. We are here today to try to pass a bill
will give the Commission cease-and-desist powers, which have
advocated for a great number of years, legislation which has in-

deed passed this body once before, which has passed the Senat
am hoping that the spirit of a very basic principle such as that
get beclouded in some confusing rhetoric about whether you ar
against the quota system.

A number of people have been trying to gain some freedom a
tice within or without this system or in any other possible way,
not going to try to divide this Congress into two groups, the
want an EEOC with the quota system and those who want it w

Why do we not consider whether we want cease-and-desist po
go to the EEOC, which is really the fundamental question her
hoping the gentleman in the well will give this question that h
raised in an extraneous fashion, in my opinion, his continue
sideration during the debate, because I think too many of our m
are going to be arguing on an amendment that has not been intr
rather than on the substantive question before us.

Mr. HAWKINS. I thank the gentleman.

May I just try to clarify the issue as to what the present law
says that it shall be an unlawful employment practice for an e
ment agency or an employer to fail to or to refuse to refer for e
ment or otherwise to discriminate against any individual becaus
race, color, religion, sex, or national origin. That same prohib
carried to employment agencies or unions or employers. It refers
individual. I read that to mean any individual, any person who h
he has suffered reverse discrimination has the same protection
the law as the person who believes he has been discriminated a
because he happens to be black.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. HAWKINS. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yi
I do not want to use a great deal of the gentleman's time, but onl
to make this response to what the gentleman from Michigan
am not raising an issue that has not been raised by the majority,
gentleman controlling the time and by the gentleman in the wel
says he supports the amendment which it is supposed will be o
If the gentleman is correct, we should be talking about getting en
ment authority into the hands of the appropriate authority. W
having a difference about what type of enforcement author
should give to whom. The gentleman from Missouri, a member
committee, would support the concept involved in the amendmen
is going to be offered by the gentleman from Pennsylvania
raises the issue of the Philadelphia plan, which is the one I rai

Mr. HAWKINS. I do not think it does. I think the issue, as it ha
stated, is cease and desist. I think others are extraneous complic
we are talking about in the present law and not what this law att
to do.

Mr. ERLENBORN. If the gentleman will yield one last time,
hardly be an extraneous issue when the gentlewoman said it
condition for her support.

Mr. HAWKINS. It may be a condition for her support, but I
she wants added security, which I personally do not believe is
sary. I am not objecting to or supporting the amendment on the
that I think the amendment corrects an ineffective law. I disagre
the Philadelphia plan imposes a quota. In this respect I agree
the Attorney General. If some people think it does, then I th

be well to clear up the law on this point, and that is the only
n that I can see for this.
. DENT. Mr. Chairman, I do not yield further to the gentleman
California.
. ERLENBORN. Mr. Chairman, I yield 10 minutes to the gentleman
Illinois (Mr. Anderson).
Ir. Anderson of Illinois asked and was given permission to revise
xtend his remarks.)
. ANDERSON of Illinois. Mr. Chairman, I am extremely grateful to
entleman from Illinois (Mr. Erlenborn) for his courtesy in yield-
ie this time.
. Chairman, there is a spirit abroad that is troubling our land.
ically, it is not a revival of the kind of American spirit for which
President recently called in his eloquent message to a joint session
e Congress. Rather, it is a spirit compounded of fear and mistrust
h once again threatens to pit race against race. Old passions that
id thought were stilled have been reignited. The paper this morn-
carried accounts of incidents from California to Boston which
llustrative of this deepening and widening fissure in our society.
n Francisco, a city noted for its liberality of spirit, one-third of
tudent population boycotts the public schools because of a busing
Travel to the Middle West from which I come, and we discover
in Pontiac, Mich., a great industrial plant, a stranger to the dis-
raging in that city between parents and school board, is shut
, and its machines stand silent because of picketing parents. In
on, that ancient cradle of liberty, dissatisfaction over school bus-
nas led one house of the Massachusetts Legislature to enact a
te which would repeal provisions of the law that would prevent
low of funds to all black schools. I mention these facts not to
t an extraneous issue into the debate that begins today. I mention
for two reasons. In the first instance they are indicative of the
hat the mood and desire for strong civil rights legislation seems
ve changed. The men who patiently and wearily walk the corri-
of Congress find fewer supporters, and even those who listen do
mewhat abstractedly. The distinguished Chairman of the U.S.
Rights Commission, Father Theodore M. Hesburgh, himself a
scholar, can speak for a unanimous Commission in recommend-
grant of cease-and-desist authority to the Equal Employment
ortunity Commission. But his voice is all but lost in the rising cre-
lo of protest against clothing Government agencies with more
nistrative power. I say all of this not out of bitterness but out of
mn realization that there is a vastly different climate today than
was back in 1968 when the Congress enacted open housing legis-
n.
nention these specific incidents that are troubling the peace and
pility of our land because although they relate to our educational
m and the highly emotional and difficult issue of school busing,
ieve that there is a clear connection between legislation which
d attempt to wipe out the pervasive effects of discrimination in
oyment and the patterns to de facto segregation which have led
e present impasse. One does not have to be a sociologist to appre-
that the economic stratification in American society which has
uced these patterns of segregated housing can be traced directly
fact that, although blacks constitute 10 percent of the American
force, eight out of 10 male black workers are concentrated in

occupations that are grouped along the three lowest rungs of th
nomic ladder in terms of income. Over the longer term, if we
want to find a solution to this tormenting problem of how b
desegregate the schools of our land in order to assure a quality
tion to all of our children, it will only come as we succeed in ach
a dispersal of the population that is today locked within the inn
ghetto into our all white suburban areas. We will make a giant
toward achieving that goal when the day comes that a man or w
is no longer disqualified for employment or advancement in his
pation or profession on the basis of his racial or ethnic backgro
repeat, when we liquidate the problem of discrimination in em
ment we do far more than assure a man of his right to a job. W
give him along with that right the opportunity to cross some of th
riers that are now raised against his complete entry into the e
ment of all the privileges of being an American citizen. I find it
than a little ironic that on the cover of Time magazine this wee
peared the face of a famous behavioral psychologist, B. F. Ski
who has written a very controversial book soon to be publishe
titled "Beyond Freedom and Dignity." It is apparently Mr.
ner's thesis that freedom and dignity, while they may have been a
priate to an earlier era in the history of man, are no longer the
important considerations for a society confronted by a race for
vival. I find it ironic because no one on either side of this debate c
truth and in conscience deny that there are still millions of Amer
who have not achieved freedom and dignity. Therefore, I would
gest that, despite any discouragement of the moment over some c
conditions that are rending our country, that we in the Congres
solve that we will continue that march toward freedom and di
for all Americans by seeking to provide within a legislative fr
work of due process those necessary guarantees against unequal t
ment under the law.

The debate during these next 2 days will be conducted not on
a very high forensic plane, but in an intelligent and enlightened
ner because of the character and capacity of the chief protagonis
this debate. Men of good will and also sometimes men of con
purpose can disagree on the means whereby an objective can be
reached. Therefore, I shall not at any time during this debate im
the motivations of those who take a position contrary to my own.
suggest that the judicial process is superior to the administrative p
ess in guaranteeing an effective implementation of the rights prov
under Title VII of the Civil Rights Act of 1964.

The argument against a grant of cease-and-desist authority s
to break down under two main headings. First, it is alleged tha
judicial process would be a more effective and expeditious way of
pensing relief than would be the administrative process. And,
frankly, there are statistics which can be adduced on both sides of
argument. After a careful examination, however, I am convinced
the administrative process would provide a more speedy remedy. T
are some very egregious examples of civil rights cases where by v
of dilatory pleadings and other delays that are countenanced by
legal system years have gone by between the filing of a case and
granting of a remedy to the aggrieved party. Certainly justice del
is justice denied, in cases involving equal employment opportu
just as much as it is in other civil and criminal cases.

fully realize that particularly in the business community there s to be a very deep seated fear of the administrative process. Some nessmen are quick to react to the suggestion that EEOC be given -and-desist authority by citing a parade of horribles that have red under other Federal agencies such as the NLRB. I think at point they should be reminded that the NLRB is not the only cy of such administrative authority. Indeed, the first administra- hearings in this country were held by customs officers, and go all vay back to 1789. Before the turn of the century the ICC was ed with the authority to conduct administrative hearings. The . FCC, and FTC are examples of other agencies that have dem- ated an ability to handle a grant of this kind of power. Certainly agree that Congress has a responsibility to carry out its oversight ority of the EEOC. If they abuse any powers they have been by statute they should suffer correction and reproof and be dis- ed in the appropriations process as well as by other means that vailable. However, I do not think that we should shrink from a of this authority unless we are willing to condemn the entire nistrative process which as I suggested has a very long history d.

ond, it has been suggested that under the administrative process will be a subtle shift in the burden of proof, and in other ways offending party will be unable to secure a due process. In a long which I previously addressed to all of my colleagues along with olleague from New York (Mr. Robison), and my colleague from sylvania (Mr. Biester), I sought to point out that, under the inistrative Procedures Act of 1946, Congress had made it clear administrative proceedings were to be initiated and conducted all of the essentials of due process that are guaranteed any person r our legal system.

conclusion, it is because I believe that we must move and act ively in the area of discrimination in employment practices that I using those means and taking those steps which will provide the expeditious and effective remedy.

as reading just a few minutes ago, as I sat here on the floor of the e of Representatives, a letter or memorandum prepared on the of the last Judicial Conference—the proceedings of the Judicial erence of the United States. It pointed out that due to the rising load in the Federal courts the conference is casting about desper- for ways to expedite trials, because in 1970 the conference re- d that the increase in that year in case filings was the steepest, steepest caseload for any year in the last decade. There was a of 127,270 civil and criminal cases in 1970.

e CHAIRMAN. The time of the gentleman has again expired.

. ERLENBORN. Mr. Chairman, I yield the gentleman 3 additional tes.

e CHAIRMAN. The time of the gentleman from Illinois has red.

. ERLENBORN. Mr. Chairman, I yield 3 additional minutes to the eman from Illinois.

. ANDERSON of Illinois. I thank the gentleman for yielding.

nd the Judicial Conference stated—

nations have not managed to keep pace with the filings . . . The slower in terminated cases inescapably forced the volume of pending cases up.

Mr. Chairman, that is the situation that confronts the F judiciary today.

I looked further at the report of the Judicial Conference with ence to the issue of the time required for trial and for the disp of these cases. The trial median for both civil and criminal cas 12 months. That does not sound too bad. But when one looks the list of specific districts, one comes to the eastern district of sylvania where the trial median time is 36 months, the southern d of New York is 28 months, the western district of Pennsylva 28 months, the very districts of the country where a number o cases are apt to be filed and the very districts in the country toda are literally drowning in a sea of cases.

Mr. Chairman, I was interested enough in this matter to tal the chief judge of the northern district of Illinois which is loca my district and he told me that because Congress has been so generous with grants of new jurisdiction that they simply cou handle the volume of cases which they are undertaking to handle and which are pending.

Mr. Chairman, it is because of the very deep-seated fear I hav if we are going to simply overburden the Federal judiciary wit gressional grants of authority in these cases, we will thereby t what proponents of this change say they want and that is efficie expeditious enforcement of the guarantees as contained under VII of the bill.

Therefore, Mr. Chairman, I have today decided that I will su the committee bill.

Mr. THOMPSON of Georgia. Mr. Chairman, I made the point of that a quorum is not present.

The CHAIRMAN. The Chair will count.

Sixty-five Members are present, not a quorum. The Clerk wi the roll.

The Clerk called the roll, and the following Members failed t swer to their names:

[Roll No. 259]

Abourezk	Evins, Tenn.	Minshall
Alexander	Fish	Mollohan
Anderson, Tenn.	Ford, William D.	Moorhead
Ashley	Frelinghuysen	Murphy, Ill.
Barrett	Fulton, Pa.	Rees
Blackburn	Gaydos	Reid, N.Y.
Blanton	Gibbons	Rooney, Pa.
Boggs	Goldwater	Rosenthal
Carey, N.Y.	Gray	Scheuer
Celler	Gubser	Seiberling
Clark	Haley	Smith, Iowa
Colmer	Hébert	Stafford
Culver	Henderson	Stephens
Diggs	Jarman	Sullivan
Dwyer	Keith	Teague, Tex.
Edwards, Ala.	Koch	Thompson, N.J.
Edwards, La.	Long, La.	Widnall
Esbleman	McEwen	Wilson, Charles H.
Evans, Colo.	McKinney	Wydler

Accordingly the Committee rose; and the Speaker having res the chair, Mr. Adams, Chairman of the Committee of the Whole H on the State of the Union, reported that that Committee, havin under consideration the bill H.R. 1746, and finding itself with quorum, he had directed the roll to be called, when 376 Membe

ed to their names, a quorum, and he submitted herewith the
s of the absentees to be spread upon the Journal.
Committee resumed its sitting.
Chairman. The Chair wishes to announce that at the time of
iorum call the gentleman from Illinois (Mr. Erlenborn) had
and 2 minutes remaining and the gentleman from Pennsylvania
minutes remaining.
Chair at this time recognizes the gentleman from Illinois (Mr.
born).
Erlenborn. Mr. Chairman, I yield 5 minutes to the gentle-
rom Illinois (Mr. Railsback).
r. Railsback asked and was given permission to revise and extend
narks.)
Railsback. Mr. Chairman and members of the committee. I
like to just ask a couple of questions either of the gentleman
California (Mr. Hawkins) or the gentleman from Illinois (Mr.
born). Really, the reason for the questions is I think that every
r who has had any opportunity to practice law has had occasion
bly to try some cases before either the State or Federal agencies.
l you the truth, my concern is about the procedure that has tradi-
ly been followed in the case of administrative agencies particu-

at I would like to ask—and I can see the gentleman from Illinois
Erlenborn) is on his feet—is this: Under the committee bill
orrect that when a complaint is filed by an aggrieved individual,
he Commission itself saw fit to file a complaint, they would have
t to do so? Then the person who is alleged to have violated the
ould be the respondent. What I am interested in is this: Am I
t to the effect that he would appear before a hearing examiner?
ot made very clear in the bill when it talks about "agents."
Erlenborn. Mr. Chairman, will the gentleman yield?
Railsback. I would be glad to yield to the gentleman from
is.
Erlenborn. Under the present procedure the party who feels
ved may make a complaint to the EEOC. That complaint is
nvestigated to find out if there is due cause for the issuance of a
l complaint.
a matter of fact, it has been the case in the past where it takes
iere from a year to a year and a half before this initial investiga-
s completed, and a formal charge is filed. The same procedure
be continued under the committee bill. Under the committee
en, if a formal complaint is issued, if reasonable cause has been
, then it would be assigned to a hearing officer for the introduc-
f evidence and a finding of fact.
Railsback. Let me ask the gentleman from Illinois this ques-
Who would introduce the evidence on behalf of the Commission?
l it be somebody from the Commission, or would it be the hearing
ner, or how would that work?
Erlenborn. It is my understanding that under the committee
torneys would be appointed by the Commission to represent the
who is making the charge. This attorney would offer the evidence
alf of the plaintiff, which would then be passed upon or, rather,
missibility of the evidence would be passed upon by the hearing
.

I might point out, however, although it has been alleged that t
islation is following the procedure of the NLRB, that it is not th
as that in the NLRB where there is an independent general c
who represents the complaining party before the Commission.
committee bill, the power to issue the complaint, the power t
duct the hearings, and the power to make decision is all lodged
Commission; there is no independent counsel.

Mr. RAILSBACK. I would ask the gentleman from Illinois if
another case where the hearing examiner will rule on the obj
and, in other words, it would be another case where they are go
act as practically the prosecutor as well as the judge and the ju

Mr. ERLENBORN. If the gentleman would yield further so
answer that?

Mr. RAILSBACK. I will be glad to yield to the gentleman.

Mr. ERLENBORN. The hearing officer will act as the judge. I
him, acting as the prosecutor, will be an attorney who represen
Commission. Both the hearing officer and the attorney represe
Commission, and they will act in behalf of and in the name of the
mission. When the hearing officer concludes the hearing he ma
final draft and prepares a proposed order.

Mr. RAILSBACK. Then his findings go to the Commission, a
Commission can either approve or disapprove of the hearin
aminer's findings?

Mr. ERLENBORN. That is correct. And in the case where there
complaint about an aggrieved party this would be pro forma
Commission would review the order, review the hearing officer's
ings of fact, and issue their order. If there were a complaint
aggrieved party there would be a more formal procedure for the
missioners to review.

But I would point out that if this follows the pattern of the N
the hearing officer's findings would be sustained in 90 percent
cases.

The CHAIRMAN. The time of the gentleman from Illinois has ex

Mr. ERLENBORN. Mr. Chairman, I yield 2 additional minutes
gentleman from Illinois (Mr. Railsback).

Mr. RAILSBACK. Mr. Chairman, I thank the gentleman for yie
me the additional time.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I would like to bring up this
Since the gentleman is on the area of the committee bill, the signi
statements which appear in the precise, or the description of the
mittee bill, H.R. 1746. These statements indicate that, in the instit
of the action, the requirement that an aggrieved person's charg
made under oath, has been deleted. Presently under the existing la
aggrieved person has to make his charges under oath. This has
deleted by H.R. 1746.

In addition, the gentleman mentioned about the Commission wh
initiates action. In this case the Commissioner's charges do not ha
be based upon a reasonable cause to believe that a violation
occurred, so that the action against an alleged defendant, a party
has allegedly discriminated, can be made first by a complainan
under oath, and then by the Commission without reasonable gro
to believe that a violation has occurred.

r. Railsback. Let me ask the gentleman this question. Once the
mission makes a determination, am I correct that if there should be
ppeal, and I believe it is to the Court of Appeals, would that
al be based upon only the record of the hearing examiner as re-
ed by the Commission? In other words, it is not a new trial, it is
ly based on the particular record? Am I correct?
r. Mazzoli. Mr. Chairman, if the gentleman will yield, this is my
rstanding. Upon review, this is a simple review of what was
ed below, which in many cases are charges not made under oath.
r. Railsback. Am I also correct that the Court of Appeals must
ld the Commission if there was not the regular degree of proof
nly substantial proof in support of the allegation.
r. Mazzoli. Yes; this is my understanding. It is based on the evi-
e from the record as a whole and not on any area of the evidence,
ust what appears in the record.
ie Chairman. The time of the gentleman from Illinois has expired.
r. Erlenborn. Mr. Chairman, I yield the gentleman from Illinois
litional minutes.
r. Chairman, will the gentleman yield?
r. Railsback. I yield to the gentleman.
r. Erlenborn. Let me just expand on this a bit. I think the answer
ave received is correct. I would point out, however, that the rules
idence, the rules of civil procedure that apply in the courts, the
ral district courts, as my bill would require any case to be tried
, those general rules of evidence do not necessarily apply in the
nistrative hearing. If an appeal is taken, it must go to the circuit
of appeals. There is no new evidence adduced. It is the hearing
d and as it is said in the committee bill, the finding of the Commis-
and the order must be sustained if it is supported by substantial
nce. That does not even mean the greater weight of evidence—any
antial evidence in the record would then be incumbent upon the
it court of appeals to sustain the Commission's finding.
r. Railsback. I just want to say, I think I have supported almost
civil rights measure. Frankly, my objections to the committee
ave nothing whatsoever to do and are not even related to the par-
ur department that we are trying to arm with this right. As a
er of fact, I think I would vote to completely restructure our en-
dministrative agency system. It bothers me—I have had a chance
y cases before the Social Security Administration. When you
a case in there and are trying to claim certain disability benefits,
are introduced to the hearing examiner. In that case, he intro-
s the evidence of the Social Security Administration and he rules
our objections or he overrules your objections. He rules on the
nce and he makes the findings and, in my opinion, they act as
e and jury and prosecutor and then the record you have and take
n that case to the Federal district court is simply the record
he has had an opportunity to make rulings on and the adminis-
ve agency.
seems to me, for that reason alone if for no other reason, even
gh I want to see the EEOC given enforcement powers, that the Er-
rn-Mazzoli substitute is far preferable to the committee version.
ie Chairman. The time of the gentleman from Illinois has ex-
d.
r. Perkins. Mr. Chairman, I yield the gentleman 1 minute.
r. Chairman, will the gentleman yield?

Mr. Railsback. I yield to the gentleman.

Mr. Perkins. First, let me state that the substantial evidence that is required here in the review court, that is the circuit cou appeals, under the committee bill, means substantial evidence that the court is substituting its judgment for the Commissio rather whether considering the record as a whole there is substa evidence to support its finding. If the court is of the opinion th not substantial evidence, the circuit court of appeals as a matt right sets aside the findings of the Commission.

That is what the word "substantial" means.

Mr. Railsback. The rule does not require a preponderance o dence.

The Chairman. The time of the gentleman from Illinois ha pired.

Mr. Perkins. Mr. Chairman, I yield myself 1 minute.

The Chairman. The gentleman from Kentucky is recognized minute.

Mr. Perkins. As I interpret the word "substantial" as used i statute, it means, considering the entire record as a whole, the mission's findings must be supported by substantial evidence. A is going to set aside findings unless there is substantial evidenc support the findings of the Equal Employment Opportunity mission—substantial and not anything less.

So I think the rights of the parties are adequately protected w we require that the evidence be substantial.

The Chairman. The time of the gentleman from Kentucky has pired.

The Chair recognizes the gentleman from Illinois (Mr. Erlenbo

Mr. Erlenborn. Mr. Chairman, I yield 2 minutes to the gentle from Illinois (Mr. Railsback).

The Chairman. The gentleman from Illinois (Mr. Railsback recognized.

Mr. Erlenborn. Mr. Chairman, will the gentleman yield?

Mr. Railsback. I yield to my colleague.

Mr. Erlenborn. Just briefly, because I would like to set to rest question and to correct the statement of the gentleman from tucky, who has said that it requires a greater weight of the evide I think the gentleman from Kentucky is a good enough lawyer to k that when you say "substantial evidence," it is not the greater we of the evidence. It is a lesser degree. We know from NLRB c decisions that it is not the greater weight of the evidence.

Mr. Railsback. Not only does it deal with substantial evidence, it is evidence that was derived from a proceeding that involve hearing examiner appointed by the Commission who ruled on objections, who ruled on the admissibility of evidence, and who m the findings of fact which for the most part are never overturned the reviewing tribunal. To my way of thinking there is nothing about that kind of procedure, and I just point out to the chairma this particular case those of us who favor civil rights may pr something like this, but in a case when you are representing a so security beneficiary who is claiming for total disability, which is v similar, it is a rather frustrating thing. The same thing is true with Bureau of Internal Revenue when you deal with them.

All I am saying is that it seems to me you are much better off a fair and impartial tribunal.

r. PERKINS. Mr. Chairman, will the gentleman yield?
r. RAILSBACK. I am glad to yield to the chairman.
r. PERKINS. The findings of the Commission under the committee
can be entirely separate. They are not bound by any findings of
earing examiner that may be designated by the Equal Oppor-
y Commission. It is a de novo proceeding.
r. RAILSBACK. Does the gentleman really deny that the Commission
grees with those findings in not more than 2 or 3 percent of the
s?
r. PERKINS. When the findings are appealed to the circuit court of
eals we then see that the word "substantial" becomes significant.
'substantial evidence," we mean evidence of substantial nature and
he scintilla rule as some have attempted to argue.
r. RAILSBACK. Mr. Chairman, I would like to add my support to
Erlenborn substitute bill—H.R. 9274—which in effect would em-
er the Equal Employment Opportunity Commission to take its
rimination cases to the Federal courts. This bill would give em-
ees the opportunity to be examined through the trial process of
courts where opposing arguments may be heard objectively and
sions reached according to the governing law.
ie Equal Employment Opportunity Commission has been created
r the Civil Rights Act of 1964, to help those people who have been
ed employment, promotion, union membership, or other job, re-
l opportunity, through discrimination based upon race, color,
ion, sex, and national origin. The law, however, limits the EEOC
vestigation, mediation, and conciliation powers only. And up to
point, the enforcement powers for the EEOC have not been de-
l. We seek to correct this deficiency today.
ia bill proposed by the gentleman from Illlinois provides for the
)C to take its discrimination cases onto Federal courts whereas
ommittee bill, H.R. 1746, would allow the EEOC to issue cease-
desist orders. By combining cease-and-desist powers with author-
o issue back pay and affirmative action orders, the EEOC under
1746 would be transformed into a quasi-judicial body. I have
us reservations whether the administrative hearing approach is
)etter means for resolving employment discrimination cases.
the first place, the combination of advocacy and prosecution
in the same small organizational structure makes attaining a
m of impartial adjudication quite difficult, particularly in view
ie strong advocate role EEOC has played in the past.
addition, quasi-judicial bodies typically must resolve competing
ests and it is my opinion that employment discrimination is not
ch a nature as to be termed an "interest" under our system.
perience has shown that legal arguments are not always effec-
y brought forth under our present system of administrative
ings. Furthermore, the procedural rules governing administrative
ings are virtually nonexistent.
though there may be some dispute as to how efficiently the ad-
strative hearing process versus the court enforcement process
be, my experience would certainly be that the court approach is
ir the most expeditious and effective means for handling EEOC
cases.
stly, although appellate review would be allowed, the court enter-
ng the review would be limited to the hearing record and would

be required to affirm the Commission's ruling upon a finding c
evidence supporting its decision.

For these reasons, I am convinced judicial enforcement will
vide the best means to carry out the purposes of equal employ
opportunities.

Mr. ERLENBORN. Mr. Chairman, I yield 5 minutes to the gent
from Wisconsin (Mr. Steiger).

(Mr. Steiger of Wisconsin asked and was given permission to
and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Chairman, I wish to make cl
the outset that I support giving the Equal Employment Opport
Commission, the EEOC, the enforcement authority it now lack

I would also want to make it clear that there should be no eff
attempt to assess a Member's position on the legislation or o
Erlenborn substitute on the basis of who is more for civil ri
Both bills grant enforcement power. Both bills can be consider
be effective. Both bills, in my judgment, would fill a void in the pr
operation of the agency.

There are two issues that were raised between the substitute
with the committee bill, but there has been, as a result of the inse
in the RECORD yesterday by the distinguished chairman of the sub
mittee and the colloquy that has taken place today, a third issue
has been raised in the committee consideration of these two bills, a
is that third issue on which I shall touch first.

I admit to being absolutely appalled at the amendment whic
distinguished gentleman from Pennsylvania intends to offer, whi
aimed at subverting the Philadelphia plan and the Office of Fe
Contract Compliance's effort to carry forward an affirmative a
program.

I do not understand on what basis, except perhaps the basis set
on pages 304 and 305 of the hearing record by the gentlewoman
New York (Mrs. Chisholm) on the whole question of why i
committee bill the OFCC is proposed to be transferred intact t
EEOC. Let me quote what the gentlewoman from New York (
Chisholm) said during her appearance before the committee, a
will use her own eloquent statement:

> However, if labor really is serious and sincere about its support of
> having the OFCC powers, I ask them if they would support codifying the
> guage in Executive Order 11246 and transferring that codified langua
> EEOC's mandate? If not, then I submit that labor's support is disingenuo
> Thank you.

I think that is exactly the situation we are faced with here tod
think an effort has been made to end the other program design
insure an increase in the ability of the minority people to gain
place in those trades in which the salaries are high and in which
have a certain opportunity to be skilled craftsmen in the socie
think it is a disgrace for it to come at this late hour, and it is a
grace for it to come at this time in an effort apparently to pic
some votes. I intend to vote against it. I hope the House reject
The simple way to reject that amendment to be offered by the ge
man from Pennsylvania is to adopt the Erlenborn substitute an
settle the question once and for all. I urge all the Members of
House to support the substitute.

Let me just touch briefly before I yield, on why it is advisable to
the EEOC enforcement power to the court. I think the answer to

given by the Chairman of the Equal Employment Opportunity
mmission, Mr. Brown himself, in his statement before both the
se and the Senate. He said:

the area of relief I believe that the district court approach is clearly and
nstrably preferable to the cease-and-desist method. The pertinent yardstick
e amount of time an aggrieved person must wait before he is afforded relief,
r temporary or permanent. . . . Under the District Court approach, if one
ils before the court, he is entitled to an immediate injunction and other
f to bring about a rapid end to the discriminatory practices proved at the
. . . As a matter of practice, this would not be the case under the cease-
lesist approach.

do not think anyone needs more than that simple statement by
Chairman of the Commission as to why the Erlenborn method is
rior in handling the problem.

think we ought to make clear in any understanding of this whole
that any effort to try to say there is going to be any backlog
ase in the courts as a result of its passage is wrong. What we are
ng about is what kind of power do we grant that will enable the
mission to do a better job in voluntary compliance. I would argue
listrict court approach rather than the cease-and-desist approach
d bring about effective voluntary compliance with the orders of
Commission.

here is one other point I want to make and that is to suggest that
e attention may be paid to the question of what kind of enforce-
power we give, there are three other matters in the committee bill
deserve consideration. The one I have touched on is the transfer
forcement power by OFCC to EEOC which I think is a mistake.
ll not take the time of the Committee to detail the reasons which
e to the genesis of the two agencies, their differing guidelines and
rent purposes. Second is the transfer from the Civil Service Com-
on the authority to handle discriminatory practices within the
ral Government which would be brought in under the committee
o EEOC and which, I think, would effectively disrupt any ra-
l means of effectively dealing with employer-employee relation-
within the Civil Service Commission. And lastly, there is the
e question of transferring the pattern and practice suits from the
ce Department to EEOC. I think the record of the Justice De-
ment in handling the pattern and practice suits is evidence of their
ration, determination and of their ability to handle the authority
was granted in the Civil Rights Act of 1964.

find no substantive reason to transfer that jurisdiction. I have
d no reason in the hearings or in anything said on this floor as to
there ought to be a transfer of that authority. Therefore, I believe
uld be a mistake to do it.

or these reasons I support the substitute offered by the gentleman
Illinois (Mr. Erlenborn) and the gentleman from Kentucky
Mazzoli). I urge the House to adopt it on the basis that it is the
effective and fair method of giving the EEOC enforcement
rs.

r. Conyers. Mr. Chairman, will the gentleman yield?

r. Steiger of Wisconsin. I am happy to yield to the gentleman
Michigan.

r. Conyers. I thank the gentleman for yielding.

ie gentleman made a comment during the course of his remarks
e effect that some Members or some parties were selling out on the

question of civil rights, if they were either to support or not su
an amendment to which he was referring. Would the gentleman cl
that?

Mr. STEIGER of Wisconsin. Yes, I shall be happy to.

We have voted once on the question as to whether or not to t
take away from the OFCC its power to have an affirmative action
The House turned down the effort to strip the OFCC of that p

The amendment which is proposed to be offered by the gentl
from Pennsylvania would, in my judgment, strip away the abili
the OFCC to carry out the mandate of Executive Order 11246.

As the gentlewoman from New York said in her testimony b
the committee, there is apparently an effort underway by the A
CIO, which wants to take the OFCC out of the business of the P
delphia plan, and turn that power over to the EEOC. Now we se
end product, which is to strip away from the OFCC any abilit
follow through on that plan.

Mr. CONYERS. What about the sellout analogy if this House doe
ratify its support of the procedures embodied in the Hawkins
which was passed in the 90th Congress? Is that a sellout of
rights?

Mr. STEIGER of Wisconsin. Of course, it is not a sellout of
rights. Both bills grant enforcement power to EEOC. It is a total
ing of the mark if one is going to argue that the Erlenborn subst
is a sellout of civil rights, and the gentleman knows it.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. STEIGER of Wisconsin. I am happy to yield to the gentle
from Pennsylvania.

Mr. DENT. If the gentleman says that the CIO or the AFL or
other organization or person is asking that the authority of the
of Contract Compliance be taken out, and all its appurtenant po
they did not ask me to do that. Did they ask the gentleman?

Mr. STEIGER of Wisconsin. Did they ask me? Since I did not spo
the bill offered by the gentleman from California, of course, they
not ask me. But the AFL–CIO did appear before the subcommittee
indicated its approval of the transfer section of H.R. 1746.

Mr. DENT. They did not ask me. I am sure I have some opposi
in some of the trade and craft unions to the position I take.

Does the gentleman say that the Office of Contract Compliance
power even above that which we are accused of trying to give t
EEOC? It seems to me that the gentleman is saying that the Com
sion will become judge, court, and jury if we give it cease-and-d
power.

Mr. STEIGER of Wisconsin. I did not say that.

Mr. DENT. But the power inherent in the hands of the Office of
tract Compliance under the Executive order makes it judge, j
court, and jailer, because without any kind of review, and with a
lutely no opportunity for an appearance, it can come in on a mi
dollar contract, or a $250 million contract, or any Government
tract, and say to the contractor, "Either you do this, you take so m
of this particular group in this category, or your contract is null
void."

What kind of power is that? Where under the Constitution is
right?

Mr. STEIGER of Wisconsin. May I say to the gentleman from Pennsylvania, as chairman of the subcommittee, the argument would have somewhat more substance were the gentleman to have attempted to codify the powers of EEOC in the statute. He has not done it. What he is doing is attempting to transfer the authority from the Executive Order into EEOC.

Mr. DENT. They are codified. They are enforceable and workable.

Mr. STEIGER of Wisconsin. The gentleman is going to enforce them on the basis of the Executive order. Do not argue about that power, for we have not attempted to do anything with it.

Mr. DENT. Can the gentleman answer the question?

Mr. STEIGER of Wisconsin. Which one?

Mr. DENT. Does the gentleman believe that the Executive order in the hands of the Office of Contract Compliance is a power which should be given to any agency of Government?

Mr. STEIGER of Wisconsin. I believe their power is appropriate, constitutional, and legal.

Mr. DENT. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky (Mr. Mazzoli).

(Mr. Mazzoli asked and was given permission to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Chairman, I appreciate the opportunity of speaking to the House today, and I would like to express my appreciation to the chairman, Mr. Dent, for his yielding some of his very valuable time.

I would like to spend the few minutes that I have to put a few things in perspective, perhaps.

As has been mentioned earlier today and it will be mentioned for the remainder of the day that those who are for the Erlenborn-Mazzoli substitute are against civil rights and those who are for the committee bill are for civil rights. I certainly do not think that is a fair characterization of the work we did in committee, and I suggest that Mr. Erlenborn and I have produced a very adequate and I believe a very realistic substitute.

I hope that the members of this committee in judging the issues and the amendments will consider this not to be a civil rights matter but, rather, consider it to be a philosophical matter of whether cease-and-desist powers granted by the committee bill are superior to the court enforcement authority granted under the Erlenborn-Mazzoli substitute.

The course of the debate today touched on a lot of issues. I would like to mention a couple that I believe are very important to an adequate understanding of the bill.

First of all, it has not been brought out—and this is very important—that the substitute does not change the present EEOC operations with respect to courage of State and local government employees. Under the substitute, State, local, and municipal government employees would not be covered by the EEOC. I feel—and it is so said in our report—that there is an interposition under the committee bill which I think is disastrous, that is, the interposition of the Federal Government in State and local matters. You tell the State and local governments what they can do and what they cannot do. I do not think that is correct.

I urge the committee to study carefully that provision in the c
mittee bill which would, if adopted, affect all of the State and
government employees.

I would like to mention, also, that we were here earlier this after
and heard——

Mr. DENT. Will the gentleman yield to me for a question?

Mr. MAZZOLI. Yes. I yield to the gentleman.

Mr. DENT. You say that we should not inject ourselves into S
and local matters. Then, would you also say that we should rem
from the jurisdiction of the EEOC all those companies that do
do interstate business, because intrastate business has just as m
right to be exclusively under State and local government as any ot
So you would make it completely read that it affects only those
are in interstate business.

Mr. MAZZOLI. Mr. Chairman, there can be an argument made on t
but it seems to me that we talk about the unwarranted interposition,
unnecessary interposition. I believe that is what this bill does. Unw
rantedly it interposes the Federal Government into State and l
matters.

I would like to mention something that we talked about ear
today.

The gentleman from Illinois (Mr. Anderson) made a very eloq
speech in behalf of the committee bill and he said that we could
afford to adopt this substitute because it would overburden the Fed
court system. I am wondering if perhaps in trying to avoid o
burdening the Federal court system, we will overburden alleged
fendants. On page 11 of the committee report, which I would ask
Members to read, it is stated:

> Administrative tribunals are better suited to rapid resolution of such com
> issues than are Courts. Moreover, administrative tribunals are less subje
> technical rules governing such matters as pleadings and motion practice—w
> afford opportunities for dilatory tactics –and are less constrained by formal
> of evidence—which give rise to a lengthier (and more costly) process of pr

And, it further says:

> In addition, past experience with administrative hearings and court enf
> ment indicates that cease-and-desist would be more effective. Experience
> shown that one of the main advantages of granting enforcement power
> regulatory agency is that the existence of the sanction encourages settleme
> complaints before the enforcement stage is reached.

Which means, Mr. Chairman, that there is a huge bludgeon
huge mace waiting on the sidelines to hit you over the head and, th
fore, quick settlements are made as a result of the coercion.

Mr. Chairman, I would certainly feel that there must be enforcem
powers granted to the EEOC, but it does seem to me that a m
more orderly, much more structured, more rational and reali
resolution of this enforcement question is through the Federal co

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from Kentucky
expired.

Mr. ERLENBORN. Mr. Chairman, I yield myself 15 minutes.

(Mr. Erlenborn asked and was given permission to revise and ex
his remarks.)

Mr. ERLENBORN. Mr. Chairman we have before us the commi
bill, H.R. 1746, and as provided for in the rule under which this de
is proceeding, H.R. 9247, the Erlenborn-Mazzoli substitute and wh
will be offered as a substitute for the committee bill.

Chairman, both of these bills have the same purpose; and, that
give to the EEOC an opportunity to exercise some power of en-
nent in the field of civil rights under Title VII of the 1964 Civil
s Act.
1964 Civil Rights Act was the product of compromise, as is
legislation of any controversy on the floor of this House and/or
s Congress. A part of the compromise in passing that bill was
creation of the EEOC, but no power to enforce was granted to
ommission. When the bill was passed it was a year subsequent to
ssage of the bill before the Commission went into business. It has
ctive since 1965. In the intervening 6 years over 50,000 cases have
iled before the Commission.
ink it is important to note that more than half of these over
cases are still pending and unresolved.
re may be several allegations made as to why this deplorable
on exists. One is that the Commission cannot resolve these cases
all it is empowered to do is to bring the parties together in the
s of conciliation, because they do not have the power of en-
nent. I think this is a part of the reason. Frankly, that is why I
with the gentleman from Kentucky (Mr. Mazzoli) in drafting
that would give them enforcement authority.
re are other reasons. However, if you look at what the Commis-
as done in the intervening 6 years there are other causes for its
backlog.
Commission, historically, takes a year and sometimes a year
half in investigating charges before due cause is found and
i complaints and charges are filed, and though the law requires
otice be given to one against whom the complaint has been filed,
been the practice of the Commission in the past to wait that year
ar and a half before notice is given to the one against whom the
aint is filed, whether it be the employer, the union, or the com-

ink this is deplorable. This denies to the party charged the oppor-
to try to resolve the question at an early date. Maybe, if timely
were given we would not have as many cases presented, maybe
ases would be resolved. But if they were not resolved, at least
nent of due process would be introduced in giving notice to the
charged that he would have the opportunity to gather and
ve the evidence with which to sustain himself when formal
s are filed and subsequent enforcement proceedings are insti-
That has not been the case.
Chairman, I feel that minimum standards of due process require
otice be given when charges are made against the party involved.
s not true in the present law and it is not true in the committee

fered, as an amendment to the committee bill when it was in the
nmittee, and the full committee, an amendment that would pro-
or timely notice. This was rejected out of hand. But now the
man from Pennsylvania does say at this late date, yesterday,
he put in the Record, and today when I finally saw a copy of his
lment, that he intends to offer an amendment for timely notice.
s late date I am glad to have this support for this amendment
ng due process.

And, talking about due process, I think there are other elem involved in this proposed cease-and-desist authority that the comm bill would give to the EEOC.

Mrs. GREEN of Oregon. Mr. Chairman, would the gentleman yi

Mr. ERLENBORN. I yield to the gentlewoman from Oregon.

Mrs. GREEN of Oregon. Mr. Chairman, it does seem to me th word should be given in explanation of the committee's action an amendments to be offered by the gentleman from Pennsylvania very capable and the very fair chairman of the subcommittee. gentleman from Illinois knows that I did not support the bill in mittee. I field minority views and they are in the committee re Other Democrats supported some of the amendments offered by gentleman from Illinois. They were defeated. I offered amendmen the committee bill. They were defeated.

During all the years that I have worked with the gentleman f Pennsylvania, he has been very fair, and he has never broken his w to me on any occasion—I think the gentleman from Illinois will call that Mr. Dent was having major surgery at the time the c mittee considered the bill in subcommittee and in the full commi He was in the hospital; he was not able to work with the gentle from Illinois or me or others. He was not able to offer the am ments that he is offering on the floor during this debate.

They are being offered in good faith. In my judgment, had gentleman from Pennsylvania been there and not in the hosp he would have worked with several of us in working out som these points that we now have to work out on the floor of the Ho

Mr. ERLENBORN. Mr. Chairman, I thank the gentlewoman for contribution. What the gentlewoman says is correct insofar as fact that the gentleman from Pennsylvania was not there, and tha was ill, and I am sorry for that. But there were all of the other m bers of the majority on the subcommittee and the full committee th The gentleman from California has been designated to handle bill.

I make the point that in the subcommittee and in the full c mittee I offered this amendment, and make no allegations aga the gentleman from Pennsylvania. I did not originally, and I not now. I say the subcommittee and the full committee rejected amendment out of hand, and that is the fact, and it is on the rec

Talking about due process, there is another element involved. cease-and-desist approach I think as has been very well pointed by the gentleman from Illinois (Mr. Railsback), involves what and I—and I hope the majority of the members of this commi would think—is something less than optimum due process. The c mittee bill grants to the Commission the power to receive complai grants to the Commission the power to investigate complaints; gr to individual Commissioners the power to file complaints; grants to Commission the power to prosecute, to adduce evidence; grants to Commission the power to pass upon those elements of evidence t are introduced; grants to the Commission the power to fashion remedy in the form of a cease-and desist order.

Now, it is said that under the Administrative Procedure Act th is a hearing officer, and therefore this introduces an element of f ness. It has been said that the committee structured bill is desig after the procedure that is followed in the NLRB. I would point that this really is not quite accurate. Yes, there is a hearing officer

ed, but under the NLRB actually, as a matter of experience, it found that it was desirable to have a separate prosecutor, and not ave the Board be both prosecutor and judge.

in the NLRB you have the Office of General Counsel indeent of the Board. You have there a division of the power to ecute from the power to judge. In the committee bill this di- is not followed, the pattern of the NLRB is not followed. have the Commission which investigates the cases with both the r to prosecute and the power to issue orders, and pass upon fficiency of the evidence.

is said an appeal is available, you can get into the courts. You es. But as the gentleman from Illinois (Mr. Railsback), pointed t is not as if you were to go to the district court for a trial de and to have evidence taken, evidence of a quality that would otected by the civil practice procedures in the Federal district You go to the circuit court of appeals for a review of the rec- at has been adduced before the hearing officer.

u do not bring new evidence in. You look at the evidence, the y of which has not been protected by the same rules of prac- nd then the circuit court of appeals under the committee bill not even weigh that evidence to see where the greater weight dence lies. The circuit court of appeals must sustain under the age of this act the findings of the hearing officer—the decision Commission—if there is substantial evidence—not the greater t of evidence.

chairman of the committee when he tells us that the two are me belies the fact that he is an excellent lawyer and he knows ent.

. ECKHARDT. Mr. Chairman, will the gentleman yield.

. ERLENBORN. I yield to the gentleman.

. ECKHARDT. This is a point I think needs clarification. The gen- n will concede, will he not, that the rule with respect to sub- al evidence in the committee bill is the same rule substantially t in the Labor Relations Act.

. ERLENBORN. Yes, I do concede that. But again I reiterate it is e greater weight of evidence. I am addressing myself to the ent made by the chairman of the full committee (Mr. Perkins). he said it was the greater weight of evidence.

ould ask the gentleman from Texas, since he posed the question to answer my question—do you agree that the chairman of the ittee was correct when he said that substantial evidence requires be the greater weight of evidence?

ECKHARDT. I would merely state that the general rule basically erned by the case of the Universal Camera Corp. against the nal Labor Relations Board.

ERLENBORN. Will the gentleman give me a simple "yes" or "no" r?

ECKHARDT. This is very brief and it simply says that the find- f the Board as to whether or not it is supported by the evidence e conclusive.

court wrote "evidence" to mean "substantial evidence." We said ntial evidence is more than a mere scintilla—it means such rele- vidence as a reasonable mind might accept as adequate to sup- conclusion, citing Consolidated Edison.

Accordingly, it must be more than to create a suspicion of exis
of the fact to be established. It must be enough to justify if the
were to a jury a refusal to direct a verdict when the conclusion so
to be drawn from it is one of fact for the jury.

That is the rule, as I understand it.

Mr. ERLENBORN. I thank the gentleman for his contribution, b
still has not answered my question whether it was the greater w
of evidence or not. I still contend that the gentleman from Kent
is a better lawyer than to say that "substantial evidence" is "gr
weight of evidence."

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman y

Mr. ERLENBORN. I yield to the gentleman.

Mr. STEIGER of Wisconsin. Would the gentleman from Illino
willing to translate the answer of the gentleman from Texas
language that a nonlawyer might understand?

If I heard the answer correctly—to the question you have ask
"Is substantial evidence the greater weight of evidence?" and he
back and said, "No".

Mr. ERLENBORN. I think the gentleman is correct—he did say, "

Mr. STEIGER of Wisconsin. I thank the gentleman.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman.

Mr. HAWKINS. You said under the law the court would not
review the evidence presented to the Commission in the Commis
hearing, and it would be required to sustain the Commission if t
were any evidence supporting its findings. That is not a true s
ment.

Mr. ERLENBORN. Mr. Chairman, I do not yield further to the ge
man.

Mr. Chairman, I would like to continue with my argument con
ing the committee bill.

There are other elements in this bill other than the question of w
types of enforcements are most desirable.

The committee bill would transfer to a commission that is alr
overburdened with half of the cases that have ever been filed wi
thousands of cases that are still pending and that are still unresolv
it would transfer additional jurisdiction—jurisdiction now poss
by the Civil Service Commission relative to equal employment in
eral employment would be transferred to the EEOC. New cove
of employees of State and Federal Governments would be provid
the EEOC.

In addition, the authority to proceed in practice or in pattern
now exercised by the Justice Department would be transferred t
EEOC and, I think, most important of all—and I think we
made the point fairly adequately today already—the jurisdiction
cised by the Office of Contract Compliance in the Department of L
would be transferred to the EEOC.

I think it is important to understand what the jurisdiction of
Office of Contract Compliance in the Department of Labor is.
Office of Contract Compliance is not enforcing Title VII rights.
Office of Contract Compliance authority is derived from an Execu
order. The jurisdiction of the EEOC is under the 1964 Civil Ri
Act, and it is to enforce those constitutional rights of equality
the court has found to be within the realm of enforcement that we
seeking to grant the enforcement power to the EEOC.

ese are basically constitutional rights and statutory rights under 964 act. It regulates the conduct of affairs between individuals heir employers.

e OFCC is an altogether different type of jurisdiction. It is not upon constitutional rights. It is not based upon statutory rights. e genesis of the power of the OFCC is the contractual relation- hat exists between the Federal Government and those with whom contract for the acquisition of goods and services. In this juris- on the OFCC can and does go beyond those powers granted by 964 Civil Rights Act. I think it is important to note that the man of the Equal Employment Opportunity Commission him- as testified that you cannot mix these two enforcement authori- Ie testified before our committee this year against the transfer of C jurisdiction. Chairman Brown testified against the transfer of ittern or practice jurisdiction exercised by the Justice Depart- and he testified in favor of the court-enforcement approach that ressman Mazzoli and I have embodied in H.R. 9247.

re are one or two additional points I would like to make. I have about the timely notification to a party who is charged. We find hat a party who is charged and goes through the present conciliа- rocess can also be subject to private action under the present 1964 Rights Act. If the complaining party loses that case, another ay be filed in proper circumstances by that same party before LRB. If the complainant loses that case, a fourth action can be nder the old Civil Rights Act of 1866.

other words, there is a plethora of forums to resolve these com- s, no one of which is exclusive, and it can happen that a multi- of cases arising out of the same set of facts can clog the courts. would provide in our substitute bill that Title VII be the sole d of enforcing these rights. There would no longer be recourse to d 1866 civil rights act. We also would affect a limitation on lia- a statute of limitations. At the present time there seems to be it to how far back pay awards can be made on behalf of a party ins one of these actions, except to the beginning of the act, which e effective date of 1965.

have class actions where the Commission admittedly encourages dual complainants to file suits on their own behalf and for the class that may be similarly affected.

s, plus the liability of backpay without limitation, would create rrendous potential liability. We would provide a limitation on ty through a 2-year statute of limitations. I would admit again he majority as represented by the gentleman from Pennsylvania id, belatedly, that if they are given the opportunity, they would pply a 2-year statute of limitations.

my attempt to have that adopted in committee was rejected.

would also provide in a class action a limitation so that those oin in the class action or those who by timely motion intervene be considered as the proper class, but not all who may be simi- situated but who are not even aware of the fact that a case has iled.

feel that, because we have greater elements of due process, be- we would give the enforcement authority to the Federal district —where, in our opinion, timely relief can be given to the com- ng party—our approach is preferable.

I would point out, contrary to what the gentleman from Il
Mr. Anderson, said, that those areas where we have the greatest
ber of EEOC complaints are not the same areas where we ha
greatest backlog in the district courts. I refer the Members
minority views in the report of the committee.

Mr. FAUNTROY. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from the Distr
Columbia.

Mr. FAUNTROY. Mr. Chairman, this is now directed to the argu
raised by the gentleman in the well, and the gentleman from Kent
and the gentleman from Wisconsin, to the effect that cease-and-
power should not be given to EEOC. I have simply two ques
Would the gentleman be in favor of withdrawing cease-and-
powers from the Federal Trade Commission and from the Secu
and Exchange Commission and from other commissions?

Mr. ERLENBORN. I think I understand the gentleman's questio
me respond to the gentleman. I do not have a great deal of time.
derstand what the gentleman's question is. I think there are two
of Federal agencies that have cease-and-desist powers. Primarily
are regulatory agencies. The only exception in the Federal Go
ment that has that authority is the NLRB.

The answer is yes. I would withdraw the cease-and-desist power
the NLRB. I would rather have those cases resolved in court.

I would point out under the committee bill, which is also the p
dure under the NLRB, the cease-and-desist orders are not self-en
ing. The only time one gets enforceable orders under the NLR
under the committee bill is if one goes to the court. That is the
place to get effective relief. That is recognized in the NLRB. Th
sue an order. It is not self-enforcing. They must then go to the Ci
Court of Appeals.

It is also true that before our Education and Labor Committ
the same time we were considering giving cease-and-desist type au
ity to EEOC, another subcommittee was considering the question
why there was a great backlog on cases and a denial of justice i
NLRB situation. Even after the NLRB issues an order, even
they go into court before it gets to effective judicial relief t
parties.

Mr. FAUNTROY. I have asked the gentleman a two-part questio

Mr. ERLENBORN. I have answered one, I hope.

Mr. FAUNTROY. I asked if the gentleman was in favor of withd
ing the enforcing authority of the Federal Trade Commission?

Mr. ERLENBORN. I understand the gentleman's question. Let m
spond to the gentleman. Mr. Chairman, I do not yield to the gentl
further.

I would say, in response to the gentleman's question, the Fe
Trade Commission at this very time has recommended to this Con
legislation they sent up requesting the authority to go into the
eral district court. They exercise cease and desist authority. They
found it is not the best way to approach enforcement, and the Fe
Trade Commission today is asking that we give them the kin
power that H.R. 9247 would give the Equal Employment Oppo
nity Commission.

Mr. Chairman, we feel, and I think with good reason, that the
of due process would best be served and the best type of enforce
authority would be given the Equal Employment Opportunity

on if our substitute H.R. 9247 is adopted. We feel the committee
oes far ahead in giving additional jurisdiction to a commission
dy overburdened and, under their bill, it will be given new duties
rform.
also feel that the cause of due process will best be served if our
itute is adopted providing a limitation on class actions, providing
y notice so that the parties may defend and protect themselves,
roviding a statute of limitations so that back-pay awards cannot
ndered in the year 2000 all the way back to the year 1965, as the
s apparently are holding at the present time.
r these reasons, I hope that this committee will support the sub-
e bill when it is offered, and I hope that then, as provided in the
itute bill, the enforcement authority will be given to the Com-
n by the passage of the bill.
DENT. Mr. Chairman, I yield 5 minutes to the gentleman from
land (Mr. Mitchell).
r. Mitchell asked and was given permission to revise and extend
marks.)
MITCHELL. Mr. Chairman, I only wish I had a sufficient amount
ney, I wish that I were independently wealthy, so that I could
packed in the galleries today the thousands of cases I know of
oor and the black and other minorities who have sought to work
the system, who have sought to avail themselves of adminis-
e redress, and have found that the administrative agency far too
turns out to be a paper tiger. They get no redress.
ish that I had the power and the capacity to transport every
er of this House and all the visitors back with me to 1963, when
g as the executive secretary for the Maryland State Human
ions Commission, I went before the Maryland General Assembly
g that our State commission be given cease-and-desist power. All
arguments, all of the fears, all of the shibboleths I have heard
were spoken to then in our Maryland General Assembly. All of
guments: That cease-and-desist power would create a powerful
er that will serve as judge and jury and prosecutor I heard in

ish that you could go back with me to 1965, when we went to
faryland General Assembly for cease-and-desist power for our
commission under our fair employment law: 1963 was public
modations, and 1965 was fair employment.
the same old arguments came up again. Once again we dealt
them.
y, I must submit that our State human relations commission
nave cease-and-desist power in public accommodations, in fair
yment, and in housing. That Maryland General Assembly gave
ease-and-desist power to that commission, recognizing that ad-
rative review is far faster than judicial review call, recognizing
dministrative review under cease-and-desist power will yield far
consistent logic than would perhaps be yielded in the courts.
us admit to it: In our Nation, despite the fact that we have an
ive of equal treatment under the law, the law is not equally ad-
ered in all regions in our country. The milieu of the region does
l affect the administration of justice.
were given cease-and-desist power under our State commission
rily because it was recognized that the cease-and-desist order is
bludgeon, as the distinguished gentleman from Kentucky alluded

to it as. It is not a bludgeon, but it is a phychological weapon c
for the decency of people to manifest itself so that there will be
redress.

This has been a long and tortuous debate this afternoon, an
we must deal with the realities. I believe I am advantaged over
of you in dealing with them, simply because I go to my district
night. I represent the Baltimore area and I can get there daily.

The questions asked me by whites run like this: "What is w
with the black folks? Why are they not satisfied with the gains
have been made?"

And the question put to me by blacks in the district is, "When
the promises be fulfilled? When will there be a delivery on a
promises of the past?"

I heard my distinguished colleague from Illinois speak e
today about his concern over the deepening fissure that exists i
society. It is a deepening one which is polarizing us day by day
hour by hour. I can almost feel it, and if you have any sensitivity
you will be able to feel it, too.

How do you resolve this problem. You do it by delivering o
unfulfilled promise. You resolve it by giving to those agencies o
Government which have the charge to implement legislation an
power to do so effectively.

I heard someone say earlier today let us get the legislation thr
on a compromise. There are compromises presented to us, mo
which are acceptable, but on cease and desist there can be no com
mise. The question that will be put by young black men and w
and Mexican-Americans and others is this: You have compron
and compromised and compromised will you now finally compro
away my faith, my belief, my credibility in the system to deliver

I see some of my colleagues smiling. I see them smiling as if
saying something that amuses them, when they should be weep
They should be weeping over the fact that in 1971 I stand here
you sit there debating over issues as to whether or not we shall
the promise made, whether we will deliver.

The Erlenborn-Mazzoli bill does not deliver on that promise.
bill is another in the series of delaying actions and is another s
of placating gestures that do not cut through to the core of the ma

My time has run out for me and it may have run out for the re
you in this body and for the rest of the people across the Nation
want to make democracy a whole entity.

I say reject the Erlenborn-Mazzoli amendment.

Mr. ERLENBORN. Mr. Chairman, at this time I yield 2 minutes t
gentleman from Illinois (Mr. Pucinski).

Mr. PUCINSKI. Mr. Chairman, I take this time to ask the ch
man of the subcommittee a question for the purpose of establis
some legislative history here.

He will offer an amendment which will provide that the Com
sion shall be prohibited from requiring a quota for preferential t
ment with respect to the numbers of employees or percentage
employees of any class, color, religion, sex, or national origin.

I am puzzled and troubled with the word "quota," because in
Philadelphia plan the administration had very stubbornly insi
and there was extensive debate on the floor of the House here, that
were not using quotas in Philadelphia but they were using "go
What I want to know is whether or not the use of the word "qu

e in this amendment applies to "goals" or any other phraseology
ch in effect would require an employer to employ a certain amount
people of various racial and ethnic categories mentioned here.
Mr. DENT. The gentleman asked me the question yesterday, and I
ked up the word "goals" and I cannot find where goals has any
ific meaning that would lend it to any plan which would say a cer-
number of quota. The word "quota" is a very plain word.
Mr. PUCINSKI. Does the prohibition against "quota" in this amend-
t apply to "goals" or to any other method or scheme used by the
inistrators of this act?
Mr. DENT. I would say the word "quota" and the prohibition of
as in the Commissions' administration of the Federal contract
pliance program means exactly what it is intended to mean, that
er any condition this Commission cannot establish a set number
uota of workers in any category that must be present.
r. PUCINSKI. If they plead as they did in the case of the Philadel-
plan that they were not establishing quotas but merely estab-
ng goals, this would be interpreted as meaning they are in viola-
of this act.
r. DENT. That is right, if what they are establishing is a quota or
erential treatment.
r. PUCINSKI. Now, do I further understand that this amendment,

he CHAIRMAN. The time of the gentleman from Illinois has ex-
d.
r. DENT. Mr. Chairman, I yield the gentleman 1 minute.
r. PUCINSKI. Then, do I also understand that this amendment
ns that Title VII which specifically prohibits the establishment of
as would, indeed, apply to this act and to the actions of the Equal
loyment Opportunity Commission under this act?
s the gentleman knows, in the case of the Philadelphia plan, the
rt held that Title VII did not apply because the plan was ordered
er an Executive order.
m I correct in concluding that this amendment would provide that
e VII restrictions on quotas, goals, or any other schemes which may
sed would apply to the Equal Employment Opportunity Com-
ion?
r. DENT. The courts said that Title VII of the civil rights bill do
pply to the Executive order. In other words, the Executive order
rsedes both the Constitution as well as the law passed by the
gress of the United States.
That we are trying to do is bring the operations of the contract
pliance program back within the law which Congress passed.
r. PUCINSKI. And, this amendment would bring Title VII into this
mission's activities? In other words, if this amendment is adopted,
Commission cannot claim it as exempt from Title VII of the civil
ts act nor can the Commission require quotas or goals in assign-
job distribution?
r. DENT. Right; it cannot require quotas.
r. PUCINSKI. I thank the gentleman.
r. ERLENBORN. Mr. Chairman, at this time I have no further ques-
s for time. I reserve the balance of my time.
r. DENT. Mr. Chairman, I yield such time as he may consume to
gentleman from Massachusetts (Mr. Drinan).

(Mr. Drinan asked and was given permission to revise and extend remarks.)

Mr. Drinan. Mr. Chairman, I rise in support of H.R. 1746, Equal Employment Opportunities Enforcement Act, under wh the Equal Employment Opportunity Commission will be ena for the first time not merely to conciliate with employers who engaged in discriminatory practices or to petition them at frustra length, but to negotiate with them purposefully, from strengt

I strongly favor this bill over alternative measures because I convinced that while discrimination in employment does not inevit resist suasion to the point where judicial remedies are required, discrimination does not invariably yield to words alone. There m be enforcement authority within the Commission, and the most app priate type of enforcement authority in this instance is that of cease-and-desist power. That power was originally contemplated the drafters of the underlying legislation, and is long overdue.

Title VII of the landmark Civil Rights Act of 1964 prohibits criminatory employment practices based on race, color, religion, or national origin.

Until now the EEOC has relied chiefly upon persuasion to g voluntary compliance with the provisions of Title VII. Too often t approach has meant that the victims of discrimination have contin to be excluded from union membership or from raises and promoti or excluded from rewarding employment altogether.

Between 1964, when it was established, and 1969 the Commiss failed in more than half of the 35,445 cases it investigated to achi even a partially successful conciliation agreement.

Moreover, discrimination is not abating notwithstanding the pr ises of the 1964 Civil Rights Act. It is mounting yearly. In fiscal y 1969 the EEOC received 12,148 charges of discrimination; in fi year 1970, 14,129 charges. In the first 7½ months of fiscal year 197 had already received 16,644 charges. That is more than the numbe charges received for all of fiscal year 1970, and already more than fourth as many as it received during the entire first 5 years of existence.

Behind the impersonal statistics of charge, recommendation investigation, and of cases unresolved there stand many millions working people—women, blacks, Indians, Chicanos, and other mi ities—who are being thwarted, exhausted, and indeed, enraged inequality, and whose invaluable skills are thereby lost to our soci if not set destructively against it.

For women and blacks the inequities left remediless by the Comm sion have been particularly outrageous.

An EEOC report released in February 1971 revealed that in building trades the percentage of black workers in 1970 had actu declined to 6.8 percent from 7.4 percent in 1969. Cease-and-de power would enable the EEOC to secure compliance by the build trades with the goals of equality which the Civil Rights Act of 1 rightly elevated into a national project.

Title VII specifically prohibits sex discrimination. But the disgr of discrimination against women has been so pervasive that contin almost up to the present it has borne the insulting status of a ridic injustice. In 1968 60 percent of women earned less than $5,000 only 20 percent of men; 28 percent of men earned more than $10 but only 3 percent of women.

It is also a telling fact that while a woman with 4 years of college
s earning, in 1968, an average of $6,694 per year, the average earn-
gs of men with only an eighth grade education were almost the same,
580.

Against this background of widespread discrimination, an EEOC
rmed principally to rely upon voluntary compliance is a frail and
dequate resort. The situation is summarized in concise terms in
e report of the Committee on Education and Labor on H.R. 1746:

t has been the emphasis on voluntariness that has proven to be most detri-
ntal to the successful operation of Title VII. In cases posing the most profound
sequences, respondents have more often than not shrugged off the Commis-
n's entreaties and relied upon the likelihood of the parties suing them.
'acts, statistical evidence and experience demonstrate that employers, labor
anizations, employment agencies and joint labor-management committees con-
ue to engage in conduct which contravenes the provisions of Title VII. The
stence of such practices demonstrates the immediate need to effectuate the pur-
es of the Civil Rights Act of 1964.

Not only is the number of cases of discrimination increasing every
r, they are also becoming more difficult and complex. A pertinent
mple is the fact that the already unmistakable distress of our
es—some have called it agony—is being aggravated by a major new
eat with obvious implications for the EEOC and H.R. 1746: the
reasing migration of large and important companies to suburbia,
ving minority workers trapped, without jobs or decent housing, in
ttos.

During the 1960's the white population of the central cities declined,
tly due to these transfers of businesses, by nearly 2 million people,
ile the minority population increased by nearly 3 million. This is
ctly the kind of incendiary polarization which the Kerner Commis-
n warned against in 1968:

ur nation is moving toward two societies, one black, one white—separate and
qual. . . . Discrimination and segregation have long permeated much of Amer-
life; they now threaten the future of every American.

n the case of these large urban corporations, as well as in the area
mployment discrimination generally, it is important not to disrupt
ously the employer-employee relationship or operations. Settle-
nt out of court and, where at all possible, short of administrative
orcement, should remain the goal of the Commission. An important
pose of the EEOC is to enable employers and employees to live with
n other without continuing bitterness and friction. In my view,
refore, the chief advantage of granting cease-and-desist power to
Commission is that the very possibility of this sanction would tend
timulate settlement. This has been the general experience and value
dministrative enforcement. In the NLRB, for example 95 percent
nfair labor practice cases are resolved administratively.

Using the possibility of administrative enforcement in order to se-
e settlement before enforcement is a tested procedure. It has sup-
d the effective foundation for regulatory agencies for more than
e decades. It has been the mainstay, for example, of state fair em-
yment practices commissions, the Securities Exchange Commission,
Federal Trade Commission, the National Labor Relations Board
the Federal Communications Commission.

Under H.R. 1746's cease-and-desist provisions both sides will know
the Commission's mediating role is backed if necessary by more
pelling process. The employer will know that an unyielding or
ely dilatory stance may result in the stigma and possible penalties

of an enforceable Commission order. It will be obvious to both em ployer and employees that the Commission need not and will not perm itself to be exploited by either side for harassment or delay.

I have emphasized the cease-and-desist provisions of H.R. 1746 b cause they are so clearly the prime vehicle by which the bill wou invigorate the EEOC. But H.R. 1746 would also enact two other qui fundamental changes in the present law, changes not contained in H. 9247. These provisions would broaden and consolidate the EEOC jurisdiction.

First, the broadened jurisdiction would enable the Commission cover 10.1 million State and local government employees now exclud from coverage by Title VII of the Civil Rights Act of 1964. As of Ma 30, 1970, minorities accounted for 19.4 percent of the total number Federal employees. But minorities constitute only 2 percent of indivi uals in the GS–16 through GS–18 grades. We are proud of our spac program, but only 2.9 percent of NASA's employees are black. Th Federal Aviation Administration employs 1,612 supervisory and ad ministrative personnel. But only 13 of these individuals are black.

Jurisdiction under H.R. 1746 would also be expanded to includ employees of educational institutions, presently exempted, and unions and companies of at least eight workers or members, instead the 25 required by present law. This latter provision would exten protection to 9.5 million workers not covered under the present law under the proposed H.R. 9247.

Second, H.R. 1746 would consolidate within the EEOC the presen ly diffused responsibility for enforcing equal employment opportunity Currently the Office of Federal Contract Compliance, the Civil Servi Commission, and the Justice Department all exercise part of a fr quently overlapping and confused obligation. As an example of th encumbering overlap, the committee report cites a 1969 court cas Zellerbach Corp. against United States, where the union and employe had settled with the EEOC but were then subjected to Federal cou litigation, action by the Office of Federal Contract Compliance, an finally a suit by the Justice Department. Accountability to sever overlapping authorities is mutually defeating. In practice it may r sult in no accountability.

I would like to emphasize the central importance in problems of em ployment relations of reaching a solution outside of court—given th legacy of bitterness and distrust often attendant upon protracte trials—and if possible before administrative enforcement. Specifica ly I would stress four points: First, the courts have neither the tim nor the experience to be the principal forum for unraveling compl cated discriminatory practice cases; second, court intervention is e pensive, protracted, and disruptive for employer and employees alik third, court action is least desirable where, as in EEOC matters, th parties are likely to be involved in an ongoing relationship that ma only be undermined by the formalized procedural combativeness im plicit in a judicial trial; and fourth, the EEOC has already acquire and will continue to accumulate the experience and insight whic bolstered by the cease and-desist power can best encourage meanin ful settlement.

I do not believe business has any justifiable fears about the effe of H.R. 1746. Indeed, the processes which this bill would implemen would, I am convinced, save businesses time, money, and bitter perso nel morale problems.

I support H.R. 1746 as a measure soundly designed in the overall erest not only of employers and workers, women and minorities, of a free society which necessarily requires freely developed ent and industry.

Mr. Nix. Mr. Chairman, as perhaps in your own experience, I know m individual cases that treatment in employment for minority ups has not substantially improved since the 1964 Civil Rights Act. n some cases, a better job might not be merited. But—of those with om I have counseled—many committed themselves to a serious, exsive and time-consuming effort to become trained and educated order to qualify for particular employment. You can readily apciate the disillusionment of an applicant who is rejected solely ause of race, creed, color, or sex.

ly own experience is corroborated by a newspaper article of Sun last, headed "Report Finds Minority Job Bias Remains."

t was an Associated Press article, printed throughout the coun. I assume many of you have read it, and I would like to ask persion to insert it in the Record following my remarks.

olid research and statistics are available to substantiate the findis of the Equal Employment Opportunity Commission. The conclun is that women and minority group workers—blacks, Spanishnamed Americans, Orientals, and American Indians—still are ely underrepresented in the more remunerative jobs of private ustry. We are all aware, too, the Federal Government has an even se record in this regard.

Vithout stronger enforcement authority in the EEOC—with mere iliation pressures available—we cannot hope to see improvement he performance of that Commission.

nd—if we do not provide the tools for it to improve its record—not we, here in Congress, foster and exacerbate disillusionment skepticism among the poor, the black, the women, all minority ups, and all those who have been rejected because of their religious efs or national origin?

s these fellow humans are delayed in their rights—thwarted in r striving to advance economically—their thoughts become the nts of the actions they will undertake.

Ve all know how injustices rancor. It does not have to be spelled after witnessing the destructive riots of the sixties.

The facts in discrimination are indisputable. I hope you have all n time to read the House Report, No. 92–238 of June 2, submitted our distinguished colleague, the gentleman from California (Mr. wkins).

f you will but study this report, and the recent letters from Consmen Hawkins, Ogden Reid and John Dent, I have every conce you will today fully support H.R. 1746.

n addition to improving the EEOC procedures with cease-andst methods of enforcement, H.R. 1746 has other great advantages the substitute bill that is being proposed here today.

I.R. 1746 would end the jumble of confusions in the field of equal ortunity by centralizing and coordinating the Federal Governt's efforts in dealing with the problems of employment discrimina-

here are presently four Government agencies dealing with such disination. The Department of Labor, the Attorney General, the il Service Commission and the EEOC all now process different

phases of this problem. Consolidating all the functions relating t employment discrimination under the EEOC is not only a most logica step, but in the long run would prove to be the most efficient and leas expensive.

In the substitute bill, H.R. 9247, decisions on employment discrimi nation would be routed through the already overburdened courts. I is obvious such cases can be processed with more expediency throug the expert, bipartisan Commission, rather than becoming a judicia function.

I must finally emphasize that the Equal Employment Opportunit Commission is oftentimes the sole recourse, the only avenue for re dress for those who are discriminated against; for those who will n longer meekly accept unequal treatment in employment—or any othe phase of their walk in this world.

These are men and women altogether like ourselves—if rejected because of race, color, creed, or sex, we would surely ask why?—and why is it not corrected?

What a man feels intently—he will struggle to speak out of him—to see represented in visual shape. And this is what H.R. 1746 would be to many Americans: a reality they can read in the law to aid a man in his fight against economic injustice.

I ask all of you who believe in the principle of equality for all people to reject the substitute bill, H.R. 9247, and unanimously pass the bill recommended by the Committee on Education and Labor H.R. 1746.

[From the Washington Star, Sept. 12, 1971

REPORT FINDS MINORITY JOB BIAS REMAINS

Minority groups and women continue to be discriminated against by employers the Equal Employment Opportunity Commission reported yesterday.

Data compiled by EEOC's Office of Research show that women and minority group workers—blacks, Spanish-surnamed Americans, Orientals and American Indians—still are largely under-represented in high-paying jobs of private industry.

Almost 8 out of 10 black male workers toil at the three lowest-level job classifications—semi-skilled operatives, unskilled laborers and service workers—according to a survey of private industry employers by the EEOC.

Black female workers fared slightly better. While 13 percent of the black males worked at white-collar jobs, 37.8 percent of the black women workers were in white-collar positions, the survey showed. Most of the black women engaged in white-collar work share the problem of women in general—that of being relegated to the lowest paying office jobs, the report said.

In 1970, women made up 34 percent of the total working force, but only 2.3 percent held managerial positions, as opposed to 12.4 percent of the men, EEOC said.

Among black males, only 1.7 percent held managerial or policymaking jobs while only 1 percent of the Spanish-surnamed American workers were in the managerial category.

[Mr. HANNA addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. DENT. Mr. Chairman, at this time I yield 10 minutes to the gentleman from Texas (Mr. Eckhardt).

(Mr. Eckhardt asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, I rise in support of the committee bill, not to make any manner of speech with respect to its merits, but to put to rest some bug bears that have been raised concerning that bill and, also, I think to disclose some real bears in the thicket of H.R. 9247, the Erlenborn amendment.

I would like to point out, in the first place, that the procedure ovided for in this bill is largely patterned after the Labor-Manage-nt Relations Act; that is, after the Taft-Hartley Act.

I have practiced under that act through four Presidents and, of urse, that means somewhat different boards. I must say that the ocess before a trial examiner in all of those circumstances is a narkably good process. Indeed, this has been recognized by the esident of the United States.

I have here a letter headed, the White House, Washington, May 9, 70, which states in part as follows:

> Our Federal judiciary provides a vital public service in trying the thousands cases each year that affect the interests of both Government and private zens.
>
> The long and impressive record of the Federal Trial Examiners is well known oughout the legal profession, and it is not only as your President, but also a lawyer I am particularly aware of your outstanding contributions to our ety.

t is signed "Richard Nixon."

I had the same experience. I see no reason why trial examiners ointed under the authority of the Administrative Procedure Act, life, will not be excellent triers of fact.

This bill, just as the Taft-Hartley bill does, ultimately rests the ision upon the law and upon whether or not there was substantial dence on the record of the hearing as a whole to sustain the judg-nt of the trial examiner, whom I believe they call the "hearing ers" here.

Now, what is the measure of that review? The measure is not the row review that excludes a consideration by the court of the ole evidence. It is not the kind of tricky review the right to which y be forfeited because one line of findings of fact would support decision. The decision on the whole record must be considered and, eve me, anyone who has tried cases before trial examiners, and ultimately gotten a favorable judgment through them and through Labor Board, and then finds himself thrown out on his ear by Fifth Circuit Court—and I have had that happen to me—knows t the review is not a narrow review, it is a review that goes to the stion of whether or not the ultimate decision was reasonably unded, had a reasonable, factual basis to support the ultimate ision.

n labor cases you have very much the same type of problem as is olved in this kind of proceeding. You have a proceeding in which re is a considerable admixture of fact and law, and, therefore, a e discretion on the part of the court to strike down if the facts, er the law, do not support the decision.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the distinguished gentleman from Mich-n.

Mr. CONYERS. Mr. Chairman, I thoroughly agree with the gentlemen would the gentleman not further concede that the review made by court of a hearing reviews both substantive and procedural ques-is alike?

Mr. ECKHARDT. There is no question but that that is true, and fre-ntly those substantive and procedural questions involve an inter-

meshing of fact and law that becomes very difficult to remove from the jurisdiction of a court. And of course ultimately the Supreme Court may strike down the decision if it is not reached in accordance with the spirit of the act.

I think that this act, even more than the Labor Act, envelopes fact and law in the same package.

Mr. CONYERS. If the gentleman will yield further, then in that sense the cease-and-desist orders provide more opportunity for review on the part of the defendant than this cumbersome method presented in the Erlenborn amendment?

Mr. ECKHARDT. I think it is better than the Erlenborn amendment because of course one thing that is not recognized by the author of that amendment, or at least has not been recognized in his presentation on the floor, is that the appellate court is also limited by the fact determination by the trial court.

We are dealing here with situations that involve the same kind of special expertise, with respect frequently to a problem involving a complex seniority system in a plant, that exists in the case of the NLRB cases. This kind of case is particularly appropriate for determination by persons who have developed a kind of expertise, and can devote a week or two to a trial. Now, if you load this type of case calling for special expertise and demanding much time for trial, if you load this field of new law on the courts, you are calling upon Federal judges to decide the myriad of questions that arise before them in whatever time it takes, perhaps 2 or 3 weeks and you are calling upon them to learn a new area of law.

So I submit that exactly for the same reasons that the Labor Board is set up in the manner that it is, with the trial examiner system, this system must be so established; otherwise one or two things will occur: either you will not be able to get to trial before a Federal court in one of these discrimination cases or else you will so heavily load the Federal court's docket that other lawyers will not be able to get to try their pressing cases.

Now I would like to point out a few of the real bears in the thicket of the Erlenborn bill. You will note that the Erlenborn bill establishes preemption against the application of any other laws which might affect an unlawful employment practice.

I have the bill before me some place, but I think that has also been gone over by the author of it.

Of course, this means that if the present provision is the exclusive provision controlling all matters relating to questions of fair employment practices, then the Erlenborn bill repeals the Civil Rights Act of 1866 where it touches upon this field.

As you recall, the Civil Rights Act of 1866 is the legislative machinery which puts into effect the rights guaranteed under the 13th and 14th amendments.

The Erlenborn bill by preempting the field removes these provisions from effectiveness in a case covered within the scope of this act.

The Erlenborn bill also ousts the National Labor Relations Board jurisdiction over job bias.

You will recall that section 7 of the Labor Act makes it the duty of a union to represent all of its employees—all of the employees of a plant and not those that it may select as those to be represented. It provides, and the courts have held, that it is an unfair labor practice

a labor union not to properly represent black people within the
on; and where seniority provisions discriminate against blacks,
re is the basis, under section 7 of the act, for a complaint that the
son was not properly represented.
he Erlenborn amendment, it seems to me, would clearly preclude
area of right which now exists for persons whose employment
its may be invaded.
he Erlenborn amendment abolishes class actions. It would wipe
class actions in the area of equal employment opportunity. In this
the courts have held that equal employment actions are custom-
y class actions whether they are so categorized or not.
ut this amendment would prohibit bringing class action suits on
alf of a whole class of persons—blacks, women, and so forth, who
be all suffering the same discriminations.
he CHAIRMAN. The time of the gentleman has expired.
r. DENT. Mr. Chairman, I refuse to yield further.
r. Chairman, about 7 years ago, amidst a great fanfare nation-
and with no little notice being given in the foreign press, Con-
s enacted Title VII of the Civil Rights Act of 1964. At that time
were breaking new ground in serious legislation dealing not only
the physical or economic welfare of the people of this Nation, but
dealing in an area in which we had trod very slowly and carefully
re.
eople have asked me many times: "You were the son of an immi-
t. Your people were at one time discriminated against. Why did
your group as a nationalistic group make the same requests that
being made today by other groups?"
say the difference is this. My people escaped from a very poor
ant life, and they came here to try to make themselves a better
of life, not so much for themselves, but for their children and their
ren's children. They had never had any schooling. They had
r had any education. They did not know they had rights. I can
re the Members that there was no television, nor any "ambulance-
ing" lawyers to advise my people they had rights, and could use
. They had no knowledge of these things. So maybe ignorantly,
observing what they had come here to do and following stead-
y on that path, they took the menial jobs, they built the railroads,
dug the mines, they extracted the coal, they worked the steel mills,
they built the homes and the schools in this country—ofttimes
other children than their own—but they did provide for their chil-
an opportunity to get that which they were seeking, a better way
fe.
their generation did not play around as it were with the so-called
ts that we are demanding today for our people. But this group
awakened us 7 years ago to the realization that something had
done were educated in the American schools and were part of the
rican scene and were citizens of this country fluent in the lan-
ge. They pointed out they were being put into an economic level
use of something that we were not afflicted with insofar as accept-
into the broad society of our people.
this Congress—and to its credit—tried to write legislation meet-
all the objections of the various sections and sectors and desires of

our country, and its economic levels; but we failed, and I will tell
breeds a sort of discrimination that you cannot tolerate. It might s
Members why we failed. We failed because we gave with one hand
took away with the other. We created a commission and gave i
power to do anything. It has taken us a long time to realize what
gentleman from Illinois, to his everlasting credit, said so well,
to which I would hesitate to add one word or to even interpret for

He said that if we are sincere in wanting to do what all of us
we want to do, then we must give this Commission power. How d
give it power? We give it the power to issue cease-and-desist or

The history of FEPC, the history of civil rights in the various St
of the Union, proves beyond a doubt this is the only way for a pe
ful, trustful approach to this very, very controversial subject befor

The State of Pennsylvania was one of the first States in the Unio
pass a law establishing an FEPC. I was fortunately one of the spon
of that act. Because of my position in the leadership at that tim
handled the legislation.

However, we were at that time no wiser than we were in the Cong
7 years ago. We did not give our FEPC cease-and-desist pow
and we started to get exactly what we have reaped under the pres
Federal law—a backlog of cases that will not be heard for 10 or
years.

Justice delayed is justice denied. In this case we cannot deny just
because the justice of equal rights is fundamental. There is noth
material one can feel and see, but it is nevertheless, a concept of a p
ciple of life to which this Nation is dedicated.

So, within 3 years, after piling up cases that would smother
courts of that State, we granted our FEPC the cease-and-desist pow
Now it is a rare, rare occasion that a case need go to court.

The 34 States in the Union that have enforceable laws of this ch
acter and nature—each in turn—have had to put cease-and-desist po
in their laws.

At present, the EEOC has a backlog of over 26,000 cases. I h
heard complaints here about how long the delay on the NLRB ca
Imagine dumping in the Federal courts of the United States th
26,000 cases, and approximately 15,000 to 20,000 more that would
created the minute the ambulance-chasing lawyers find what they
do under this act.

I say to the Members, in all sincerity, if they want to see this p
ticular law become the effective public act we intend it to be—and I
this to my good friends in the South, and to my good friends in
East, the West, and the North, and I say it to all of us regardless
our ethnic backgrounds, the color of our skins, our affiliations of
kind of our sexes—the one just thing we can do is to have the peo
believe that we are trying to help them, to have the people in the sm
communities believe we are trying to find a solution for them.

Imagine what would happen in a State like mine, with the appell
courts hanging one on the Atlantic Ocean and the other on the O
River, with nothing in between but small communities. Imagine hav
to go to those appellate courts, the only two jurisdictions we have, o
case involving an employee charged with a rather minor infract
of this particular law, of having to go down with his own lawyer
fight the mighty Office of the Attorney General of the United Sta

y, half of the little businessmen in my town would do exactly what
y have done many times before. They would give up.
Ve do not want them to give up. If they are not guilty of an infrac-
n they should not be made to accept the guilt because they do not
e the money, the time or the courage to go before the high and
hty Attorney General in each and every appeals case.
The history is—and this cannot be denied—that where you have
se-and-desist powers, between 95 and 98 percent of the cases are
ed before they ever get to a court because we give remedies as well
afeguards.
This is equal rights legislation; this is fair treatment legislation.
w can we sit here and try to pass legislation that is not fair to every-
y whatever their standing, or their station or their level in life is?
o not care whether it is a big employer of 100,000 employees or a
ner drygoods store with eight or nine employees. That is not
vant. True justice has to be equal. That is what we are fighting for
what the blacks in this country are fighting for—equality of
ice, equality of opportunity. They do not want special treatment,
pite of what anybody tells you, because special treatment of itself
ds a sort of discrimination that you cannot tolerate. It might serve
r purpose for the moment, but if it is not sound for the future, for
long haul, it is not sound now and you should discard even the
ght of preferential treatment. They do not want quotas because
as are against the concept of the very Government we are trying to
old. Shall we start with quotas and say: "All right. We will have
blacks and 15 Italians, 14 Irish, and 11 Slavs" I do not know how
would ever divide that great body of Anglo-Saxons, because it
rs a multitude of sins.
elieve me when I say that I think some of my friends did them-
es an injustice; and there are some of them, I believe, who did me
njustice. I was not here in the formative stages. At this time I want
y that no man in my whole experience as a legislator—and this is
0th year as a legislator—worked harder in the field, in the various
es and cities, and spent more time in discussing the matter with
ps or has given more of himself, in many cases I know spending
own money. I happen to hold the purse-strings and I know he
never come to me for fare or anything else in order to handle this
slation. I am referring, of course to the gentleman from California
. Hawkins). I have never known a man that I have ever worked
who had a deeper understanding of the difficulties which we face
his legislation, or a greater willingness to give consideration to
problems of others. It is that understanding, I think, that we all
nt to strive for.
know that a person in my particular district has a different problem
the person, let us say, in the ghettos of Philadelphia. I know that
person in Georgia who lives in a cotton-growing or a peanut-grow-
community or even in the city of Atlanta has different problems.
use that, too, is the essence of our Government. We represent 435
icts here.
is in the hope that the majority of those districts in sending their
nbers here will at some point have a majority of that membership of
Congress representing the 435 separate districts but in the whole
resenting the total of the United States who will vote for a certain
e of legislation. If we said that it had to be unanimous, there would

never be any law. If we said that it had to be less than a majority, th
would be chaos.

So it is when you give the consideration that the gentleman fr
California has given when I came back and discussed the problem w
him. He understands that it cannot be exclusively the thought of
person or the needs of one district that is mandatory, and that it is
upon this basis that the act must pass. It has to be a conglomerate n
consolidated under one piece of legislation.

I know it is not perfect. There are a lot of problems in here. But I
not believe we should vote for a piece of legislation that wipes out
Equal Pay Act of 1963 for women that was passed by the Congr
with the clear understanding that the matter of sex should not b
determination of how much is paid for a particular job when it is p
formed by both sexes. The substitute proposal by the gentleman fr
Illinois wipes it out under the section of the act dealing with exclus
remedy.

The Erlenborn substitute would establish, as is said in the let
which he sent to us, a 2-year back pay liability. The Hawkins b
goes further. If there is a liability for over 2 years—and I think
all understand that economics and the need for common sense in e
nomics. Today you go back to the date of the passage of the act a
you could very easily create an injustice greater than the justice y
were giving or trying to give. So we have a statute of limitations su
as we have in all of our departmental procedures.

Mr. Chairman, many of my friends today were telling me that th
had committed themselves against the committee bill. Now, they d
not commit themselves so deeply to the Erlenborn amendment but
had a very strange sensation that what they were saying to me w
"I am committed against the committee bill." Then, by virtue of th
statement that gives support to the Erlenborn substitute. Howeve
I asked a couple of them, "Are you committed to the Erlenborn su
stitute?" They said, "If that is all I have to select from."

Well, now, it is hard and difficult in the last moment of debate
the floor when, as has been said very clearly by the gentleman fro
Louisiana and by the gentleman from Michigan, few of us take t
time to listen to the debate. So, if your mind is already made up
having committed yourself to a proposition 3 months ago, to a pie
of legislation proposed 3 months ago, I say it is no longer the sa
animal that was put in the coop as a pup. It has grown to full grow
and it has grown different spots.

How can I, how can you, help this committee make these Membe
who committed themselves to a piece of legislation before they sa
all of the amendments, before they saw the final typewritten co
of what we are trying to do, change their mind.

So, Mr. Chairman, what I intend to do at the proper moment is
put into the Record the amendments we are going to offer tomorro
at their proper places in the copy of the bill in order that the Erlenbo
amendment or substitute which will be presented for the Record toni
as an official substitute will be followed by our amendments. Then,
am sure that the Members of Congress will have an opportunity
read and study the conditions which would be created by both pie
of legislation.

r. Chairman, I am disturbed because I know that unless we can
the trust and the belief that our intention is honest on the part of
e so adversely affected by the conditions that brought on the pas-
of the first Civil Rights Act, and unless they believe that their
gress is trying to do something for them to settle their cases and to
t them appropriate relief and set a precedent and a record of
ory that will enable us to resolve the oncoming cases as rapidly as
ible, unless we do that, we should not pass any legislation—let it
in its haphazard, bungling way in the same manner in which it
been going down the pike during the last 7 years, creating more
understanding and injustice. Give us a precedent that will be good
omorrow, one upon which we can rely, give us a remedy or a non-
dy, but let us put into their hands something on which they can
rm their faith in the workings of democracy.

he CHAIRMAN. The time of the gentleman from Pennsylvania has
red.

he Clerk will read.

he Clerk read as follows:

it enacted by the Senate and House of Representatives of the United
s of America in Congress assembled, That this Act may be cited as the "Equal
oyment Opportunities Enforcement Act".

NDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ERLENBORN

r. ERLENBORN. Mr. Chairman, I offered an amendment in the
re of a substitute.

The bill, H.R. 9427 may be found on p. 141.)

r. Chairman, I ask unanimous consent that the amendment in
nature of a substitute be considered as read and printed in the
rd.

he CHAIRMAN. Is there objection to the request of the gentleman
Illinois?

here was no objection.

he CHAIRMAN. The gentleman from Illinois (Mr. Erlenborn) is
gnized for 5 minutes in support of his amendment.

r. DENT. Mr. Chairman, will the gentleman yield for a question?

r. ERLENBORN. I yield to the gentleman from Pennsylvania.

r. DENT. Would the gentleman object to a unanimous-consent re-
to allow the original bill to be considered as read and printed in
Record?

r. ERLENBORN. I would object to that, because I think the substitute
ld be considered first.

he CHAIRMAN. The gentleman from Illinois has objected to the
st of the gentleman from Pennsylvania.

he gentleman from Illinois (Mr. Erlenborn) has offered his amend-
in the nature of a substitute which is to be considered as read,
printed in the Record in full.

he gentleman from Illinois (Mr. Erlenborn) is recognized for 5
utes in support of his amendment.

Ir. Erlenborn asked and was given permission to revise and
nd his remarks.)

r. ERLENBORN. Mr. Chairman, at this point I think the merits of
mendment that I have just offered as opposed to the merits of the
mittee bill have been thoroughly debated. I might put this in con-

text by saying that it is probably obvious by now that, while the
are other peripheral issues that have been debated today, the outstan
ing difference between the alternatives before us is what type of
forcement authority should be granted the EEOC. There are those w
say that the cease-and-desist approach is much preferable: that t
courts cannot do this job of guaranteeing equal opportunity for e
ployment. None of them have addressed themselves to the questi
that I would ask now, and I hope maybe would be answered before
vote is taken between these two bills and that is: if the courts are
inefficient and unable to grant relief in this area, why is it that ov
the past many years great strides have been made in the civil rigl
field primarily through our Federal courts? Why is it that we lea
to the Federal courts the right to enforce equal voting rights, the ci
rights law, the questions of integration and desegregation, if the cou
are so inept?

I think maybe there is a hangup on the part of those who favor t
cease-and-desist approach, and I call your attention to part of the ed
torial that appeared in the Wall Street Journal this morning. I wi
quote just one or two parts from that. It says:

Most civil rights advocates write off this Republican-backed alternative.

They are talking about my substitute bill in which I am joined b
the gentleman from Kentucky (Mr. Mazzoli) so it is not a Republica
approach, it is a bipartisan approach. But, despite that, they say

Most civil rights advocates write off this Republican-backed alternative as
predictable move to water down an obviously stronger Democratic approach.

And yet I point out that the committee bill is also sponsored by o
Republican and one Democrat, it, too, is a bipartisan approach.

I shall continue to read from the editorial. It says:

Yet it is significant that a growing number of scholars strongly committed
civil rights disagree. They doubt that giving the agency cease and desist a
thority would be either effective or desirable. They think a sort of knee-je
reaction by liberals is blinding them to the potential inherent in the GOP counte
proposal.

In his 1971 book, "Black Employment and the Law," (Rutgers Universi
Press), Mr. Blumrosen then argues that minorities have been far more succes
ful achieving their rights through courts than administrative procedures. H
also asserts that state agencies have invariably failed in their own efforts to eradica
job bias through administrative cease and desist powers.

This is what is contended as the best and obvious best way to mov
The article continues:

"I doubt whether cease and desist orders could get at the vestiges of bias bett
than the courts," declares Bernard Anderson, assistant professor of industry
the University of Pennsylvania. "It would take years to build up the guidelin
on which to base such orders, but if you had a good case you could be in cou
next week."

I think that is important.

Let me explain the other parts of my amendment as I have briefl
during general debate.

As to the timely "Service of charges." That is something that shoul
have been in the law originally and, certainly, we should add it now
those who have charges filed against them should be given timel
notice.

So a person bringing an action under this cannot shop around fo
another forum on which to base another law suit, we would make t

ıal Employment Opportunity Act the sole Federal remedy for relief
n discriminatory employment practices.
he next item is "Temporary and preliminary relief."
y giving the Commission power to go into court, relief is avail-
at the outset.
he next item is "Class action." To limit class action cases to those
are named or who join.
imitations on liability: Testimony before the House General Labor
committee by EEOC Chairman Brown established that the posi-
of EEOC is that remedies—including backpay—for discrimina-
acts may reach back to the effective date of the act, July 2, 1965.
s not clear that the courts have so held. However, to preclude the
at of enormous backpay liability which could be utilized to coerce
loyers and labor organizations into surrendering their fundamen-
ights to a fair hearing and due process, my bill offers a new subsec-
(h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C.
e-5) which limits liability in pattern and practice suits to a period
years prior to the filing of a complaint with said court.
ith respect to individual complainants therefore, back pay and
r liability is limited to the stautory period for filing, formerly 90
s and extended under this bill to 180 days. The final sentence in
ection (h) which limits back pay orders to 2 years is directed to the
ern and practice suits authorized under section 707.
is only fair to say that liability should not go back ad infinitum
that there should be some reasonable statute of limitations.
r. DENT. Mr. Chairman, I ask unanimous consent to extend my
arks and to include at this time amendments in their proper form
ollow the substitute offered by the gentleman from Illinois for the
rmation of the House in the printed Record tomorrow.
r. STEIGER of Wisconsin. Mr. Chairman, reserving the right to
t, it is my understanding that the gentleman from Pennsylvania
king that copies of certain amendments be printed in the Record
is point?
r. DENT. Yes.
ne CHAIRMAN. The gentleman from Pennsylvania has requested
is point in the Record he may revise and extend his remarks and
ve printed in the Record the amendments which he indicated he
d propose to place in the bill at the appropriate place.
r. STEIGER of Wisconsin. Mr. Chairman, further reserving the
t to object, would that request not be inappropriate in the Com-
ee of the Whole and should it not come only in the House?
ne CHAIRMAN. The Chair is of the opinion that the request is in
r. These are the gentleman's own remarks and the gentleman's
statement.
r. STEIGER of Wisconsin. Mr. Chairman, further reserving the
t to object, again is it the understanding that this is a request only
certain amendments be printed in the Record and not that the
dments are offered at this point; is that correct?
ne CHAIRMAN. The gentleman has not offered the amendments.
as asked unanimous consent only that they be printed in the
rd.
r. STEIGER of Wisconsin. Mr. Chairman, I withdraw my reserva
of objection.

The CHAIRMAN. Is there objection to the request of the gentlem from Pennsylvania?

There was no objection.

Mr. DENT. Mr. Chairman, the matter to which I referred is follows:

(A copy of H.R. 1746, referred to, may be found on p. 1.)

Mr. DENT. Mr. Chairman, I move that the Committee do now ri

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resum the chair, Mr. Adams, Chairman of the Committee of the Wh House on the State of the Union, reported that that Committee, havi had under consideration the bill (H.R. 1746) to further promo equal employment opportunities for American workers, had come no resolution thereon.

[From the Congressional Record—House, Sept. 16, 1971]

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

Ir. DENT. Mr. Speaker, I move that the House resolve itself into the mmittee of the Whole House on the State of the Union for the fur- consideration of the bill (H.R. 1746) to further promote equal loyment opportunities for American workers.
he motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

ccordingly the House resolved itself into the Committee of the ole House on the State of the Union for the further consideration ie bill H.R. 1746.
he Clerk read the title of the bill.
he CHAIRMAN. When the Committee rose on yesterday the Clerk read the first section of the bill, ending on page 1, line 4, and there pending the amendment in the nature of a substitute offered by the leman from Illinois (Mr. Erlenborn).
Ir. DENT. Mr. Chairman, I rise in opposition to the Erlenborn ndment.
he CHAIRMAN. The gentleman from Pennsylvania is recognized 5 minutes.
Ir. ALBERT. Mr. Chairman, will the gentleman yield?
r. DENT. I am happy to yield to the distinguished Speaker.
r. ALBERT. Mr. Chairman, I refer the Members to the very convinc- arguments which the gentleman from Pennsylvania made yester- . I believe that all Members of the House, whether they support the mittee or whether they support the Erlenborn amendment, are in or of equal employment opportunities for all citizens. The time has e to implement that desire.
Ir. Chairman, the economic and social conditions in our Nation in . the latter half of the 20th century, continue to frustrate the prin- es of equal rights and equal opportunities envisioned by the found- of this Nation. We are constantly reminded, by statistics from Gov- nent agencies, by articles in the Nation's press, and by the increas- burdens upon this country's social welfare programs, that there t serious economic and social deficiencies in our society. The facts unassailable. They indicate that minorities and women have borne, continue to suffer discrimination in employment, education, and r vital aspects of their existence. Discrimination in employment inues as the major aspect of this inequity, and constitutes a sys- ic denial of essential economic and social progress, stemming from gressional failure to enact effective enforcement provisions to en- the Government to combat these discriminatory employment tices, minorities and women continue to be treated as second-class

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citizens and are denied the jobs for which they properly qualify. H.R. 1746, the Equal Employment Opportunities Act of 1971, introduces effective and long-overdue enforcement provisions with which to attack the framework of employment discrimination.

The House Committee on Education and Labor, after extensive hearings and careful consideration of the various enforcement schemes available to insure compliance with the national policy of equal employment has determined that the administrative cease-and-desist powers embodied in H.R. 1746 will best attain equal employment for all citizens. However, the opponents to H.R. 1746 propose to strike down the administrative cease-and-desist enforcement provisions of H.R. 1746, and substitute therefor a method of direct court enforcement. In my judgment most of the opposition to our expressions of concern about this bill will be allayed by the Dent substitute.

The present EEOC backlog of cases is cited as conclusive that further delays would result if the additional administrative steps proposed by H.R. 1746 were introduced. This argument, however, ignores the major causes for the current backlog. Because of the lack of any effective enforcement provisions in the Commission, recalcitrant employers have had little reason to strive for successful settlements during the conciliation process. They are well aware that the final burden for obtaining compliance rests with the aggrieved individuals who must bring suit against them in the courts. Therefore, after a pro forma attempt at settlement, many employers will simply refuse to conciliate any further. This ineffectiveness of the conciliation process without adequate enforcement is clearly borne out in the Commission's fifth annual report which shows that in fiscal year 1970, there were only 225 successful conciliations out of 17,000 charges filed. In addition, it is well known that EEOC appropriations have repeatedly been far short of the needs of the agency. This has resulted in the Commission's inability to hire the required investigators and conciliators who are essential for prompt processing of complaints.

The opponents also seek to justify their position by arguing that the administrative cease-and-desist process would be inherently unjust as administered by the EEOC, and that protection of the principles of justice requires that these cases be heard only in the Federal courts. In support of their position, they claim that the EEOC, as an advocate of civil rights, cannot be fair in its assessment of Title VII cases. They also claim that the procedures under Title VII presume a party's guilt before he has been properly heard. Therefore, the agency making the initial finding cannot also adjudicate the final order. In my opinion neither of these statements is correct.

In the first instance, while it is true that the EEOC has been a strong advocate of civil rights, its lack of enforcement powers has forced it to seek other forms of insuring compliance with the provisions of Title VII. Because it could not enforce the rights of aggrieved individuals who had filed complaints before it, the EEOC has resorted to other forms of technical and moral assistance to those individuals. The EEOC's participation as amicus curiae in Title VII suits across the Nation has been the only role that it has been able to play in the enforcement process, and it certainly cannot be condemned for its efforts in this area. EEOC statistics also show a great objectivity in its treatment of the charges that it receives. For example, the Commission has

nissed over 50 percent of the charges filed with it, and its findings frequently much less harsh than findings in similar cases by the rts.

The claim that the EEOC is too biased to properly adjudicate the ues in a Title VII case also ignores the procedural safeguards that provided by law in the administrative process. Hearing examiners, example, are hired by the Civil Service Commission and not by the OC. To qualify, applicants for the position of hearing examiner st pass stringent guidelines and requirements set by the Civil Serv- Commission. Cases are submitted in rotation to hearing examiners predetermined schedule, and all proceedings are conducted on the ord to insure adequate judicial review wherever a party feels that e has been bias. The Administrative Procedure Act, which gov- the entire Federal hearing process also has numerous procedural substantive safeguards to protect rights of all parties.

essence, the argument supporting court enforcement over the ad- istrative cease-and-desist enforcement provisions of H.R. 1746 is justified. The assertions that court enforcement provisions would vide more expeditious relief for an aggrieved party are not sup- ed by existing facts. Title VII suits are not simple civil or criminal ons. Their complexity and frequently obfuscated factual develop- t is well recognized among courts and practitioners alike. To in- ate the courts with a massive upsurge of Title VII cases requiring enditure of large segments of a court's time and resources would serve the ends of justice. It can only serve to further aggravate ined court dockets, and lead to longer delays for all litigants in the eral Courts. The complexity of issues and the need for expertise in eloping Title VII litigation requires that the courts be left free to ew those situations where it is determined necessary, while leaving development and ordering of the case to an administrative process er suited to recognizing the problems of this specialized area. The inistrative Procedure Act provides adequate safeguards for all ies to insure an equitable determination of all complaints. The ext of protecting the individual by sending him to an overworked unwilling judiciary, cannot be allowed to subvert the pressing need iminate employment discrimination.

y denying the EEOC the power to enforce its own findings, the onents seek to reduce the agency to second-class status. In like ner, they would relegate the enforcement of civil rights to second- significance and would imply that those individuals whose civil ts have been denied are no better than second-class citizens.

r. Chairman, I believe that the committee has the solution which work. I oppose the Erlenborn amendment. I trust the House will port the position taken by the gentleman who is managing the bill. Mr. Albert asked and was given permission to revise and extend his arks.)

r. Boggs. Mr. Chairman, will the gentleman yield?

r. Dent. I am happy to yield to the distinguished majority leader.

r. Boggs. First, Mr. Chairman, I ask unanimous consent that the leman from Pennsylvania may be allowed to proceed for 5 addi- al minutes.

he Chairman. Is there objection to the request of the gentleman a Louisiana?

Mr. HALL. Mr. Chairman, reserving the right to object. I ask th distinguished gentleman to defer that request until after we have hea the first 5 minutes. Otherwise I shall be constrained to object.

The CHAIRMAN. Does the gentleman from Louisiana withdraw H request?

Mr. BOGGS. Mr. Chairman, my good friend from Missouri has th authority, and of course I am happy to defer the request and let t gentleman proceed.

Mr. PERKINS. Mr. Chairman, I make the point of order that quorum is not present. We should have more Members on the flo during this debate.

The CHAIRMAN. Evidently a quorum is not present. The Clerk w call the roll.

The Clerk called the roll, and the following Members failed answer to their names:

[Roll No. 260]

Abbitt	Fraser	Murphy, Ill.
Abourezk	Frey	Passman
Anderson, Tenn.	Gallagher	Railsback
Baring	Goldwater	Rooney, Pa.
Blatnik	Griffiths	Rosenthal
Celler	Gubser	Roybal
Chamberlain	Hansen, Wash.	Sebelius
Chisholm	Hastings	Shipley
Clark	Heckler, Mass.	Shoup
Clawson, Del	Jarman	Stafford
Collins, Tex.	Johnson, Pa.	Stokes
Dellums	Karth	Sullivan
Derwinski	Long, La.	Teague, Calif.
Diggs	McCulloch	Tiernan
Dwyer	McEwen	Ullman
Edwards, La.	McKinney	Vander Jagt
Eshleman	Macdonald, Mass.	Widnall
Evans, Colo.	Mollohan	Wilson, Bob
Ford, William, D.	Montgomery	

Accordingly the Committee rose; and the Speaker having resume the chair, Mr. Adams, Chairman of the Committee of the Whol House on the State of the Union reported that that Committee, havin had under consideration the bill H.R. 1746, and finding itself with out a quorum he had directed the roll to be called, when 377 Member responded to their names, a quorum, and he submitted herewith th names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. Dent) ha 4 minutes remaining.

Mr. DENT. Mr. Chairman and Members, I rise in opposition to th Erlenborn substitute amendment. I do so because I believe it is im portant to explain just what we intend to do on our side this afternoo

We will let the Erlenborn amendment come to a vote of the Hous without offering any amendments whatsoever to it. I believe the issu has to be clear cut. I do not believe anyone is naive enough to feel tha we are trying to fool anybody. Some of us believe it is so importan that we now clarify the issue to the point we know exactly what w stand for and what our vote means.

There can be no plea of ignorance, because in yesterday's actions introduced into the Record, following the Erlenborn substitute, th

stitute which I had prepared for the Erlenborn amendment. So
n Member of Congress must now in good conscience admit he knows
ctly what he is voting for.
le is asked to vote to continue the most undemocratic process ever
en to any governmental agency since the writing of the Constitu-
, when he is asked to give to the Department of Labor, under its
ract compliance functions, the right to absolutely set aside con-
cts duly presented under the rules of contract agreements in the
eral Government.
hey walk in and say, "You must do this or your contract is not
g to be allowed."
illions of dollars are spent by airplane companies, by construction
panies, by hundreds of companies, on all types of Government
racts. These contracts can now be set aside at the wish and whim
n official of the OFCC for any of many reasons.
That has been done by the Executive order is to circumvent the
stitution of the United States. The Executive order circumvents
civil rights laws. They could not get this sweetheart deal under
law passed by this Congress, and they could not get it under the
stitution, so they used an Executive order.
hey walk in and say, "You have to put 10 of this particular group
orkers in this particular job."
know of one case from personal experience. The company in-
ed employed fewer than 2 percent minority employees, and they
told they had to have a percentage somewhere around 15 per-
. They said:

do not have them. We will take all the operators you can present, not under contract but under our regular operation. We have never turned anybody

nd the OFCC said:

will bring them to you from Chicago and from Cleveland.

ney can do that and have.
company could spend thousands of dollars preparing a contract,
then be out. The Erlenborn amendment leaves things exactly as
are.
e say in my amendments that it was the intent of Congress that
e should be no quotas and that there should be no preferential
ment. In our amendments we specifically prohibit the use of
as. We prohibit the establishment of preferential treatment and
stepping over a person in line because of race, color, creed, reli-
, or sex.
ne CHAIRMAN. The time of the gentleman from Pennsylvania
expired.
By unanimous consent, at the request of Mr. Boggs, Mr. Dent
allowed to proceed for 5 additional minutes.)
r. DENT. I know there is a hangup here on the part of the certain
ple about cease and desist. We were told yesterday on the floor
ny ranking colleague that the FCC is dissatisfied with the cease-
desist enforcement authority which they have and has requested
the Congress give it court enforcement powers instead. The
is holding onto cease and desist. What they want is what we
also giving to the EEOC, that is, the ability to seek preliminary
nctive relief.

Now, when a person is charged with a violation of the EEO the charge appears in the paper long before the person charged w the violation ever gets word of it. I have an amendment which s cifically prohibits the divulgence of any information during the formal Commission proceedings. An employer now feels that he condemned in the eyes of the people in the community and in the e of his customers, especially in the case of retail stores.

I beg you to understand that what we are trying to do is to w out the inequities in the law itself. They saw that cease and desist bad thing. Well, cease and desist itself is not bad. It is what is in law that can be bad.

Cease and desist is just another manner of enforcement, and manner of enforcement does not change the character of the la What we are doing is giving another manner of enforcement he It is the same one that is enjoyed by virtually every agency in Government. All we are trying to do is to put into the law an forcement feature to secure justice to all of the citizens of the Uni States. That is all we are trying to do here.

Mr. Chairman, I said to you yesterday and I repeat now that law can make men equal, but there has to be and there must be law to give all men and women equal treatment. That is all we asking for. I know it has been said that all of us are born equ but it stops right there. That is where organized law in a good ciety picks up; after the birth. It says that from the day a person born until his death he shall be given equal treatment. That is strength of our country. That is why the millions of immigrants ca to this Nation to build it into what it is, and that is why we fou the Civil War. It was to try to bring back equal treatment. Noth else.

That is all I am asking for here. I am not asking you to put so thing in the law to give anybody an advantage. I am trying to you to put something in the law to take the advantage away fr somebody. If I did nothing else in this law but wipe out the contr compliance feature and put it under the jurisdiction of the EE where it rightfully belongs and subject to the laws and the crite established by this Congress of the United States and not to ru enacted by Executive order, then I would have done sufficiently.

I beg of you to reassert the authority of this Congress and t back the powers guaranteed to us under the Constitution.

I beg of those who committed themselves months ago, and so of you years ago, without ever waiting to see what was in the b that you cannot plead ignorance. You know what you are doing. you vote for the Erlenborn substitute amendment, you vote for quo you vote for special preferential treatment, you vote for closing do individuals who have entered into contracts that may not be in t same party, who may not be in the same political group, who m not contribute enough on election day. You make possible somethi which we have fought against in labor, something which we sho have destroyed. You are giving quotas and preferential treatment blessing of your vote if you vote for the Erlenborn amendment.

Mr. Boggs. Mr. Chairman, I move to strike the requisite numb of words.

(Mr. Boggs asked and was given permission to revise and extend remarks.)

Mr. Boggs. Mr. Chairman and Members of the Committee, 7 years , in the civil rights bill of 1964, we made a promise to all Ameri- ns that regardless of color, creed, national origin, or sex, there uld be no discrimination in employment in this country. Polls ich were conducted by creditable organizations at that time in- ated that the overwhelming majority of the American people ored the enactment of nondiscriminatory legislation in employ- nt.

Americans, with their innate sense of fairness came forth and said t if a man or a woman is trained and qualified, the doors of op- rtunity should be opened to them, whatever their background l from wherever they come.

Now, Mr. Chairman, that was a magnificent promise. But, unfor- ately—like so many other promises it remains unkept.

Since the enactment 7 years ago of this law there have been literally usands of cases of discrimination filed with the Commission. In a ort in yesterday's Wall Street Journal, Mr. Brown, the present airman appointed by the President, indicated that in a great major- of these complaints there had been no effective remedy. I think it is ar that despite the law, despite the congressional intent, despite the ation of the Commission, the effect of the law has been more or nullified.

Mr. Chairman, there is a substantial difference in the gentleman's stitute and the committee bill which I support wholeheartedly, and t is the question of how to attain compliance.

The committee bill says we will use the procedures which have been established in Federal practice by a half dozen or more existing ministrative agencies such as the Securities and Exchange Commis- n, the NLRB, the FTC, the ICC, and others, to issue cease-and- ist orders for compliance—with all the safeguards set forth in the ministrative Procedures Act spelled out.

On the other hand, the gentleman from Illinois says that we will ke an exception in this situation. He says that enforcement will be property of the Federal courts. And, in the literature that has been ulated by the very able gentleman, for whom I have profound re- t, it is argued that there will be better and quicker enforcement der his plan than under the committee plan.

It seems to me that one issue that has been determined here is that present law is ineffective and not helping the people whom it was nded to help. And, so the only issue remaining is: does the commit- approach recommend itself, or does the substitute approach recom- nd itself?

In the opinion of those who have spent many years in Federal ad- nistrative practice, and before Federal agencies, boards, and com- sions, it is the practice of giving administrative commissions the wer to issue orders and to ask for compliance, devised and perfected r a long period of time, which is superior. These administrative rings are conducted under complete due process, with a notice re- rement, and the right to summon witnesses, subpena witnesses, and on, and are presided over by a hearing examiner who has been ined in administrative law, and who owes no responsibility to the

agency which has employed him. So he comes there in the same judicial, impartial atmosphere or attitude that a Federal judge has. The only difference is that his whole time is devoted to that one agency, and he has the time and the opportunity to move ahead these complaints.

In the Federal courts today we have an enormous backload of cases. We have some jurisdictions—and I have seen figures, I believe, for one of the New York jurisdictions—where there is a delay of about 38 months or 40 months. In any event, the Federal courts are crowded, packed, and jammed with litigation, and the notion that the thousands of cases now pending before the EEOC could receive expeditious consideration from the Federal court is something that I just cannot believe.

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

(By unanimous consent, Mr. Boggs was allowed to proceed for 2 additional minutes.)

Mr. BOGGS. Mr. Chairman, I commend both sides here for trying to resolve the problem of compliance.

I believe that the great strength in America must continue to be the opportunity of our citizens. We built a great Nation with the men and women who came here from everywhere for the opportunity to live and work in freedom.

Today, minority Americans hold but a small fraction of jobs in almost every category. Look at the unemployment figures, and you will see that 5 or 6 percent is the average around the country, but among minorities it is doubled, and in some cases tripled.

So we have made a promise to many of our Americans, many of whom are not so fortunate as those of us who are gathered here. As I see it, the committee bill is an effort to carry out that promise. It does no good to grant a right if you do not provide a remedy. One of the earliest things I learned in law school was that a right without a remedy is no right at all.

Today we are seeking a remedy for a right that we have already granted.

In my humble judgment, the committee bill more adequately grants that remedy than the proposal contained in the substitute.

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

Mr. GERALD R. FORD. Mr. Chairman, I move to strike out the last word.

(Mr. Gerald R. Ford asked and was given permission to revise and extend his remarks.)

Mr. GERALD R. FORD. Mr. Chairman, I assume that the eloquent remarks made by the gentleman from Louisiana include the support of the three amendments that the gentleman from Pennsylvania indicated he would offer if the substitute did not prevail. I make that assumption—is that an accurate assumption?

The gentleman from Pennsylvania indicated yesterday that he would offer three amendments if the substitute amendment were defeated. So I assume that is the vehicle or the legislation, that we will have before us if the Erlenborn substitute is defeated.

If that is the case, I would assume that the gentleman from Louisiana would support this amendment.

Mr. BOGGS. Mr. Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I am glad to yield to the gentleman.

Mr. BOGGS. I have every intention of supporting those amendments when I get the opportunity and I hope I do get the opportunity and the gentleman from Michigan will make that opportunity available to me.

Mr. GERALD R. FORD. I am glad we clarified that point.

The gentleman from Louisiana during his remarks made this comment—that he wanted to keep the doors of opportunity open to blacks and other minority groups.

One of the amendments to be offered by the gentleman from Pennsylvania does just the opposite. One of the amendments to be offered by the gentleman from Pennsylvania, in effect, makes it much more difficult for blacks to get a job, particularly in the building and construction industries.

Now the gentleman from Louisiana makes a big point of the unfortunate fact that unemployment today for blacks is higher than it is for whites. I deplore that and I gather that he does too. But, if the gentleman from Louisiana supports this amendment to be offered by the gentleman from Pennsylvania, he is making it much more difficult for blacks to get jobs and will help to perpetuate the higher unemployment record for blacks in the United States.

Now let me add this, if I may. I take the floor as a person who voted in February of 1964 for the Civil Rights Act. I believe that was good legislation and I have no compunction about supporting the substitute as a good implementation of that legislation.

Those of us who supported the 1964 act—and I was one of those who did support that act—and I cannot remember how the gentleman from Louisiana voted—I suspect that maybe he voted against it, but I do not know for sure—but I can say that I voted for it. What I want to do is to achieve the best and most equitable way of enforcement. I happen to think that the Erlenborn substitute provides that. We do not have sufficient enforcement provisions under the existing law. That was a deficiency. What we are trying to do now is to get enforcement in a fair, equitable, and judicious way. That is primarily, if not exclusively, why I support the Erlenborn substitute.

Mrs. GREEN of Oregon. Mr. Chairman, will the distinguished minority leader yield?

Mr. GERALD R. FORD. I am glad to yield to the gentlewoman.

Mrs. GREEN of Oregon. Mr. Chairman, the gentleman has made reference to the Civil Rights Act—and I joined him in the majority of my party in voting for that in 1964. This was dedicated to the proposition that equal opportunities and equal rights should be available to all.

But, if the gentleman will allow me, I would like to read from Title VII of the Civil Rights Act which was approved by this House in 1964, and this is what the issue is about, today.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment

by any employment agency or labor organization, admitted to membership classified by any labor organization, or admitted to, or employed in, any prenticeship or other training program, in comparison with the total number percentage of persons of such race, color, religion, sex, or national origin in community, State, section, or other area, or in the available work force in community, State, section, or other area.

The CHAIRMAN. The time of the gentleman from Michigan expired.

(On request of Mrs. Green of Oregon, and by unanimous consent Mr. Gerald R. Ford was allowed to proceed for 5 additional minutes.)

Mrs. GREEN of Oregon. When all of us in this House were present with the Civil Rights Act in 1964, if any Member of the House had come to the well of the House and had said, "When you vote on the Civil Rights Act, you are voting a quota system," I wonder what would have happened. The imposition of a quota system under the Executive order contradicts Title VII of the Civil Rights Act. The imposition of quotas by OFCC destroys labor contracts that have been negotiated on seniority rights. It allows the Office of Contract Compliance to go into a plant, to go into a school system, to go into a college or university—and they have done this in thousands of cases across the country—and say, "We do not agree with the percentage of minority employees to majority employees and we insist that you have this number of blacks in proportion to this number of whites—or the number of another minority to this number of whites.

They have done it in Portland, Oreg. They have done it in Washington, D.C., in the schools here in the District; and this is in direct contradiction to the Civil Rights Act that was passed. We do not need to argue whether the Philadelphia plan is a quota system. I feel sure every Member of this House has had complaints about quotas that the Office of Federal Contract Compliance have ordered. The Erlenborn bill does not touch this matter.

One important issue is whether or not we continue to allow the executive branch under the Executive order to continue to establish and to demand quotas and give special or preferential treatment to some and to deny equal employment to others.

The Erlenborn substitute perpetuates the quota system. The Dent amendment would put an end to the contradiction of the Executive order—Title VII of the Civil Rights Act. The Erlenborn bill is not an equal employment bill. Under the quota system you give special employment rights; you give special preferential treatment to some and in the process job rights are denied others. The civil rights bill was passed to end discrimination. It was not passed to substitute one kind of discrimination for another kind.

If we believe in the Civil Rights Act, including Title VII, it seems to me that we ought to vote to do away with the quota system, which is harmful to this Nation. It is dividing the country and it is accomplishing nothing.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mrs. CHISHOLM. Mr. Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I am very glad to get the observations and comments of my good friend from Oregon. But let me just make my comment, and then I shall yield to the gentleman from Illinois and the gentlewoman from New York.

Philadelphia plan, which is what we are really talking about, ot have anything to do with quotas. I honestly think that the man from Pennsylvania is drawing a false issue by the kind nguage that he is employing in his proposed amendment. do not think that we ought to interfere with this program with ind of amendment. The Philadelphia plan seeks in all honesty prove the job opportunities for blacks or other minorities. You ve them all the rights in the world, but if you do not give a in a minority status a job, all of those rights really do not mean uch, because he cannot feed his children, he cannot feed him- rights where he does not have a job.

eld to the gentleman from Illinois.

ERLENBORN. I thank the gentleman for yielding. I hope that the ution of the gentlewoman from Oregon has not confused the ttee, because the language she read from Title VII of the Civil Act is undisturbed by the committee bill, and undisturbed by lenborn substitute. Neither one is going to repeal the prohibition t quotas that is in Title VII of the Civil Rights Act.

GERALD R. FORD. I thank the gentleman.

ld to the gentlewoman from New York.

CHISHOLM. I thank the gentleman. Would the gentleman agree the EEOC had the right and opportunity to issue cease-and- orders, then it would have to naturally follow that perhaps ld not have to be speaking this afternoon in terms of preferen- otas?

ink we cannot talk about one without connecting it with the

have we had to discuss this whole question of preferential ent for one group as contrasted to other groups? It is precisely the EEOC has not had the power to be able to issue the cease- sist orders that will make the construction workers and other do that which they have to do in order to be able to prevent ntial treatment.

GERALD R. FORD. Let me respond to the very appropriate ques- ised by the gentlewoman from New York. In the Erlenborn ute there is a new device for enforcement. It is a different de- om the cease and desist, but it is an effective one, because it s legal action in a court of law, in the Federal courts.

anyone deny that the Federal courts are capable of actually ing orders on discrimination? The Federal court system is fully te to meet the problems. The only difference is in the court of ere there will be an equitable trial with the rules of evidence ling, whereas under the cease-and-desist proposal of the com- we would deny people that fairness and equity.

CHAIRMAN. The time of the gentleman from Michigan has d.

request of Mr. Boggs, and by unanimous consent, Mr. Gerald d was allowed to proceed for 2 additional minutes.)

Boggs. Mr. Chairman, will the gentleman yield?

GERALD R. FORD. I yield to the gentleman from Louisiana.

Boggs. Mr. Chairman, my good friend, the gentleman from gan, has finally gotten down to the difference between these bills.

He points out, and quite correctly so, that the Erlenborn substit provides for a remedy in the courts as compared to the normal adm istrative remedy provided for in the committee bill. Why would gentleman make this profound distinction between human rights the rights which are set forth for the ICC and the NLRB and Securities and Exchange Commission and other Federal agenci

Mr. GERALD R. FORD. Let me respond. It is not appropriate that human rights be considered in the Federal courts? Is it not a pro forum for the consideration of human rights? That is where we h made the most progress in the safeguarding of human rights—in Federal courts. I do not want some administrative agency making cisions on basic human rights. I would have a great deal of faith a trust in the Federal courts.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman from Mic gan for yielding.

Mr. Chairman, I made the point yesterday, and I make it again day, that comparing the cease-and-desist authority in this bill w the authority of the NLRB is false. The NLRB enforcing function separate from the judging function. No such separation of powers provided in the committee bill.

As far as whether the cease and desist is working well, here aga I reiterate what I told the Representative from the District of Colu bia yesterday. The gentleman used FTC as one of his examples. T Federal Trade Commission does have cease-and-desist authority, b at this very moment it is petitioning Congress to give it authority to into the Federal district court to seek enforcement in the same man that the Erlenborn substitute would provide here. It is obvious th the Federal Trade Commission, exercising cease-and-desist authori has come to the conclusion that it would be better off going into t district court.

The CHAIRMAN. The time of the gentleman from Michigan h again expired.

(On request of Mr. Boggs, and by unanimous consent, Mr. Ger R. Ford was allowed to proceed for 2 additional minutes.)

Mr. BOGGS. Mr. Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Louisiana.

Mr. BOGGS. Mr. Chairman, I am well aware of the fact that the g tleman from Illinois would want to keep the record entirely accura To the best of my knowledge, the only administrative agency in t Federal Government where there is a separation as the gentlem pointed out happens to be the NLRB. In the other cases, it is t hearing examiner, selected as I outlined in my main remarks, whi prevails. Is that not correct?

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I would point out that all oth agencies, with the exception of NLRB, that exercise cease and des are regulatory agencies. There is a great deal of difference betwe those that are regulating industries with cease-and-desist orders a those that are resolving disputes between contesting parties.

hen there is this resolution of disputes between contesting parties,
s been the judgment of the Congress to separate the function of
ecuting from the function of making the judgment.
e committee bill does not separate these. It would allow the Com-
on to investigate, prosecute, judge, and fashion the remedy.
my opinion, we will be much better off if we separate in the tradi-
l fashion the job of prosecuting from that of judgment.
r. BOGGS. Mr. Chairman, will the gentleman yield for one further
vation?
r. GERALD R. FORD. I am glad to yield to the gentleman.
r. BOGGS. I thank the gentleman for yielding.
the Coast Guard, Social Security, and several other agencies the
e procedure is by a hearing examiner, with a right of appeal to the
of appeals, and that is what is spelled out in this bill.
. GERALD R. FORD. Let me make one observation on the point at
here.
this kind of situation discretion is very, very important. I happen
ieve the system of justice in the courts is a better forum for that,
r than leaving it in the hands of an agency which has the right
restigate, to prosecute, to make a decision and then to enforce it.
rongly prefer the use of the courts for enforcement, rather than
gency itself.
. O'HARA. Mr. Chairman, I move to strike the requisite number
rds.
. Chairman, we are not discussing the Philadelphia plan or any
s in employment. I understand the gentleman from Pennsyl-
, the subcommittee chairman (Mr. Dent) will, if he gets the
tunity, offer some amendments to the committee bill that have to
th employment quotas and the Office of Federal Contract Com-
ce. If he has that opportunity, then we can debate those amend-
s and vote on them, as we see fit.
t these amendments are not pending before us now. What we are
g about is the Erlenborn substitute. And if the Erlenborn sub-
e is agreed to, the gentleman from Pennsylvania (Mr. Dent)
ot even have the opportunity to offer his amendments.
at then is the difference between the Erlenborn substitute and
mmittee bill? The committee bill provides a new method of en-
ment for equal employment cases. It lets the Commission go
, after appropriate hearings and deliberation, and issue a cease-
esist order.
Erlenborn substitute does not give the aggrieved party any-
he does not already possess under existing law. The gentleman
Illinois (Mr. Erlenborn) says his substitute will put the case to
But, that is where it goes now. That is the existing law. The
man from Illinois (Mr. Erlenborn) is not giving that aggrieved
any right he does not already possess.
only thing in the Erlenborn substitute that is of any advantage
soever to the aggrieved party is that under the Erlenborn substi-
he Commission may, in its discretion, if it decides it wants to,
he case to court for the aggrieved party.
. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?
O'HARA. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. I appreciate the clarification of the
tleman from Michigan, because in fact the Erlenborn substitute
grant an enforcement power the Commission now lacks.

Let me take it one step further, to cease and desist. The gentle
has just used the words, "may, in its discretion, if it decides" do s
thing. The same is true either of the Erlenborn substitute or
Hawkins bill.

Mr. O'HARA. The point of the matter is that under the Erlen
substitute the Commission perhaps will take it to court, and that
be some slight advantage to the aggrieved party over taking it to
himself. Though he is now guaranteed attorney's fees and cos
he wins it might be nicer to have the Commission take the ca
court for him.

But, he gives up something to get that advantage. He now can g
court 30 days after he has filed his charge or 30 days after the C
mission has completed some action.

He would be required to wait 6 months before he could go to cou
his own under the Erlenborn substitute.

Mr. DENT. Mr. Chairman, will the gentleman yield to me?

Mr. O'HARA. I yield to the chairman of the subcommittee.

Mr. DENT. He gives up something that is good. The people
grieved will have more freedom as a result of it, because only
Attorney General can institute a case in the court of appeals; not
EEOC.

Mr. O'HARA. I thank the gentleman.

I really think there is serious question as to whether or not
aggrieved party is better off under the Erlenborn substitute tha
is right now under existing law. It can be argued with a good deg
force that he would be better off with nothing than with the Erlen
substitute.

Mr. HAWKINS. Will the gentleman yield to me?

Mr. O'HARA. I yield to the gentleman from California.

Mr. HAWKINS. Is it not also true under the Erlenborn substitute
individual will also give up the right to sue under the 1866 act,
Equal Pay Act, and possibly under half a dozen other civil ri
acts?

Mr. O'HARA. That is absolutely correct. The Erlenborn substi
would not only take away his right to go promptly to court on his
behalf, it would deprive him of his right to a remedy under o
statutes. There are remedies under the NLRB Act and under som
the old civil rights statutes that he would sacrifice under the Erlen
substitute.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. O'Hara was allowed to proceed
2 additional minutes.)

Mr. O'HARA. If Mr. Chairman, we are dissatisfied, as I am, with
provisions of current law as to enforcement of the equal employm
opportunities law then we ought to do something about it, and
way to do something about it is equip the Commission with ce
and desist powers as proposed in the committee bill. If we do not w
to do that, then let us not do anything at all. Let us not amend an
adequate system of job protection to make it more inadequate as
Erlenborn substitute proposes.

hope, Mr. Chairman, that the Erlenborn substitute will be defeated that the committee bill will be agreed to.

r. REID of New York. Mr. Chairman, I rise in opposition to the nborn substitute.

r. Chairman, first I would like to point out that the committee is bipartisan in character. It is not a Democratic bill; it is not a ublican bill, but it is a bipartisan bill.

econd, I think it should be pointed out that a significant number Members on my side of the aisle, in my judgment, will support the mittee bill. Indeed, at least one Member and perhaps two Members ne leadership of the Republican Party in the House will support committee bill.

ext I would like to say as simply as I can that there are merits to approach of administrative agency proceedings enforceable with -and-desist orders.

lo not think that during the debate today there has been total ty focused upon the real problem.

ne real problem is not whether you get enforcement in the courts hether you get enforcement through the Commission per se.

ne real point is that if the Equal Employment Opportunity Commion is given cease-and-desist powers the vast majority of cases will r need go to a hearing in the first place, let alone to any kind of proceeding. I can speak from some experience in New York re I served as the Chairman of the New York State Commission nst Discrimination, now the division of human rights.

ne figures in New York's experience clearly emphasize my point. een 1945 and 1967, 16,129 complaints were received by the New commission; 98 percent of them—all but 326—were settled before were ordered for hearing and more than two-thirds of those red for hearing were settled before the hearing was completed.

at means that in New York in 22 years only 110 cases out of 16,000 d further action, and that is largely because the State commispossessed cease-and-desist powers.

. Chairman, the whole concept—and frankly, this should be reczed—of this particular legislation in New York was that of Tom y and Senator Irving Ives, and the concept was that the Comon could deal with complex, sensitive questions, backed up by aw in a way that could not be done in formal court proceedings. erefore, the Commission approach is much more sensitive, more able, and obviously much faster.

ow, Mr. Chairman, what are the dangers of the court proceedings? danger, first of all, is that we would load onto the courts of the ed States an additional 20,000 cases. Does any Member seriously that by adding 20,000 additional cases to the court calendars we oing to expedite matters?

t me state that through the commission procedures cases are dealt much more expeditiously. Let me repeat that, much more exiously; whereas, in court proceedings it can take months or even s.

r example, a case—Weeks against Southern Bell which was a sex imination case—has been in the courts for 5 years and it was just d in April. I have seen through the Commission procedures

cases conciliated in a matter of days. It was relatively rare that it
came a matter of months. But, believe me, if you go to the court pr
dure, you go to a much more difficult procedure, both in time
flexibility.

Finally, let me say this, that the Commission procedure works
would not be the law of the land in 32 States if it did not work. I h
yet to see anyone say that the Commission procedures as followed
the several States does not work and work well.

The CHAIRMAN. The time of the gentleman from New York
expired.

(By unanimous consent, Mr. Reid of New York was allowed to p
ceed for 2 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. REID of New York. Yes, I yield to the gentleman from Illin

Mr. ERLENBORN. I thank the gentleman for yielding. Let me just
a question or two of the gentleman.

First of all, if the Commission procedure is working in the Sta
why are so many of the cases that are referred to these local and St
Commissions unresolved and referred to the EEOC?

Mr. REID of New York. In response to the question of the gent
man from Illinois, first of all, one-third of the States do not ha
commissions with cease-and-desist powers. I think the point is th
Where you have a commission with such authority such as the St
of New York does it has worked extremely well with no need to
to the Commission.

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield furth
I would point out the fact that the State of Illinois has a fair emplo
ment practices commission which has cease-and-desist authority and
it is among one of the top 10 States in the number of cases that th
go to the EEOC even after referral. Does this mean that we will
clogging the Federal courts with 20,000 more cases?

Is the gentleman aware that in the 6 years of its existence o
some 50,000 cases have been filed before the EEOC? Is the gentlem
aware that this is not a self-enforcing order? That if enforcement
the order under the committee bill is to be obtained it must go to t
courts and if this follows the practice of the NLRB, over 50 perc
of all the orders issued by the NLRB wind up in the enforcem
proceedings in the circuit courts of appeal, where you have only
courts, rather than the district court level, where there are 93 cou

As a matter of fact, my recollection is that in the most recent ye
66 percent of the NLRB's cease and-desist orders have wound up
the courts for enforcement proceedings. You are not avoiding t
courts by using the cease and desist approach.

The CHAIRMAN. The time of the gentleman from New York h
again expired.

(By unanimous consent, Mr. Reid of New York was allowed
proceed for 2 additional minutes.)

Mr. REID of New York. Mr. Chairman, I have asked for the ad
tional 2 minutes so that I might reply to the comments of my
league, the gentleman from Illinois (Mr. Erlenborn).

First, the gentleman from Illinois raised a question of 20,000 cas
and the fact that this might overload and jeopardize the court cal
days. That is the figure that has been provided me by the EEOC as
their estimate of the pending cases that are unresolved due to the f

they do not now have cease-and-desist powers. I think as a reason-
estimate there are something like 16,000 to 17,000 cases, as the
tleman knows, that are still pending with the Commission, and
e not yet been resolved. In fact, they were able to conciliate fewer
n half because the Commission does not have cease and desist power.
s to the NLRB, it is my understanding that in fiscal year 1970
ething like 72 percent of the cases have been settled without need
a formal hearing. In my experience, certainly in New York, if the
mission works effectively, if the individuals know that the Com-
sion has the power of the law in cease and desist, then you can
iliate.
he whole thrust of what I am trying to say is not that the Com-
sion procedure works alone, but that it works a great deal better.
y? Because you do not have to go into court in the first place, be-
e the individual knows that there is that power, and is willing
t down and conciliate, and the matter gets resolved, and resolved
nptly.
nally, let me say that I think it is terribly important that the
ublican Party that was born in the fight to make men free, fight
y for that procedure which will most clearly and effectively deal
millions of people who still are denied equal employment op-
unities, and who need Federal protection with cease and desist.
t is our heritage as a party.
he CHAIRMAN. The time of the gentleman from New York has
n expired.
r. PUCINSKI. Mr. Chairman, I move to strike the requisite num-
of words.
r. Chairman, I take this time to establish some legislative intent
he committee bill, and on the Erlenborn substitute.
ction 706 of the Hawkins bill says that:

e Commission is empowered, as hereinafter provided to prevent any person
engaging in any unlawful employment practice as set forth in section 703
4 of this title.

ction 703 provides:

shall be an unlawful employment practice for an employer—
to fail or refuse to hire or to discharge any individual, or otherwise to
minate against any individual with respect to his compensation, terms, con-
s, or privileges of employment, because of such individual's race, color,
on, sex, or national origin

uch has been said about race, color, religion, and sex, but the ques-
of national origin has very seldom been discussed.
would like to ask the distinguished chairman of the subcommittee,
gentleman from Pennsylvania (Mr. DENT), whether I am correct
derstanding that it is the intent of this committee and this Con-
s that by national origin we mean any person's national origin, and
it is not limited to any particular ethnic group, such as a Spanish
ame, or American oriental or American Indian. Discrimination
se of national origin applies to any American who feels that
as been discriminated against because of his national origin,
rdless what that national origin may be. Am I correct in that
rstanding?
r. DENT. According to the law as it is now written, I would say
"national origin" would be the national origin of the individual
rdless of what that national origin is.

Mr. PUCINSKI. The reason I ask this question is to be absolutely c
tain about this. The Equal Employment Opportunities Commiss
has tons of directives and guidelines and material and informat
and inquiries and questions and answers dealing with the problems
discrimination because of race, color, religion, or sex. But when y
ask the Commission for guidelines on that aspect of discriminat
dealing with national origin, these guidelines are very scarce.

I was wondering if the Chairman could answer this question. If t
are going to give the Commission broad powers in this bill to prev
discrimination because of national origin—how can we motivate t
Commission to show more sensitivity to those Americans who are d
criminated against in job opportunities and promotion advancemen
because of national origin?

Mr. DENT. I do not know anything about the Commission's attitu
on that matter.

I would say if they administer the laws according to the congr
sional intent, you would have no problem at all with the guidelines
that because it is the most simple of all answers so far as I am co
cerned. National origin only means just that—it means national ori
or country of origin.

Mr. PUCINSKI. I would ask the gentleman one more question.

Am I correct in my understanding that it is the intent of this Ho
and this Congress that discrimination because of national origin sh
be given the same priorities as any other form of discrimination?

Mr. DENT. That is already a part of the law.

Mr. PUCINSKI. I just want to establish this for the purpose of t
record.

Mr. DENT. I have never been informed that they do not give eq
treatment in cases pertaining to national origin and I would be a lit
reticent about any condemnation of the Commission because of th
question. I do not know.

Mr. PUCINSKI. I hope that my question does not indicate any co
demnation of the Commission. I think the Commission is doing a go
job. But I am concerned about the discrimination that exists in t
country against various ethnic groups and members of various eth
groups such as Italian Americans, Polish Americans, the Jews, G
mans, Slavic people, and others, who have been discriminated agai
because of their national origin. Guidelines dealing with this form
discrimination have not been dealt with on the same priority basis
the others are.

I have said on a number of occasions there are indications th
priority is given to these other cases involving discrimination beca
of race, religion, or sex, and all I want to establish is—that it is t
intent of Congress that discrimination because of national origin sh
get the same treatment and the same consideration and the same equ
ity as to priorities as any other discrimination case.

Mr. DENT. I would read from the report of the committee on page
this language:

> It shall be an unlawful employment practice for an employment agency to
> or refuse to refer for employment, or otherwise to discriminate against, any
> dividual because of his race, color, religion, sex, or national origin, or to class
> or refer for employment any individual on the basis of his race, color, religi
> sex, or national origin.

Each of the requirements are exactly on the same status and on the
ne level and the same priority, in my opinion.
Mr. Pucinski. Then it is the opinion of the distinguished gentleman
t national origin means any ethnic background and is not limited
ny specific background, and this would apply to the Equal Em-
yment Opportunity Commission whether the committee bill or the
stitute prevails?
Mr. Dent. Yes. But I do not want to get into an argument about
t.
Mr. Fauntroy. Mr. Chairman, I move to strike out the last word.
Mr. Fauntroy asked and was given permission to revise and ex-
l his remarks.)
Mr. Fauntroy. Mr. Chairman, I rise in support of H.R. 1746 and
pposition to the substitute measure offered by Mr. Erlenborn. The
has long passed when we could argue over the need for the wide
ging reforms embodied in H.R. 1746. Mr. Hawkins' well-conceived
carefully worked out bill. Others will argue ably in support of im-
ant features of the bill, but I wish to take just a moment to focus
r attention on one provision that I regard to be of great urgency.
ion 11 of H.R. 1746 would enact into statutory law the national
cies expressed in Presidential Executive orders mandating non-
rimination in Federal employment. In addition, and most signifi-
ly, the bill would transfer the responsibility for implementing
eral non-discrimination requirements in Federal employment from
Civil Service Commission to the Equal Employment Opportunity
mission.
here are few in this Congress who can testify with more experience
I about the pervasive and continuing discrimination by the Fed-
Government in the employment of blacks, Spanish-surnamed, and
en employees. As a pastor and community leader in the District of
mbia during the past 12 years, I have had to respond to thousands
omplaints of job discrimination from among the 58,000 Federal
loyees in the District who are black. My father was employed at
U.S. Patent Office here for 44 years before retiring. He knew the
ts of discrimination and we, his children, knew his frustration and
air. He trained two generations of white employees who were then
ed up and over the shoulder to higher level and higher paying jobs.
n all the evidence I have seen, even today in this supposedly en-
tened time, these practices continue daily with little substantive
ge.
Then I came to the Congress 5 months ago, I expected that a sig-
ant portion of the casework of my office would be devoted to help-
Federal employees resolve job discrimination problems. But I did
foresee the incredible deluge of pent-up grievances that have de-
ded upon my office in the few short months I have been here. These
brought by people with just claims who are deeply angered and
trated by the unfair treatment they receive at the hands of the
eral Government. My office does its best to help, and in many cases
ucceed, but only with a tremendous expenditure of time by my office
the time of the employee. We give willingly, knowing that these
ple have nowhere else to turn. They have sought help from their
cies, and from the Civil Service Commission—all with little
ess.

One function of casework in a congressional office is to identify th need for remedial legislation where a pattern of case problems develo I can think of no greater need than this legislation. The Civil Servi Commission, as a result of many factors, is not up to the job. I a convinced that EEOC with its experience in battling job discrimin tion in the private sector and with its sensitivity to the systematic an insitutional roots of job discrimination offers far greater hope to th thousands of employees who every day must suffer the indignity being discriminated against because of their race, religion, sex, or n tional origin.

But I have more than my personal experience to sustain my convi tion about the urgent need for this legislation. The record is clear Statistical evidence demonstrates beyond serious question that minori ties and women find it difficult to secure Federal jobs, particularly higher paying, decisionmaking levels. Blacks, women, Spanish-sur named employees are unduly concentrated in jobs paying the lowe salaries and having the least amount of policymaking responsibilit A report issued by the Civil Service Commission in May 1970 showe that minorities make up 19.4 percent of the total number of Gover ment employees and 14.4 percent of the general schedule employee Approximately 80 percent of these general schedule employees a locked at grades 1–8. While comprising slightly over 14 percent of th general schedule work force, minorities account for 27.3 percent of th lowest level GS 1–4 positions. The picture grows even more gloom when we look at the record of individual cabinet level departments Only 5.2 percent of Interior's employees are black, 5.8 percent of Agr culture's and 6.2 percent of Transportation's. Even more dramatically only 2.9 percent of NASA's employees are black, and less than 550 o the Federal Aviation Administration's air traffic controllers out of total of 20,000 are minority.

These pervasive patterns are reflected in the employment practice at the executive level of Federal employees. In grades GS–14 and 1 minority employees account for only 3.3 percent of employees, and grades GS 15–18 minorities count for only 1 in 50 of all employee While Spanish-surnamed employees are 2.9 percent of employees, on six-tenths of 1 percent have managed to make it to executive level pos tions. Similar patterns also pertain to women employees.

In individual agencies, the presence of blacks in executive level pos tions earning more than $15,000 and presumably having some decisio making authority, grows even more infrequent. In the Department o Interior, less than 1 percent of the blacks in the agency earn more tha $15,000. In Treasury, Defense, Agriculture, and Transportation, percent or less of all black employees make more than $15,000. Mos remarkably of all, in the Justice Department, which at one time ha the major responsibility for securing equal rights for all American only 1.4 percent of black employees reached a salary range of $15,00 or more.

The difficulty of minorities and women in securing Federal employ ment, their high concentration in low level jobs, their virtual absenc from executive level positions, can only be attributed to systemat and institutional failures, failures that the Civil Service Commissio has proved unable to root out effectively.

hese patterns are not accidental; they are the direct result of the
ure of the Civil Service Commission to come to grips with the deep
s of discrimination pervading Federal employment practices. The
mission's failure springs from several sources. The Commission
the ultimate responsibility for establishing Federal personnel poli-
At the same time, Executive Order 11748 places primary respon-
ity for insuring equal employment opportunity in the hands of
Civil Service Commission. It seems anomalous to have the Com-
sion both establish policies for rooting out discrimination and at
same time have the basic responsibility for measuring the effective-
of those policies against the demands of the law. H.R. 1746 will
edy this inequity and provide for objective review of Federal
rimination policies.

eyond the Civil Service Commission's conflict of interest in en-
ing nondiscrimination standards, the Commission has failed to
owledge the institutional and systematic origins of discrimination
'ederal employment. The Commission persists in searching out
rvisors with malicious intent rather than focusing on personnel
ies that have the inherent effect of discriminating against black,
ish-surnamed, and women employees.

many of us who have closely followed the work of the Commis-
in the area of equal employment programs, it has seemed that
it is more concerned with fashioning a tidy personnel system
in effecting equal job justice for Federal employees. Present Civil
ice standards continue to overemphasize paper qualifications and
results, even when an employee in his work experience of per-
ance has demonstrated a capacity for a better job or advancement.
hermore, the tests used by the Commission are not directed in
significant way to the specific job requirements. As the Labor and
cation Committee pointed out in its report on H.R. 1746:

> inevitable consequence of this * * * is that classes of persons who are
> rally or educationally disadvantaged are subjected to a heavier burden in
> ng employment.

ese policies are wrong, but the Commission has utterly failed to
at they are wrong.

e CHAIRMAN. The time of the gentleman from the District of
mbia has expired.

On request of Mr. Fauntroy, and by unanimous consent, Mr. Faunt-
was allowed to proceed for 2 additional minutes.)

r. FAUNTROY. Mr. Chairman, the time for change has arrived, and
ge my colleagues to seize the time. The Civil Service Commission
demonstrated that it is incapable of providing fair and equal job
rtunities for all government employees. A new and more sensitive
rtise is required. I believe that EEOC offers far greater hope to
thousands of employees who today have no real hope for change.
ge your vote against the Erlenborn substitute and in favor of H.R.
The Erlenborn substitute would leave equal employment oppor-
y programs for Federal employees in the hands of the Civil Serv-
Commission. The status quo would be continued. I maintain that
ransfer is desperately needed, and I urge your support for it.

nally, Mr. Chairman, I want to ask of those who oppose the
-and-desist powers for the Equal Employment Opportunity

Commission this question: What is more precious about the right of investors to be protected by cease-and-desist powers given the Securities and Exchange Commission than the right of blacks, Spanish surnamed, women, and other oppressed minorities people, to be protected by the cease-and-desist powers with which H.R. 1746 would provide the Equal Employment Opportunity Commission? If the Members of this distinguished body will answer that question honestly, they will vote against the Erlenborn substitute and for the bill which is before us, H.R. 1746.

Mr. ECKHARDT. Mr. Chairman, I move to strike the last word.

Mr. DENT. Will the gentleman yield for a request to set a limitation on time?

Mr. ECKHARDT. Mr. Chairman, will it come out of my time?

The CHAIRMAN. It will come out of the gentleman's time.

Mr. ECKHARDT. But it will not limit my time?

The CHAIRMAN. It will come out of the gentleman's time, but will not limit the gentleman's time.

Mr. DENT. Mr. Chairman, I ask unanimous consent to set a time limit on this amendment and all amendments thereto, that debate end in 35 minutes from now, except for the 5 minutes for the gentleman from Texas.

The CHAIRMAN. The gentleman asks unanimous consent for the time to end when?

Mr. DENT. Thirty-five minutes from now, except for the time of the gentleman from Texas, which would make it a total of 40 minutes from now.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. HALL. Mr. Chairman, I would object to the reservation. I would have no objection to the time limitation.

The CHAIRMAN. The Chair will state the gentleman from Texas had previously been recognized by the Chair. Therefore, the limitation of time would not apply to his time.

Mr. HALL. As a parliamentary inquiry, did not the request for time limitation, which came out of the gentleman's time, retain the last 5 minutes?

The CHAIRMAN. No; it did not.

Mr. HALL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. ECKHARDT. Mr. Chairman, there is one thing which, it seems to me, has not been recognized with respect to the effect of the Erlenborn amendment as compared with the original committee bill, and that is the real nature of the cases that come before the Commission, or, on the other hand, under the Erlenborn bill, before the court. These are not the simple kinds of cases in which John Smith seeks employment with Joe Bloke, who is the proprietor of a firm, and Joe Bloke says, "No, John, you are a Negro, and I shall not employ you." A case like that, of course, could easily be tried in the Federal court.

However, the kind of case that arises is one similar to this. Both the union and the employer may be acting today in good faith and both may want their problems with respect to racial discrimination solved, but the problem is enmeshed in a long history of contract relations.

ere is, for instance, a labor pool of employees which is composed acks, and historically blacks have been hired into the pool. His- ally whites have progressed along the lines of promotion within arious departments within the plant. To simply say that blacks y have the same rights as whites to exercise their contract se- ty is meaningless, because their seniority is in the pool. What o be done is a discreet examination of the contract relationship een the union and the employer to establish how the effects of discrimination may practically be eradicated. This is as difficult st unfair labor practices that are before the Board today. It may ecessary to establish a system by which seniority in the pool is d into the lines of promotion in the departments.

is is difficult. This is similar to a situation in a merger between ompanies in which two different lines of seniority must be recon- Or we may have a situation such as exists, say, in a telephone any where most of the noncraft employees have been black, and have been no admission tests for those employees to enter into nploy of the telephone company.

ey have worked there for 25 years. They seek at this time to be oted to craft jobs. Craft jobs have always required a test upon ssion at the time of original employment, so a test is imposed blacks who seek to move from one level to another in the tele- e company.

e question then arises, is the test prior to promotion discrimina- since it applies, as far as existing employees are concerned only acks, and those blacks have been just as truly employees of the any for the many years they have been there as the whites have ?

ese questions do not just deal with John Smith asking for em- nent, and he is black, and he is refused. They deal frequently with reds of persons in a single case. That is why we need a Commis- s administrative determination first. It is perfectly reasonable to re it.

a matter of fact, had we imposed upon the courts the complex ems which exist in labor relations- which are no more complex these—we should never have come to the point we are today in g these difficult questions.

e matter here is simply a question of whether we are going to p machinery adequate to solve the problem or whether we are oing to set up that machinery.

e Supreme Court in the steelworker trilogy has said, with re- to many labor problems that they are a matter of the law of the . and this matter of equal employment opportunity fits in that f the plant and is equally complex. The trilogy has said this is e kind of thing the court will decide, that the court will permit atter in that instance to be decided by arbitration so that persons an expertise in this field can solve the difficult questions.

e same kinds of problems are involved here, and the committee rovides the only appropriate machinery for solving them: a ission-type proceeding in which sufficient time and expertise can plied to these very complex problems.

Chairman. Members standing at the time the limitation of de rder was entered will be recognized for 2 minutes each.

The Chair now recognizes the gentlewoman from New York (Mrs. Abzug).

(Mrs. Abzug asked and was given permission to revise and extend her remarks.)

Mrs. ABZUG. Mr. Chairman, I support H.R. 1746, the Hawkins-Reid bill. The purpose of the Civil Rights Act of 1964 and the establishment of the Equal Employment Opportunity Commission was to end employment discrimination. As a Congresswoman who represents a district in New York which has in it substantial minority groups, I am particularly involved in this issue. I happen to have been a lawyer for many years in the labor law field. I grew up in the NLRB. I can tell you gentlemen who have argued for the Erlenborn amendment, which I oppose, that the reason the cases between labor and management have been able to be resolved is because they have been heard in the same kind of forum in which we are now seeking for the Equal Employment Opportunity Commission.

The fact is that we have to be sensitive to our commitment; we have to have a partiality in our commission which understands that it has to fulfill the needs of the blacks and the minorities and the women in this country for equal employment.

I am determined to see that blacks, Puerto Ricans, Chinese, Italians, Jews, Ukrainians, and other minority groups no longer suffer discrimination in employment. Many suffer both because they belong to a minority group and because they are women. They are victims of double discrimination.

The sad fact is that despite the efforts of The Equal Employment Opportunity Commission and despite the Civil Rights Act of 1964 women and minorities can still be characterized and minorities can still be characterized as castoffs of the American economy. Both groups suffer consistently from employment discrimination which is blatant, pervasive, and in flagrant violation of Federal law.

One major reason that this discrimination persists is that the Equal Employment Opportunity Commission, charged with ending employment discrimination in accordance with the provision of Title VII of the Civil Rights Act of 1964, has been a watchdog without teeth.

The issue confronting the Congress is how we can eliminate this discrimination in employment, and how we can fulfill our commitment to the people under the Civil Rights Act?

Every one of us bears a responsibility, once and for all, to eliminate the cruelty which denies the right to opportunity because of race, sex, national origin to millions of Americans. Let me give you some facts about the rising demand to eliminate discrimination in employment because of sex.

Women now comprise 40 percent of the work force. One out of five women in the work force in 1970 was single and therefore entirely self supporting. One out of three supports children; and one out of five are widowed, divorced, or separated from their husbands. Clearly, these women do not work to "fill up their time" or make "pin money." They work to buy food and clothing and shelter for themselves and their families.

Employers continue to discriminate against female workers in recruitment, hiring, placement, and promotion. Women who pass these

iers often confront discrimination in the form of lower wages, f segregation of women into the lowest paying jobs. The United trical Workers Union has estimated that American industry saves illion a year by paying women lower wages than men for essen- the same work.

1969 the average American woman who worked full time earned $60 for every $100 earned by the average American workingman lack women made 20 percent less than that.

omen who have completed college and at least 1 year of graduate ol receive only 67 percent of the salary received by men with alent training—a woman with a college degree earned about uch as a man with an eighth-grade education averaged in 1968. t women who are less educated and highly skilled suffer most— 66, women salesworkers received 41 percent of the salary received en in the same occupation.

e nonwhite woman worker who labors under the double dis- nation of race and sex faces the severest discrimination. In 1969 women earned a median income of $5,182 compared with $8,668 white and nonwhite men. Non-white women, however, who are heavily concentrated in low-wage, low-skill jobs, earned $4,126 47 percent of the income of the average male worker, white or .

e problems of Spanish-surnamed Americans, a racial minority, o less serious. Although they are the second largest minority in the United States, the Spanish-surnamed population is often ted or ignored, even in view of the massive economic and social tice to which they are subject, and cases involving discrimination st Orientals have been practically invisible under Title VII.

e unhappy history of continued employment discrimination st women and minorities, brings us to the question of how we mprove the act, to which we, as Americans, are committed. The kins bill provides such improvement—the Erlenborn bill does

e double discrimination suffered by minority group women can- e eliminated until we begin to deal boldly with their problems as n, as well as their problems as members of a minority.

e important elements in both bills are those dealing with enforce- powers for the EEOC and the scope of coverage of Title VII.

e Hawkins bill gives the EEOC cease-and-desist powers in addi- to the right to issue affirmative orders for back pay and rein- ment. This power is crucial; an administrative order can be ned within several months, while the median time for resolving e in the U.S. district court is 19 months. Also, the cease-and- power is a power which is given to such regulatory agencies as LRB, the SEC, the FCC, and 34 State fair employment prac- commissions.

contrast, the Erlenborn bill would give the EEOC only the time- ming remedy of court enforcement. It seems to be illogical and ary to the intention of the Civil Rights Act of 1964 for the rney General or the district court to assume the function of de- g whether there has been discrimination when the EEOC has ie expertise, by virtue of its experience, in investigating and con- ng cases concerned with employment discrimination.

I want to discuss the importance of expanding the scope of the co
erage presently afforded under Title VII. A major reason why EE
has not been able to be more effective in eliminating employment d
crimination is that large numbers of workers have not been cove
The Hawkins bill would extend coverage to employers and un
with eight or more employees or members, whereas now those w
fewer than 25 employees or members are exempt from coverage. T
Hawkins bill would also extend coverage to teachers by eliminating t
"educational institution" exemption under Title VII. This may w
be the most important provision in terms of its effect on wom
Consider the number of women who would gain protection by T
VII coverage under this provision: Two out of five college gradua
major in education, 86 percent of elementary school teachers
women, and 47 percent of secondary school teachers are women.
In addition, and this is an important addition, the Hawkins
would extend coverage to State and local government employees, a
would extend the Civil Service Commission powers of enforcem
regarding employment discrimination to EEOC. Data from the C
Service Commission itself indicates how badly women need this. C
data in 1969 showed that 80.4 percent of all women in the Fede
Government held jobs in grade levels 1 through 6. For Spanish-s
named Americans, the percentage in levels 1 through 6 was 6
Clearly, the Civil Service Commission is either unwilling, or has be
unable, to make equal employment opportunity a reality for either
these groups.
The Erlenborn bill extends no coverage to these groups: employ
of small businesses, teachers, and Government workers. Surely th
workers are entitled to the same protection afforded all other work
under the coverage of Title VII, and the Hawkins bill does no m
than give them that to which they are justly entitled.
Although enforcement powers and scope of coverage are the t
most important issues before the Congress, several other highly s
nificant matters remain.
The Erlenborn bill would eliminate the right of an employee to br
a class action on the behalf of all other employees similarly situat
a right which now exists under Title VII. My fellow colleagues, sex a
race discrimination are by the very nature class discriminations. N
a member of a discriminated against class, or several members, c
bring suit on behalf of their entire class, and seek an award of ba
pay, reinstatement, or injunctive relief. The structure and pattern
employment discrimination will remain untouched unless large nu
bers of workers are affected. An award in favor of one complain
will do little to discourage an employer bent on discriminating aga
a class of employees, but an award or even the possibility of
award on behalf of an entire class can effectively discourage t
kind of unlawful discrimination.
The Erlenborn bill provides that charges filed under Title VII co
stitute an exclusive remedy. That means that working people wo
be denied the remedies Congress has already provided, such as t
Equal Pay Act of 1963 and the Civil Rights Act of 1966 and the N
tional Labor Relations Act.
It is a plain fact that as women continue to recognize that they a
receiving less pay for the same work that men are doing, more emplo
ment discrimination cases are going to be filed.

milarly, as minorities realize that they cannot continue to live on kind of pay they are receiving, there will be more cases. The Mem- of this Congress must recognize, for once and for all, that a per- ent obligation of a Representative of Congress is to provide the rtunity to all Americans, equally, to earn a living.

ie very heart of a nation and the success of a democracy depends n giving freedom and equality to all its citizens, and there can be reedom or equality when people are discriminated against in the fundamental life—the way in which they earn their living.

would disagree with the amendments to the bill which the com- e may recommend to limit back pay to no more than 2 years, enting setting quotas, and require informing the employer within ys when charges are filed with the Commission. I am also opposed e transfer of the functions of the Office of Federal Compliance— C—from the Labor Department to the EEOC.

owever, I can accept these amendments to get an overall bill which real enforcement powers to the EEOC. I would suggest that those Members who, though they have spoken for the Erlenborn dment, consider it important that EEOC's coverage be extended ose who are most discriminated against should be prepared to go way and support the Hawkins-Reid bill with the Dent amend- s.

ose who have been traditionally discriminated against women minorities—are entitled to the protection of the law and law en- ment in a country which boasts of equal opportunity for all. ly the concept of "equal pay for equal work" is an idea whose has come.

e CHAIRMAN. The Chair recognizes the gentleman from Illinois, Anderson.

[r. Anderson of Illinois asked and was given permission to re- nd extend his remarks.)

. ANDERSON of Illinois. Mr. Chairman, anyone familiar with the ment of civil rights legislation over the last decade knows the eman from Ohio (Mr. McCulloch), the ranking Republican mem- f the House Committee on the Judiciary, has played an absolutely pensable role in the passage of every important bill of that kind. ysical limitations have prevented him from being here this after- . He personally contacted me this morning and requested that I ar on the floor this afternoon before the committee and inform that he had prepared a statement which he wished me to read. ould like at this time to read his statement.

. MCCULLOCH. Mr. Chairman, the central issue confronting the bers of this body in choosing between H.R. 1746 and H.R. 9247 is her the Equal Employment Opportunity Commission should be ed cease-and-desist powers. There is no question in my mind that uld.

e difference between the two approaches is that H.R. 1746 would the Commission to issue what is, in effect, a preliminary injunc- whereas H.R. 9247 would allow only a Federal court to issue such junction. Both approaches are subject to later judicial scrutiny. he critical distinction is that H.R. 1746 places the burden of delay e wrongdoers whereas H.R. 9247 places the burden of delay on ictim. If the Commission with its unsurpassed expertise in this

field believes that discrimination exists, why should relief be withhel for months or more until the Federal courts have time to take up th case?

The burden of delay must fall on one side or the other. I prefer t place my trust in the Commission's judgment. H.R. 1746 does tha H.R. 9247, in effect, presumes that the Commission is wrong unt the Federal court overrules that presumption. Thus I cannot suppo H.R. 9247.

When the Commission finds wrongdoing, why should we presum that the wrongdoer is right? Why should we presume that the Co mission is wrong?

Suffice it to say this distinguished member of the House Committe on the Judiciary shares with me the concern that I expressed on yeste day that if we are really seeking the most effective and the most ex peditious means of enforcement under Title VII, we should choose th administrative process or run the considerable risk of overburdenin the Federal judiciary of this country. I take my place with pri alongside of the distinguished gentleman from Ohio (Mr. McCu loch) in support of the committee bill, H.R. 1746.

The CHAIRMAN. The Chair recognizes the gentleman from Kentuck (Mr. Mazzoli).

(Mr. Mazzoli asked and was given permission to revise and exten his remarks.)

Mr. MAZZOLI. Mr. Chairman, I rise in support of the substitute.

Earlier today we heard from the distinguished gentleman fro New York (Mr. Reid), who indicated that the cease-and-desist powe generally settle more cases—roughly 98 percent of the cases. I woul like to suggest that the committee read on page 11 of the committe report where it is stated:

Past experience with administrative hearings and court enforcement indicat that cease-and-desist would be more effective. Experience has shown that one the main advantages of granting enforcement power to a regulatory agency that the existence of the sanction encourages settlement of complaints befo the enforcement stage is reached.

I might say the existence of this dramatic and drastic and potentiall arbitrary power waiting on the sidelines does tend to settle cases, bu it may not settle them accurately and appropriately.

I further suggest that the committee read on page 11 where it says

Moreover, administrative tribunals are less subject to technical rules go erning such matters as pleadings and motion practice which afford opport nities for dilatory tactics and are less constrained by formal rules of evidenc

I might suggest to the committee that abandonment of formal rul of evidence does not guarantee the equitable disposition of cases. I does not adhere to the noble and time-tested traditions of America, th tradition of the rule of law, the tradition of granting each party hi day in court and the fullest protection of all rules, procedural and ev dentiary on the statute books.

I urge support of the Erlenborn substitute.

The CHAIRMAN. The Chair recognizes the gentleman from Iow (Mr. Gross).

(Mr. Gross asked and was given permission to revise and exten his remarks.)

Mr. GROSS. Mr. Chairman, I rise in support of the Erlenborn stitute.

By unanimous consent, Mr. Gross yielded the remainder of his to Mr. Erlenborn).

he CHAIRMAN. The Chair recognizes the gentlewoman from Michi- (Mrs. Griffiths).

Mrs. Griffiths asked and was given permission to revise and ex- her remarks.)

Mrs. GRIFFITHS. Mr. Chairman, I rise in support of the bill and nst the Erlenborn substitute.

would like to point out that this bill affects women, 52 percent of population of this country. If there is any group that should not illing to trust their rights to the Federal courts of the country, it men. They have never won. The only case that has ever reached Supreme Court under Title VII, the Supreme Court had the colos- erve to laugh.

there is any group to which I am not willing to trust my rights he Supreme Court of the United States.

r. Chairman, I am for the cease-and-desist powers remaining in the Commission, and on behalf of all women, I think that is correct.

we only win one-third of the cases, that is one-third more than ver won before.

herefore, Mr. Chairman, I urge everyone here to oppose the nborn substitute and vote for the committee bill as it has been en.

he CHAIRMAN. The Chair recognizes the gentleman from Wiscon- Mr. Steiger).

Mr. Seiger of Wisconsin asked and was given permission to re- and extend his remarks.)

By unanimous consent, Mr. Gerald R. Ford yielded his time to Mr. ger of Wisconsin.)

r. STEIGER of Wisconsin. Mr. Chairman, I think with what has said recently in the debate we have finally gotten back to the where it is very clear as to what the issue is. The issue is not the rescreen of setting quotas and it is not the smokescreen of prefer- l treatment, but, rather, what kind of enforcement powers should ranted to the EEOC.

he issue is whether or not the administrative approach is preferable hether the referral of these matters to the courts is preferable.

r. Chairman, I think the Chairman of the EEOC who has ex- ed his views on this matter are worth recalling to the members of committee. In his testimony he said this:

must keep in mind that the great growth of administrative agencies as icating bodies took place in the 1930's, because of the established hostility ack of understanding of the problems of that time by the courts of that

lay, in the area of civil rights at least, the opposite has been true. Whereas nistrative and other non-judicial approaches have evidenced timidity and of resourcefulness on the part of the administrative agencies, the courts the beginning demonstrated both that they knew the nature of the problem ere willing to take steps necessary to effectively combat employment dis- nation.

I think, Mr. Chairman, that that one statement of the Chairman of the Equal Employment Opportunity Commission more than anything else clarifies exactly what we are talking about. What we would get through the adoption of the Erlenborn substitute is the ability to insure not only effective enforcement and to insure fair enforcement but prompt enforcement of the voluntary enforcement compliance efforts of the EEOC.

If you stay with the committee bill, not only do you have the continuing problem of administrative relief of cease-and-desist which is less substantive and less effective than the court process, but you also have the three other problems: namely, the transfer of the jurisdiction of the Civil Service Commission, the transfer of the pattern and practice jurisdiction of the Justice Department and the transfer of the OFCCC. You put them all together with the cease-and-desist authority plus granting jurisdiction over State and local employees and you create problems.

Mr. Chairman, I think the substitute amendment which has been offered by the gentleman from Illinois (Mr. Erlenborn) and the gentleman from Kentucky (Mr. Mazzoli) offers to this House the opportunity to fulfill a commitment to grant the power to EEOC that it needs now in its effort to see that all parties are treated equitably and justly.

Mr. Chairman, I trust that the substitute amendment will be adopted.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. Biaggi).

(Mr. Biaggi asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, many years ago New York State adopted a law that created a State Commission for Human Rights, and thereafter the city of New York did likewise. It did so initially without a cease-and-desist order.

The enactment of that legislation was virtually meaningless. Later cease and desist was written into the law, then it became a meaningful operation. The statistics were correctly enunciated by the gentleman from New York (Mr. Reid) showing very effectively the process of conciliation and cease and desist works.

The gentleman from Wisconsin said it is a question of administrative remedy versus judicial remedy. I suggest that that is not the case because under the committee bill you have the administrative remedy plus the judicial remedy. When a cease-and-desist order is granted the respondent can then appeal to the courts.

Currently I am representing a young lady, and have been for four years, who is seeking to be a baseball umpire. We went through the State commission for human rights, and won every step of the way. It was appealed on cease and desist. We are now before the State of New York Court of Appeals waiting a determination. That confirms the fact that you have judicial plus administrative remedies.

In addition to that we have a situation existing now where the commission grants money to the human rights commission in the various States in order to employ more people to deal with complaints.

This route is pursued because they know they are inadequate by virtue of the absence of cease and desist orders. By providing more per-

l the complaints or complainants are referred to the State agency
they can seek redress and get the advantage of cease and desist.
mbers of the House, this is vital, it is working, and, again I re-
that is the salient point—it is working. The substitute offered by
ntleman from Illinois (Mr. Erlenborn), I presume—and I have
sume, because I know the gentleman—that he intends in good
to provide substantial relief. Others have stated this substitute is
t but a ploy to deny civil rights machinery to all aggrieved peo-
f so, I suggest that he is asking for surgery when an aspirin
l do.
arguments of those opposed to giving the EEOC cease-and-de-
rders seems to center around a fear that employers will be sub-
to unjust actions by a governmental agency attempting to form
n civil rights policy that may not be in keeping with the law.
fact is that cease-and-desist powers are available in some 35
that have fair employment practice acts of one sort or another.
ionally, the EEOC through its grant authority has provided
to State and local commissions that then use their cease-and-
powers to bring about desirable results. There have been no
aints of the operation of this system.
be specific, the EEOC granted $1,050,000 to various human rights
man relations commissions during 1971. A total of 41 governmen-
dies—23 States, 17 cities, and the District of Columbia—used this
to file unfair employment charges and issue cease-and-desist or-
In New York City, for example, the Commission on Human
s received over $100,000. The State division of human rights
ed over $75,000.
power is there and is being exercised. Why waste government
in employing people to do something twice. The EEOC could
its own accord in issuing cease-and-desist orders and be more
ve in the process. Moreover, Congress would be in a better posi-
exercise its oversight function in this regard by keeping direct
n the effect of appropriated dollars.
ability of the EEOC to eliminate job discrimination will be
y enhanced by the authority contained in the Hawkins measure.
of the amendments that will be proposed to ease the fears of
yers should be considered if they will not have a weakened effect
bill. I believe a limitation on the liability of an employer to
ck wages or reinstate personnel is legitimate. Also requiring that
lay notice to an employer or union before unfair employment
s are filed will not weaken the bill in any way.
s Congress has the obligation to help eliminate the last vestiges
discrimination in this country. Equal employment opportunity
ntial to the fight for racial equality. Unless a man has the oppor-
to succeed in life, he will never be able to hope for a better
. I urge approval of the measure substantially as reported from
mmittee.
CHAIRMAN. The Chair recognizes the gentleman from Cali-
(Mr. Corman).
. Corman asked and was given permission to revise and extend
narks.)
CORMAN. Mr. Chairman, I am firmly convinced that the greatest
n this Nation has borne since it was founded is racism, and it is

something that was thrust upon us by history. The one encouraging thing we can say is that we have always moved in the direction of destroying it.

From 1808, when we said we will no longer import human beings to sell, we have moved in the direction of fulfilling the promise of those who founded America to all Americans. In 1865, we kept this promise alive with the ratification of the 13th Amendment and black men across this country thought this promise might even become a reality with the passage of the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Open Housing Act. Today, we are voting on a bill that is as important as any we will have this year because the House of Representatives is going to decide whether we as a Nation want to move on down that road of freedom and equal opportunity or whether we want to back out on a promise we made nearly 200 years ago.

All the talk about the Erlenborn substitute being the greater remedy to insuring equal opportunity is hogwash. Just look at the people inside and outside this House who support or oppose it—and we all know what the issue is.

I was sorely disappointed when the minority leader was not on the side of the committee, and on the side of the gentleman from Ohio (Mr. McCulloch), because he is so important, and so often he speaks for the administration, as well as for the minority Members of the House. Mr. McCulloch and Mr. Celler have for the past two decades been giants in the struggle for civil rights and both are strongly opposed to the Erlenborn substitute.

I was disappointed when Mr. Ford and the President did not support a continuation of the voting rights bill in the last Congress and by their opposition to integrating suburbs and schools. Throughout his administration, the President has acted repeatedly to frustrate the desires of blacks to vote, to enjoy equal housing opportunities, to avoid the job discrimination which has prevented them from taking their proper places in the American job market. As one of the major spokesmen for the administration, the minority leader has frequently backed the President in perpetuating these injustices.

It was disheartening to learn that the minority leader does not support cease-and-desist power for the Commission because more important than the issue itself or the party advocating it, this enforcement power is a symbol that we in the House of Representatives are still firmly opposed to racism and that we want to end it using the most vigorous mechanism we can.

We tried in 1964 to get cease and-desist power for the Commission when it was first established. We knew it would have to come some day. I am sorry we had to wait so long. Since 1964 we have fought to allow the black man to take his place beside his white brother in our schools, in our neighborhoods and I believe it is long overdue that he take his proper place in the labor market.

I truly regret that the minority leader is not supporting the committee, but I hope the Erlenborn amendment is defeated overwhelmingly because I hope that the voice is loud and clear that we are still dedicated to eliminating racism in this country.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. Reid) for 2 minutes.

Mr. Reid of New York. Mr. Chairman, on the point of how rapidly
s proceed, let me just say that litigation on Title VII cases has
n held up for years in courts.
or example, the case of Washington against T.G. & Y Stores has
n before the Federal District Court for the Western District of
isiana on motions to dismiss for 13 months, but the case has not
reached trial. Even more outrageous is the fact that charges were
inally brought in this case 3 years ago.
econd, let me point out that Chief Justice Burger has opposed
slative introduction of large numbers of cases into the Federal
cial system without first providing for the reorganization of that
em.
n an address before the American Bar Association last year, Chief
ice Burger said:

e difficulty lies in our tendency to meet new and legitimate demands with
laws which are passed without adequate consideration of the consequences
e terms of case load.

ne Commission itself estimates that the new case load could be
)0 additional cases.
would submit that that would not result in expediting the adminis-
on of justice, but it could mean a lack of timely and effective en-
ement.
he House passed this bill in 1966. The Senate passed it in 1970. I
e today that we make equal employment opportunity a reality now
defeat the Erlenborn amendment and then go on to approve the
mittee bill which is the kind of legislation that should have really
passed 20 years ago and which is legislation that is vitally neces-
to our country.
e Chairman. The Chair recognizes the gentleman from Illinois
Erlenborn) for 4 minutes.
Mr. Erlenborn asked and was given permission to revise and extend
emarks.)
r. Erlenborn. Mr. Chairman. I am not going to take the time of
Committee now to again reiterate what is in my substitute or
t is in the committee bill. I think we have had a thorough dis-
ion of that during the last 2 days.
e also have had an issue raised, new this week, by the introduction
new element by the gentleman from Pennsylvania (Mr. Dent)
ome three amendments that he proposes to offer if he has an op-
unity to offer them to the committee bill.
wo of those amendments are amendments that I offered in the sub-
mittee and in the full committee. They were rejected by the com-
ee. I would still support them if it comes to that, but I hope it
not. I hope my substitute amendment is adopted.
ne third point is another issue that has been somewhat debated
that is the question of removing from the OFCC jurisdiction the
t to set effective goals, an affirmative action plan.
ne circuit court of appeals has affirmed the Philadelphia plan.
here is an obligation requiring bidders on Federal or federally
sted construction projects to submit an affirmative action plan for
employment of minorities excluded from referral systems in six
es.

The courts upheld this, and held specifically that it does not violate Title VII of the 1964 Civil Rights Act.

But what is the thrust of the gentleman's amendment? It can be one of two things. It either means nothing or it destroys the affirmative action authority that the OFCC now exercises.

I submit from the explanation of the gentleman from Pennsylvania (Mr. Dent) that he believes it does the latter—it destroys this authority.

How the proponents of civil rights can support this sort of amendment and can take the floor and say that this is a fine thing—I do not understand, because the one great opportunity for greater minority employment in the construction crafts has been through the OFCC affirmative action plan.

Yesterday I referred to an editorial published in the Wall Street Journal and read a part of it. A good deal of the debate we have had concerning the effectiveness of enforcement proceedings, cease and desist vis-a-vis court enforcement, has been as to the speed and effectiveness of the opposing enforcement procedures. This editorial in the Wall Street Journal addresses itself to that point:

But speed is only one measure of effectiveness; final results are a better gauge. But by that measure, too, the scholarly critics doubt that complex problems of bias, deeply rooted in many aspects of the society, lend themselves to resolution through cease and desist orders. For one thing such orders issued by the labor board have the relatively limited function of getting parties to negotiate. At the EEOC, they would presumably have to carry a greater problem-solving load. Furthermore, some experts worry that a substantially strengthened EEOC would invite subversion from special-interest groups.

Concluding, the editorial states—

No doubt, the new powers Congress confers upon the EEOC will profoundly affect the future course of the civil-rights movement. While most civil-rights advocates prefer cease and desist, it's by no means clear that this approach would ultimately prove more effective than merely authorizing the EEOC to ask courts to enforce its anti-discrimination rulings. As Mr. Blumrosen writes: "One court decision is worth 10 written conciliation agreements and one hundred annual reports of administrative agencies."

Mr. Chairman, I urge support of the Erlenborn-Mazzoli substitute, which would give the Commission the right to go into court, resulting in fairness to both parties, and expeditious, judicial and fair relief. I hope the Erlenborn-Mazzoli substitute is adopted.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. Hawkins).

(Mr. Hawkins asked and was given permission to revise and extend his remarks.)

Mr. HAWKINS. Mr. Chairman, I was quite upset when the minority leader some time earlier mentioned the Philadelphia plan as the main support apparently of blacks and others to get jobs in America.

In the first year of the operation of this plan do you know how many blacks got jobs? Less than 100. Do you know how many women have gotten jobs in the history of the Philadelphia plan? Not a single one. Yet the gentleman has the nerve to put that forth as a civil rights record to go to the American people.

The gentleman from Illinois (Mr. Erlenborn) says that we are attempting to destroy affirmative action plans by transferring the authority of the Office of Federal Contract Compliance. The amendment

ne gentleman from Pennsylvania (Mr. Dent) does not do this, he knows that it does not do this. Furthermore, he knows that to sfer it to Title VII of the Civil Rights Act would, for the first , bring labor under the operation of the law, which is now exempt r the OFCC. It cannot be reached. They are trying to reach by having the companies do it. But labor itself is not touched. If does not strengthen the law, I do not know what does. These tatements have gone on for 2 days.

hat the Erlenborn substitute does is to nullify the Civil Rights of 1866, which later became the 14th Amendment, as far as em- nent discrimination is concerned. It nullifies the Equal Pay Act. ipes out the Office of Federal Contract Compliance where Title now applies. And it wipes out other Civil Rights Acts as well.

e implication is given that somehow this bill is supported by some rights individuals. What ones was never brought out in the com- e. It is a phantom Civil Rights Act. The origin is clouded in ery. The Chairman of the EEOC would not take credit for it, the rney General's Office would not take credit for it, and apparently lministration has not yet taken credit for it. Its support is under- nd. They are operating as guerrillas to try to line up support in House.

e CHAIRMAN. The time of the gentleman from California has ed.

e Chair recognizes the gentleman from Pennsylvania (Mr.).

. DENT. Mr. Chairman, I yield to the gentleman from California Hawkins).

. HAWKINS. Mr. Chairman, the future of this bill is equally a tom. This bill is going to evaporate if its real mission is accom- ed, which is the defeat of H.R. 1746. This bill was not dragged til it was thought there was a possibility of passage of a strong rights bill. The proponents have not yet indicated how this some way accommodates to the administration position, or how osition of the minority leader in the House squared with the mi- y leader in the other House who is supporting our bill—that explained. There has been no explanation as to why they do not to follow the leadership of the ranking Republican on the Ju- ry Committee, who is supporting our bill.

parently there has not yet been an understanding of Chief Jus- Burger's warning that to pass such legislation will result in at 20,000 to 25,000 more cases in courts which are already over- led.

. DENT. Mr. Chairman, will the gentleman yield for just a ques-

. HAWKINS. I yield to the chairman of the subcommittee, the eman from Pennsylvania.

. DENT. Mr. Chairman, I would like to ask the gentleman if in inion after the experience we have had, and with his sources of ledge and the acquaintances the gentleman has with the many rights groups in the United States, and after hearings on this leg- on all over the country in the last 3 years before our com- e, would the gentleman say that a vote for the Erlenborn amend-

ment would be considered a vote favorable to a good civil rights bill or a bill that has the support of civil rights groups?

Mr. HAWKINS. There is no issue which is clearer. The only person they have ever quoted who is anywhere near to being a civil rights activist or a civil rights spokesman is the Chairman of the Equal Employment Opportunity Commission, and he is an appointee of the administration. Not only that, but also in spite of that, he supports not just this bill, but he wants a self-enforceable cease-and-desist order bill, so he wants to go much beyond the position we maintain. That is the only person they have ever quoted.

They do not have the support of a single civil rights organization or a single women's rights organization on their side. Yet they have the audacity to give the impression that somehow they are doing something with and for minorities. I suppose before making that statement they have not consulted with the minorities.

I think this is one of the most dangerous and far-reaching types of sabotage of a civil rights bill. I think there should be give and take on both sides, but certainly there should be some giving on the other side and not only just on our side. On the asking for minorities and women to continue to be patient while we drag out the implementation of the Civil Rights Act.

Mrs. GREEN of Oregon. Mr. Chairman, I rise to oppose the Erlenborn amendment. First of all, I worked for 7 years on a bill to provide equal pay for equal work. On page 4 of the Erlenborn bill, on line 14 it reads:

A charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization.

In a memorandum from Mr. Erlenborn's office, dated June 17, 1971, on pages 1 and 2:

2. *Exclusive Remedy.* Section 3(b) of the bill adds a provision that charges filed under Title VII shall be exclusive federal remedy for persons claiming to be aggrieved by discriminatory practices of covered respondents. . . . One effect of this section is to supersede employment discrimination proceedings now being filed under the Civil Rights Act of 1866 and the National Labor Relations Act, amongst others.

The Equal Pay for Equal Work Act is one of those "among others."

Mr. Erlenborn stated yesterday, in supporting his substitute:

So a person bringing an action under this cannot shop around for another forum on which to base another law suit, we would make the Equal Employment Opportunity Act the sole Federal remedy for relief from discriminatory employment practices.

From these statements, I cannot but conclude that a woman no longer has the protection of the Equal Pay for Equal Work Act. This is another reason why I believe that the Erlenborn substitute is misnamed. It is not an equal employment bill if it wipes out in one fell swoop the provisions for some justice for the majority of the people in this country and for one third of the labor force: The women, black and white, red and brown, who have historically been doing identical work to that of men and have been paid less. In 1963 this Congress finally passed the equal pay for equal work bill. Is the minority leader, Mr. Erlenborn, and are other Members of this House willing to

a bill today which denies equal employment rights in the form
qual pay to some 36 million American women?
r. Chairman, let me turn to the argument over the power that
ıt be exercised under the cease-and-desist provision. My State of
gon has had cease-and-desist powers as have some other 30 States
ıe Union. It is not under the cease-and-desist power that unfair
tices occur in Portland and in other parts of my State. The in-
ties, the injustice comes about because of the almost absolute power
h the Office of Federal Contract Compliance exercises. Yesterday
ferred to three cases of which I had personal knowledge. One of
e was a ship conversion plant in Portland. In Oregon we have a 5
percent black population. This ship conversion plant had on their
olls 15 percent minority employees. Long before OFCC was
lished this plant had gone out to actively recruit members of the
rity races. The Contract Compliance Office in San Francisco said
percent quota was not sufficient and that they must hire 15 per-
in every job category. They demanded that 15 percent of all
ers be members of the minority race; that 15 percent of all of the
ricians be of a minority race; that 15 percent of all carpenters be
minority race; that 15 percent of the clerical employees be of
ıority race.
ie Office of Contract Compliance further threatened to hold this
any in noncompliance and ineligible for Federal contracts unless
complied with their demands. The management of the plant ex-
ed that there were not a sufficient number of qualified welders
ıg the minority groups to meet that 15 percent quota. The answer
we have a surplus in Chicago, we will bring them to Oregon.
e management of the plant decided that any appeal was hope-
ınd that it was almost impossible to successfully appeal an order
the Contract Compliance Office.
ıder the cease-and-desist orders there is an automatic right to
ıl the case. It seems to me that this is a much fairer way than
tinuation of the awesome power exercised by the Office of Federal
ract Compliance which the Erlenborn substitute would now
fer to the EEOC.
summary, Mr. Chairman, I oppose the Erlenborn substitute be-
it perpetuates the quota system established under the Executive
and in conflict with Title VII of the Civil Rights Act. I oppose
Erlenborn amendment because in giving special rights to some
nies equal rights and job opportunities to others. I oppose the
ıborn amendment because it has clearly been misnamed. It is not
ual employment bill when it wipes out the Equal Pay for Equal
Act which was finally placed on the statute books after years
ork by almost every women's group in the country.
. Ashbrook. Mr. Chairman, I supported the Erlenborn sub-
e but will vote against this bill. Having followed Title VII very
y since its inception and the EEOC since its establishment it is
us that the real purpose of granting additional powers for the
C is to give it more authority than it deserves or should properly

e EEOC will work for quotas, despite congressional intent, and
s blackjack authority to force these on employers. Cease-and-
powers, however, discussed in the rhetorical context, will be

the method for compliance. Just as bureaucrats now order localities or businesses to "submit plans" they will hold the threat of issuing cease-and-desist orders over the heads of business to bring about compliance.

An editorial from the Indianapolis News on September 7, 1971 states the issue very well. I read it into the Record at this point:

One of the first restrictions a totalitarian government imposes is to forbid freedom of movement, an authorization tactic some top members of the Equal Employment Opportunity Commission also want to adopt.

A trio of EEOC attorneys, including an executive director of the American Civil Liberties Union, has recommended to the chairman that entrepreneurs must first prove to EEOC's satisfaction, or face court action, that any proposed relocation of a business is solely for improvement of its economic or competitive position. What the attorneys really intend is to prevent businesses from closing down unprofitable facilities in inner cities—a prohibition which eventually would injure employe and employer. No businessman can tell beforehand what effect relocation is going to have on employment.

The attorneys claim that any contemplated move to a site "that threatens to deprive minority workers of employment opportunities constitutes a prima facie violation of Title VII" of the Civil Rights Act of 1964. In a memorandum to William H. Brown III, chairman of EEOC, the attorneys said: "Section 703(a) states that it is unlawful for an employer 'to deprive or tend to deprive any individual of employment opportunities . . .'" The catch is—and it blows the entire "legal" argument—the section says much more, to wit:

"Section 703(a). It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

"(2) to limit, segregate, or classify his employes in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employe, because of such individual's race, color, religion, sex, or national origin."

What EEOC trio has done is to trim down part two of Section 703 to "provide" its legal authority to restrict freedom of movement. Taken as a whole, Title VII, Section 703(a), parts one and two, says nothing about where a businessman can or cannot operate. It simply requires him to hire, fire and compensate an individual solely on his skills and performance—which, out of economic self-interest, a smart employer would do anyway.

The EEOC attorneys are attempting what Congress clearly has not authorized and therefore has prohibited. Only the President, however, can prevent the EEOC, an executive agency, from severely damaging the free enterprise system.

Mr. Chairman, this agency does not deserve any additional power. I oppose giving it any additional authority.

Mr. BADILLO. Mr. Chairman, we are today considering a measure which will grant the Federal Government much needed enforcement powers to end discriminatory employment practices and to improve and, hopefully, reinforce Federal efforts to prevent bias in employment. Although I intend to fully support the Equal Employment Opportunities Enforcement Act of 1971—H.R. 1746—I believe the time is long overdue for the Federal Government to put its own house in order in terms of ending its own discriminatory employment practices.

Although the Government must have the authority to bring an end to the bias and prejudice which currently exists in many areas of personnel policies in the private sector, it must also abide by the same principles and achieve the same goals and quotas which are established for private industry and labor. I am especially concerned over

very poor record of the Federal Government in the employment Spanish-speaking Americans.

The U.S. Government is the Nation's largest employer with some 1,639 men and women serving in civilian capacities. However, nish-speaking persons represent only 2.85 percent of all Federal loyees—less than half of our proportion of the general population. s interesting to note that two departments which administer social economic welfare programs of special importance to much of the nish-speaking community—HUD and HEW—have a particu- y small percentage of Spanish-speaking employees—1.3 and 1.2 cent, respectively.

n addition to the very low representation of Spanish-speaking ericans in the Federal civil service, it is also most important to ize that those who are fortunate enough to be employed by Uncle are heavily concentrated in the lower grade levels. The U.S. mission on Civil Rights advises me that there are only 17 Spanish- king persons who hold supergrade positions—GS–16 to GS–18 he entire Federal Establishment.

ast November, the President announced a 16-point program de- ed to create greater employment opportunities for the Spanish king in the Federal Government. Although this program has been xistence for some 10 months and has taken some small steps to lement the President's 16 points, it is clear that much remains to one. Two departments, for example—DOD and the U.S. Postal ice—together employ 81.09 percent of all Spanish-speaking per- in the Federal Establishment. The great majority of Spanish- king citizens continue to be concentrated in pay categories below 00 per annum and very few—too few—are in positions of respon- ity or decisionmaking. Consider, for example, the fact that only n Spanish-speaking persons are in the supergrade category in the artment of State and none heads any of our country's foreign ions in any Spanish-speaking nation, even though the Nixon ad- istration has professed an intense interest in our Latin American hbors to the south.

r. Chairman, it is clear that the time is long past to end the hypoc- of equal employment opportunities practiced by the Federal Gov- ment since the first Equal Opportunity Executive order was pro- gated in 1955. It is time for the U.S. Government to follow the ciple of employment of Spanish-speaking Americans commen- te with their percentage of the total population. Tokenism is rly unacceptable to the Spanish-speaking community. An imme- e and concerted effort must be undertaken to fully implement the oints announced by Mr. Nixon last year and to expand them where ssary to achieve some meaningful results. I speak not only of in- sing employment opportunities for Spanish-speaking Americans also in ending certain requirements or features of personnel poli- which discriminate against Spanish-speaking persons. For exam- physical height requirements have often presented unnecessary iers to the employment of Spanish-speaking persons in many ncies. Most of the written examinations are conducted in English,

even though the results of a test may not necessarily reflect the ap
plicant's ability to perform a particular job.

The failure of the Federal Government to afford full and equa
employment opportunities for Spanish-speaking persons transcends
Republican or Democrat administrations and the low degree of em
ployment has remained at the same basic level for over a decade. The
efforts of the U.S. Civil Service Commission to recruit Spanish
speaking persons must be significantly accelerated and the continued
low representation of Spanish-speaking persons in the Federal servic
clearly indicates that considerably stronger efforts must be made
While I realize that we are now in the midst of a freeze in Federa
employment, this situation will certainly not persist and when the
Federal job market again becomes open, expanded opportunities must
be made available for Spanish-speaking Americans—not only in term
of being hired but also in achieving promotions and in being selected
for supergrade and important managerial positions.

In order that our colleagues may have a clearer picture of the cur
rent situation, I submit herewith, for inclusion in the Record, two
charts on Spanish-speaking employment prepared by the U.S. Civil
Rights Commission and the U.S. Civil Service Commission and the
President's 16-point program.

Mr. Chairman, Spanish-speaking Americans have been treated as
second-class citizens far too long and we demand fair and just treat
ment by the Federal Government. Equal employment opportunities
has been a hollow, meaningless promise to us and we intend to exer
all necessary efforts to achieve full equality with other citizens. We are
not making extraordinary demands but simply ask that the Federal
employment of Spanish-speaking persons shall be proportionate to
our percentage of the total population of the United States and that
we be afforded the opportunity to serve at all levels of Government
service, including management and supervisory positions. Federal per
sonnel policies and practices must serve as models for the private
sector and true equal employment will not occur in this country until
it exists in the Federal service.

The material follows:

1970 minority group study: all agency summary—full-time employment as of May 31, 1970

RANKING OF THE 12 DEPARTMENTS

(Percent of staff Spanish surnamed)

Commerce	0.
Transportation	1.
Health, Education, and Welfare	1.
Housing and Urban Development	1.
Treasury	1.
Labor	1.
Agriculture	1.
Interior	2.
Justice	2.
State	2.
Post Office	2.
Defense	4.

Source: Minority group employment in the Federal Government May 31, 19
Prepared by U.S. Civil Service Commission.

NUMBER AND PERCENT SPANISH SURNAMED[1]

de	Average wage[2]	Number	Percent
	$4,758	108	5.5
	5,386	624	2.6
	6,076	3,649	3.3
	6,823	4,877	2.8
	7,631	3,987	2.6
	8,501	1,493	1.9
	9,440	2,296	2.0
	10,441	410	1.5
	11,517	2,706	1.8
	12,669	190	1.0
	13,878	1,767	1.2
	16,543	1,081	.9
	19,537	619	.7
	22,897	315	.7
	26,675	163	.6
	30,943	9	.2
	35,801	7	.6
	37,624	1	.2

epresent total Federal employees.
erage salary for a grade is usually at step 4.

VICE COMMISSION REPORT, MINORITY GROUP STUDY, FULL-TIME EMPLOYMENT AS OF MAY 31, 1970

PERCENT OF WORK FORCE THAT IS SPANISH SURNAMED TOTAL ALL PAY SYSTEMS

	Department of—											
	Commerce		Transportation		Health, Education, and Welfare		Housing and Urban Development		Treasury		Labor	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
SCHEDULE												
	28	0.6	59	1.5	403	1.7	64	2.9	505	2.2	29	2.2
	43	.7	173	1.8	404	1.3	55	1.6	379	1.6	33	1.2
1	51	.9	215	1.1	188	1.0	34	.9	289	1.5	38	2.6
13	33	.7	131	.8	93	.9	22	.7	129	.9	48	1.6
15	6	.2	15	.3	37	.7	9	.7	10	.3	18	1.3
18	0	0	2	.7	2	.7	0	0	0	0	2	2.0
AL FIELD RVICE												
12												
16												
19												
21												
l, Postal Field rvice												

	Agriculture		Interior		Justice		State		Defense		Post Office	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
SCHEDULE												
	381	3.1	322	3.2	278	3.4	28	3.3	5,796	3.8		
	451	1.6	302	2.2	379	3.2	55	2.3	4,868	2.7		
1	196	.8	187	1.2	85	1.2	28	2.6	2,865	1.8		
13	51	.4	65	.7	37	.6	10	2.6	771	.8		
15	4	.1	12	.4	7	.4	6	.7	53	.2		
18	0	0	1	.5	2	.7	1	2.5	1	.1		
AL FIELD RVICE												
											16,039	2.7
											1,600	1.8
12											133	.8
16											33	.7
19											3	6
21											0	0
l, Postal Field rvice											17,808	2.5

Minority Group Employment in the Federal Government; May 31, 1970. Prepared by U.S. Civil Service Com-
S. Government Printing Office, Washington, D.C.

SIXTEEN-POINT PROGRAM

The President today announced the initiation by the Civil Service Commissi of a sixteen-point program to assist Spanish-speaking American citizens wh are interested in joining Federal civilian service.

This program is a follow-up to the statement the President made in his July 3 press conference in Los Angeles welcoming interested and qualified Spanis speaking persons who have an interest in Federal employment.

The sixteen steps which Civil Service Commission Chairman Robert Hampton will begin immediately to undertake are as follows:

1. Appoint a full-time official in the Civil Service Commission who will provid advice and assistance on matters relating to Spanish-surnamed population t assure full application of the EEO program in all Federal agencies to this grou

2. Begin an intensified drive to recruit Spanish-surnamed persons, particular for identified public contact positions, in areas of heavy Spanish-speaking popul tion, including the Southwestern states and in Chicago, Detroit, and New Yor and certain other major metropolitan areas.

3. Use specialized recruitment teams, to include Spanish-speaking person for college recruitment, particularly at colleges with heavy Spanish-speakin enrollments.

4. Begin work immediately with OEO, DHEW, HUD, Labor to find ways t enhance opportunities at all levels for Spanish-surnamed Americans in progra dealing with the Spanish-speaking population as well as in other programs and key occupations.

5. Step up recruitment for Cooperative Education Program at colleges wit significant numbers of Spanish-speaking students to permit entry from FSE registers without necessity of written examination.

6. Emphasize to Federal agencies availability of selective placement bilingual basis so Spanish-speaking persons may be reached for appointme to positions dealing with the Spanish-surnamed population.

7. Hold an EEO conference of Federal managers and equal opportunity offici in the Southwest designed to assure equal opportunity for Spanish-speaki persons in employment and upward mobility in Federal agencies.

8. Develop plans for Federal agencies under CSC area office leadership t work with high schools in Spanish-speaking areas to make known job oppo tunities in the Federal Government and to counsel and to encourage students stay in school.

9. Hire for summer employment in Federal agencies school and college teache from schools serving Spanish-speaking students to give them understanding the Federal Government which they can relate to students.

10. Make special effort to inform Spanish-surnamed veterans of availabili of non-competitive appointments for Vietnam Era Veterans including GS- level.

11. Require Federal agencies to review their EEO action plans and minori employment figures and make any necessary revisions to assure the full applic bility of the plans to Spanish-surnamed population.

12. Review with agencies staffing of EEO program to make sure that the is understanding in the program of the special problems of the Spanish-speakin

13. Provide additional training programs on EEO and personnel management for Federal managers in areas of Spanish-speaking population.

14. With the Department of Labor, explore the feasibility of establishing a Intergovernmental Training Facility for upward mobility and skills traini for Federal, State and local careers in the Southwest, probably in San Antonio.

15. Collect necessary data and broaden analysis of minority statistics to brin out special information relating to employment and upward mobility of Spanis surnamed persons in the Federal Government.

16. Require EEO reports from agencies to reflect special information o Spanish-surnamed persons and include in the CSC agenda for EEO evaluatio questions directed at particular problems relating to employment and upwar mobility of Spanish-surnamed persons.

Mr. JAMES V. STANTON. Mr. Chairman, I rise in support of H.R 1746 because, as I see it, the issue is simply one of Congress keeping its word. In the Civil Rights Act of 1964, we promised that job opportu nities would be open to all Americans, without discrimination on ac count of race, religion, gender, or national origin. But we neglected at that time to see to it that there were adequate provisions in the law for

ng out this commitment. The evidence adduced at the committee
igs makes it plain that unfairness persists in the job market, com-
ing our grievous unemployment problem. We have learned from
ience in this country that promises not kept are better not made—
law not enforced, because no machinery is provided for its en-
ment, arouses a cynical contempt for laws generally. If we want
t for the law in these troubled times, the laws must command
t by being drafted in such a way that compliance follows.
wise the law is reduced to a scrap of paper.

Chairman, there is nothing unique about H.R. 1746. It fits in
our pattern of administrative law. By giving cease-and-desist
s to the Equal Employment Opportunity Commission, we are
arming that agency with the type of authority familiar to all
who have followed the practices and procedures of the National
Relations Board, the Federal Trade Commission, and similar
mental entities. The cease-and-desist power has been used effec-
by those agencies, and I fail to see why the Equal Employment
tunity Commission should be an exception to the general rule.
ing my tenure as president of the city council in Cleveland, Ohio,
a hand in strengthening fair employment legislation that had
nacted earlier in that municipality. My support of H.R. 1746
istent, then, with the philosophy I subscribe to in matters of this
urge my colleagues to join with me by voting for passage of
1746.

Fraser. Mr. Chairman, one of the facts which those of us who
ncerned about governmental organization must face, is the gap
n the mandate given by Congress to Federal agencies and the
rovided to fill that mandate.

Equal Employment Opportunity Commission is an excellent
le of Government's half-hearted commitment to equal oppor-
. In 1964 we passed the Civil Rights Act which prohibited dis-
atory employment practices based on race, color, religion, sex,
onal origin. In 1971 we have still to grant the tools necessary to
e that mandate. The Equal Employment Opportunity Enforce-
Act of 1971, which we are considering today, would give the
ission the necessary structure and power to make equal employ-
pportunity a reality.

President has talked to us about making Americans proud of
ork; that all work should be considered honorable, a proud con-
on to the Nation. But how honorable can it be when minority
s and women hold the lowest paying jobs, are the first to be laid
ing cutbacks, have few benefits and in many areas are system-
y discriminated against moving into jobs involving greater skills
aining? What commitment does the Government give to make
rk honorable, when it will not even protect the rights of large
nts of our labor force whom we know are discriminated against?
e have seen too many times, the capacity to hold hearings, pro-
udies, and hold informal negotiating meetings is no substitute
l enforcement power. These are preliminary techniques. With-
al enforcement power under law, companies or individual em-
s will continue discriminatory practices until it is no longer
ble and convenient to maintain such practices. Often the source
riminatory patterns is inertia rather than deliberate intent. But

that does not lessen the injustice and economic damage done to t
recipients.

Despite the real progress made in fighting employment discrimi
tion since 1964, the fragmentation of effort by Federal agencies h
resulted in a diffuse and often uncoordinated effort to enforce t
provisions of Title VII of the Civil Rights Act of 1964.

Responsibility for Federal efforts to fight employment discrimi
tion has rested with the Office of Contract Compliance in the Depa
ment of Labor; in the Civil Service Commission--for the employees
the Federal Government; with the Attorney General in the Just
Department--initiation of pattern and practice suits; and with t
investigatory and conciliation efforts of the EEOC. The number
charges filed with the Commission has been increasing yearly since
inception and in over 63 percent of the cases investigated they fou
discrimination. But in over half these cases were not resolved throu
"voluntary means."

The EEOC enforcement bill that we are considering today combi
the structural and legal changes that are needed to make equal opp
tunity for all American citizens—regardless of race, sex, national o
gin, color, or religion--a reality. The consolidation of all Federal e
forcement machinery and the granting of judicially enforceable ce
and-desist powers are a fundamental necessity in bridging the g
between the mandate given by Congress to the EEOC and the abi
to fulfill it.

While I appreciate the points of view of Representative Erlenb
and of the minority of the committee who supported his substitute
feel that it is simply not feasible to expect the EEOC to undert
individual court cases on behalf of individuals. Both in terms of i
posing a great burden on the judicial system because of the enorm
caseloads which would result, and the protracted litigation result
from suits in civil rights cases, I believe that the Erlenborn substit
simply does not meet the needs of individual citizens. The Equal E
ployment Opportunity Commission is a regulatory agency in much
same fashion as Federal Trade Commission and the Securities E
change Commission, and it should have the same powers to pro
minorities and women as those agencies are empowered to pro
consumers and investors.

Although administrative transfers are always resisted because Fe
eral agencies too often seek to keep all possible powers and progra
under their control, it is an eminently sensible concept to concentr
all enforcement responsibilities in a single agency. At the very le
it would reduce overlay and would encourage coordination of t
program. At best, it would result in uniformity and concerted effort
development of the law, goals, policies, and procedures for ending e
ployment discrimination in the United States.

The Erlenborn substitute does not deal with any of these structu
changes nor would it extend coverage of Title VII to the groups
employees who are not presently covered by the act. This inclu
employees of State and local governments, personnel of educatio
institutions, and employees in establishments employing eight or m
but fewer than 25, individuals. In addition, the substitute would li
the amount of back pay which could be awarded in cases of discri
nation and would prohibit class action suits. This is clearly a ba

step and could only serve to aid industries and unions rather
he working man and woman.
difficult to reconcile the rhetoric of opportunities for the work-
an and woman in America with the reality of labor statistics:
n who work full time earn about 58 percent as much as men. A
n with a college diploma can expect to earn the equivalent of a
ith a high school education. Minority males earn 67 percent as
as white males. In addition, unemployment among these groups
h higher than the national average because many are considered
inal workers" and not counted among the unemployed. Many
rs such as Spanish-American agricultural workers who are sup-
to be receiving the minimum wage are not, and they have no
se. The percentage of women in top Government jobs—1.5 per-
shows that the Federal Government itself contains systematic
ination. Low wages, frequent layoffs, limited job benefits, in-
bility to learning new job skills—these are all discriminatory
es suffered by minority groups within the United States.
e in work cannot come until there is equal opportunity in work.
is a clear obligation on the part of Government to provide the
to make the words of Title VII of the 1964 Civil Rights Act a
. Therefore, I will vote against the Erlenborn substitute and
Equal Employment Opportunity Enforcement Act of 1971,
746, as reported out of committee.

Podell. Mr. Chairman, when Congress created the Equal Em-
nt Opportunity Commission in 1964, it intended to provide a
n to one of our Nation's most acute social problems, baseless
ination against members of minority groups. That discrimina-
s resulted in underemployment and lack of reasonable advance-
pportunities for those minority members who have been for-
enough to gain employment.

ng the 88th Congress, it was made clear that in order to stamp
insidious evil of employment discrimination, a strong pro-
ment of national policy favoring equal employment opportu-
private industry was necessary. There was clearly differing
s, however, on how to achieve these results. No less than a dozen
hensive bills were introduced and more than 530 hours of de-
ok place. Finally, after much lengthy consideration, the present
II to the Civil Rights Act was enacted.

impact of such legislation has been substantial. The EEOC's
nual report noted that the Commission had received 8,854
ints, rather than the projected 2,000 cases, which it character-
s a "dramatic response to the new law which reflected the
nce of civil rights organizations and minority persons in this
enue to relief from discrimination."

Commission's fourth annual report, published in 1970, similarly
s a report of the progress the EEOC has already made, ex-
g satisfaction with the number of conciliations achieved, the
tive acts programs inspired, the legal precedents which have
veloped, the data that had been accumulated, the State action
d been prompted, and the new methods which had been imple-
of public confrontation and visitation of individual plants,
industries, and geographic areas. Further, the report indicates

the EEOC was now handling an incoming annual volume of o
17,000 cases.

Despite such achievements, however, the Commission continues
suffer from a most serious handicap. There is a patent need to am
the enforcement scheme contained in Title VII. The Commissio
now relatively powerless to change discriminatory employment p
tices of respondents. After a failure of conciliation efforts, the al
edly aggrieved person is simply left to make his way alone in
unfamiliar and formidable milieu of the courts in order to ob
redress. The Commission only participated as intervenor or am
curiae in 96 Title VII cases in fiscal 1969. This is clearly not a realis
enforcement procedure.

This House has before it a bill sponsored by Representa
Hawkins—H.R. 1746—which seeks to correct this deficiency in
act. H.R. 1746 gives the EEOC power to order employers to cease
desist from their discriminatory practices. Since 1966, Congress
proposed giving cease-and-desist power to the EEOC. For one rea
or another these efforts have been stymied. This vital issue is befor
again today, and I sincerely hope that this enforcement power wil
finally granted to the Equal Employment Opportunity Commiss

An examination of statistics with respect to the progress of e
employment opportunities conclusively shows that the current vo
tary approach has failed to eliminate employment discrimination. T
time has come to end employment discrimination once and for all a
to make available for every individual the opportunity for the s
respect that goes hand in hand with a job commensurate with a c
zen's ability.

True justice demands an affirmative vote for this essential legislati

Mr. Frenzel. Mr. Chairman, prior to the floor debate on H
1746, I had been prepared to vote for the Erlenborn substitute ame
ment. There are many reasons for doing so. The Erlenborn ame
ment would give the EEOC the ability to take its cases to court. T
is a strong power which is especially potent as a threat in working
compliance agreements. It may even be a better weapon than
cease-and-desist powers sought by the sponsors of H.R. 1746.

Also, the track record of the EEOC has not been such as to insp
my confidence to place strong powers in it. The blame for noncom
ance and a heavy backlog cannot all be placed on the EEOC. Ne
theless, at least in my State, when our human rights department
given the ability to work through the APA—and later given stron
powers than mere cease-and-desist authority—these powers w
granted only after the Department has achieved a first-class com
ance record and gained the confidence of both complainants a
defendants. On the record, I do not have that kind of confidence
the EEOC.

I do not believe the powers granted to regulatory commissions
analogous to the powers H.R. 1746 seeks to give to EEOC. I am
sure that the NLRB analogy is quite comparable.

For these reasons I lean toward the Erlenborn amendment. Inde
I would feel comfortable voting for it. It would be surely a safer,
perhaps an even more effective, path toward equal opportunity
employment. But, in these times, it is not always appropriate to
comfort and safety. I believe we ought to seek instead the quick
path to equal employment opportunity. Equality has been delayed

already. In granting cease-and-desist powers to EEOC, there is risk, of course. But, I believe that the Administrative Procedure contains safeguards sufficient so that the risk lies primarily with EEOC, a Commission theoretically at least responsive if not untable to the President. In addition, the Dent amendments lessen risk of arbitrary actions by the EEOC. The notice amendment icularly tends to "defang" some objections to the administrative ess.

naller employers may find they prefer the hearing procedures un- APA rather than the expensive, unfamiliar, and time-consuming ess of going to court. Surely the court system is still available to stop the APA.

nerefore, I intend to vote for the committee bill. If the Erlenborn ndment prevails, I do not believe that the cause of human rights be set back. Nor do I believe that, if H.R. 1746 prevails, businesses be subjected to harassment without due process. In choosing the nittee alternative, I am simply looking for the quickest and best to bring equality of employment opportunity to this country.

rs. Mink. Mr. Chairman, I rise today to express my strong sup- for H.R. 1746, the Equal Employment Opportunities Enforce- Act of 1971. This legislation would greatly improve and expand Federal Government's efforts to eradicate discriminatory hiring promotion practices. It would revitalize the commitment to employment opportunity which Congress initiated in 1964 with ssage of the Civil Rights Act.

scrimination, regardless of its basis, mocks the principles of ity which have animated and guided this Nation since its very tion. But discrimination is much more than a philosophical gruity: it is an abhorrent fact of American life and a debilitating often intolerable burden on those who must struggle against it. ite our cherished principles, minority groups and women are still d equal employment opportunities in our society.

though still unsolved, the plight of minority groups in this coun- s at least recognized as shameful and unjust. Equally serious, ver, is the discrimination inflicted against working women who additionally contend with the widespread belief that their cause ther serious nor justified. The view that employment discrimina- against women is perfectly natural and only reflects the inherent ences between the sexes continues to the detriment of the en- Nation. However, as the Education and Labor Committee report is bill unequivocably states:

crimination against women is no less serious than other forms of prohibited yment practices and is to be accorded the same degree of social concern to any type of unlawful discrimination.

cause existing legislation has failed to eliminate discriminatory oyment practices, we must again concern ourselves with this to insure that all Americans, regardless of their race, religion, r national origin, share equal access to employment opportuni- H.R. 1746 would vest the major responsibility for ending illegal iscrimination with the Equal Employment Opportunity Com- n and would increase its powers and broaden its jurisdiction dingly. Established by Title VII of the 1964 Civil Rights Act, EEOC has made a notable effort to reduce employment dis-

crimination but has been severely hampered by its hitherto limit enforcement powers. Lacking this authority, the Commission has been able to produce an acceptable degree of compliance from vio tors, and barring passage of this bill, there is no reason to exp any improvement in the future.

H.R. 1746 would give the EEOC the authority to issue judicia enforceable cease-and-desist orders and would transfer to it Justice Department's authority to prosecute "pattern or practi suits. This consolidation of authority would enable the Commiss to quickly remedy individual grievances while simultaneously mo ing to eliminate the larger patterns and practices which they reve By giving the EEOC effective enforcement powers, we will great improve not only its ability to respond to violations but to preve them as well. If it is known that the Commission can and will against violators, its attempts to secure voluntary compliance will doubtedly be more successful.

The purpose of this legislation is to end employment discriminatio and this goal cannot be served by dispersing the agencies charg with achieving it. The Government's responsibility and commitme to those denied equal rights is too great to be sacrificed to administr tive inefficiency and confusion. Past experience has shown that o a concerted and coordinated effort has any chance of reducing t incidence of job discrimination. In recognition of this fact, H.R. 17 would transfer the Office of Contract Compliance from the Depar ment of Labor to the EEOC, thereby assuring a systematic a directed approach to the problem.

The Office of Contract Compliance was created to oversee the e ployment policies of Government contractors to insure that their h ing and promotion practices were in compliance with Federal sta ards. Government contractors are among the largest and most inf ential in the Nation and the policies and practices which they ado have a significant impact on the rest of the business communit Through the Government-wide contract compliance program, t OFCC seeks to prevent any indirect Federal subsidization of emplo ment discrimination and to guarantee that the Government's treme dous purchasing power operates as a force for social improvement. T OFCC's efforts to end job discrimination by Government contracto would be an integral part of the EEOC's larger effort to achieve eq employment opportunity throughout American society, and no pu pose is served by their continued separation.

In addition to improving the enforcement and administration Federal laws prohibiting job discrimination, this bill would broad the EEOC's jurisdiction to include previously exempted Feder State, and local government employees and certain employees co nected with educational institutions. One year following its date of e actment it would also extend coverage to all employers and lab unions with eight or more employees or members, thus including m lions of persons unprotected because of the present restriction requ ing 25 or more employees or members.

There is no reason why persons working in the public sector shou not enjoy the same protection and rights as those in the private. Go ernment employment practices should serve as a model for the re of the Nation and be the first area freed of prejudice and restricti

Federal Government in particular must effect internal employ- reform to emphasize its firm and unrelenting commitment to l employment opportunity. Leadership by example is a prerequi- for the success of all our other efforts.

ie Civil Service Commission is the agency responsible for imple- ing and enforcing equal employment policies within the Federal rnment. However, its record has been less than successful because t only lacks the necessary expertise but suffers from a built-in ict of interest whenever it is called upon to investigate hiring or notion complaints. It is unreasonable to expect any improvement ng as the Commission continues to sit in judgment of its own poli- and practices, many of which continue to promote systematic dis- ination. I have repeatedly seen the difficulties this poses for a Fed- mployee or applicant seeking relief from unfair and unwarranted ments.

r years, I have fought to gain equal rights for women employees e Federal Government, particularly those employed by the over- dependents schools system. On the basis of this experience, I that we must empower the EEOC to protect all Federal em- es from arbitrary regulations and summary verdicts.

transferring the Civil Service Commission's civil rights en- ment function to the EEOC, we would provide an independent impartial review for all persons whose employment rights have violated because of their race, religion, or sex. This move would prevent the Civil Service Commission from continuing its own in- l equal employment programs but would provide for their modi- on should they prove insufficient.

ere is no reason for omitting Government employees from the ction offered by the EEOC, and, similarly, there is no justification xcluding teachers and other employees of educational institutions . as the committee report clearly documents:

crimination against minorities and women in the field of education is as sive as discrimination in any other area of employment.

is especially important that employment in our educational insti- ns be open to all on an equal basis, for they have an unparalleled rtunity to free the future from present discriminatory attitudes practices. The example which our educational system sets has an culable impact on the attitudes and beliefs of the youth of this try, and we cannot permit discrimination to infect and damage nother generation.

r. Chairman, all of the provisions of this bill are essential if we going to make any headway against job discrimination in this try. Taken together, they promise that equal opportunity will one e secure for all our citizens. I urge all of my colleagues to join me pporting this bill without amendment.

r. STOKES. Mr. Chairman, the lines have long been drawn in the e over giving the Equal Employment Opportunity Commission -and-desist powers. Since 1965, various measures have been offered th Houses to strengthen Title VII enforcement. The Members of Chambers have heard the arguments for too long. We are at an sse, and the time for positive action is yesterday.

though no one today is so unsophisticated as to rise up in favor of imination and racism, the fact is that only the words have

changed. The attitudes are there. The methods are there. And t hypocrisy is there.

This, then, is the problem we face in the controversy between t Hawkins bill, H.R. 1746, and the administration bill, H.R. 9247. Bo sides claim to want strict enforcement of Title VII. Both claim to al inequities in employment. But when one looks not-so-far beneath t surface of the arguments, the intent of those who would oppose cea and-desist power for the EEOC is quite plain.

What we must do is project ourselves into the future for a mon Given the amount of money we intend to use in funding Title V enforcement efforts, where would the small amount we are likely to do the most good? There are no guarantees that additional mon appropriated for the courts would be spent in expediting discrimi tion cases. If we appropriate funds for EEOC's enforcement effo on the other hand, we can hold the Commission accountable for performance.

We all claim to be searching for the most efficient and effective mea of eliminating discrimination in employment. Given this claim, think that our only alternative is to strengthen the Equal Employm Opportunity Commission itself. And the only way to do that—I m to really give it the strength it needs—is to give it the option to iss cease-and-desist orders where prompt decisive action is required.

The proponents of the administration measure argue that court d lays are insignificant because of the availability of temporary restra ing orders. What they neglect to mention is that such orders are rar useful and seldom granted in employment discrimination cases. T court will say, "Stop discriminating until we have investigated t merits of your case." It will not temporarily reinstate the worker temporarily award him backpay. It will only maintain the status q which, we all agree, must be changed, not perpetuated.

We should forget about temporary relief and create a system wh will provide a prompt—and final—decision. The courts have failed this respect in the past. Administrative enforcement is the solution the future.

In addition to expediting decisions, administrative enforcem would yield two additional advantages. The first is that decisi would conform to a national standard. National criteria cannot established within the context of the courts which, as we all kn differ from State to State, region to region.

The second advantage of the administrative process is that co plaints would be heard by experts. In its report, the committee point out that while certain types of discrimination are not readily appa ent to the layman, they are real and illegal. The Commission hear officers would have a trained eye for such devices as placement te which are geared to the white middle-class applicant.

I have explained why I favor cease and desist over court enfor ment. But my absolute opposition to H.R. 9247 is based upon even mo serious considerations.

In subtle but substantial ways, the administration bill would grav weaken even existing remedies. The bill would limit the coverage Title VII, minimize damage awards against discriminating employe and unions, and hamstring private individuals' efforts to enforce Ti VII by private litigation. It ignores the more than 10 million State a

l government employees; it limits back pay collectable to 2 years; it eliminates private class action law suits, presently the single effective remedy. Its passage would be a great leap backward in struggle for equal employment opportunity.

urge my colleagues to join me today in recognizing—and ferreting —the hyprocrisy which has, so far, kept our civil rights laws rotting e books. If we are sincere about our commitment to equality in em- ment, we will pass the Hawkins bill by a resounding margin.

r. BROOMFIELD. Mr. Chairman, it has been clear for some time the Equal Employment Opportunity Commission lacks effective er to enforce our laws against job discrimination. William H. wn, Chairman of the Commission, reports that it was "able to ve either a partially or totally successful conciliation" in only t 18 percent of the 40,000 employment discrimination charges re- d during the first 4 years of its existence, a dismal record, Mr. rman, by any standard. Needless to say, I support the general osition that its powers be expanded.

annot support, however, the bill reported by the Committee on ation and Labor, for in treating the ineffectiveness of the EEOC ommittee has given it authority far beyond its needs—authority h can only serve to compromise the principles of due process and ation of powers. That the legislation carries this to an even fur- extreme, extending the jurisdiction of the Commission to cover act enforcement, pattern and practice suits, and State and local rnments, seems to me final evidence of the committee's irrespon- ty in dealing with this crucial matter. Even now, Mr. Chairman, EOC is faced with a 1½ to 2-year backlog of cases: to expand its diction would manifoldly increase its present inefficiency, slow- ven further the disposal of discrimination cases.

e key article of the committee bill would permit the Commission ue cease-and-desist orders when it has determined after investiga- and hearings that an employer has engaged in discriminatory tices. This is, of course, in marked contrast to its present power ly to conciliate employer-employee differences. That power is, I t, useless. But the fact that it is useless does not warrant its re- ment by a provision which would make the EEOC an all- rful quasi-judicial administrative agency. By giving it the re- sibilities of investigator, prosecutor and judge the committee is usly undermining the doctrine of separation of powers: it would milar to letting policemen arrest, try, and punish citizens on the t at the point of a gun.

less important, Mr. Chairman, the committee bill would create tem in which the burden of proof, contrary to any notion of due ss, would rest upon the defendant and not the plaintiff. On receipt harge, the Commission would be required to find reasonable cause e issuing a formal complaint. The mere issuance of the formal laint, then, would be a presumption of the defendant's guilt, and uld be faced with the anomaly of proving his own innocence.

ese two arguments seem to me reason enough to reject the com- e's bill and accept the substitute offered by my distinguished gue from Illinois (Mr. Erlenborn). His legislation would author- e Commission to initiate suits in Federal district courts against citrant employers greatly increasing its powers without endan-

gering the right of Americans to due process of law and without com promising the separation of powers principle. If the employer refuse to correct injustices, the Commission would act as prosecutor and en forcer, but never as judge and jury.

This makes greater sense when we realize that even in the com mittee bill the courts serve as the employer's last resort. Mr. Erlenbor has proven conclusively that initial resort to district courts is a muc speedier way of disposing cases than the long and arduous processes o agency investigations and hearings. If only in the interest of efficiency the committee bill should be rejected.

We must realize, Mr. Chairman, that effectiveness normally goe hand in hand with efficiency. This bill before us today would only in tensify the failures of the Equal Employment Opportunity Com mission, while seriously undermining the principles of due process an separation of powers. Accordingly, I urge that it be defeated.

Mr. LEGGETT. Mr. Chairman, considerable strides have been mad in equal employment since the 1964 Civil Rights Act. Firms and cor porations which only a few years ago rigidly restricted their executiv suites to white Anglo-Saxon Protestants are now sending representa tives to the campuses in determined and sincere efforts to recruit blac graduates for management positions. Similarly, unions which wer once bastions of discrimination have one by one begun to open their ranks to promising young men regardless of race.

But we have a long way to go. For every corporation or unio sincerely determined to open its ranks, we can find one only interested in tokenism. Unfortunately, the same is true of a number of Govern ment agencies.

Giving teeth to the Equal Employment Opportunity Commissio will not solve all our problems, but it will help. We have before us today two bills. One, the original Hawkins bill, is highly desirable The other, the Erlenborn substitute, is considerably weaker, and in my opinion it is not enough for 1971.

Some may feel the Hawkins bill goes too far, and thereby create inequities. The gentleman from California plans to offer three amend ments, which I will support, which will answer most of these objec tions. These amendments would impose a 2-year limit on backpay liability, would rule out quotas from the Federal contract compliance program, and would require the defendant to be notified within 1 days of the filing of a complaint.

So we will have to decide between the Hawkins bill and the Erlen born substitute.

The Hawkins bill would give the Commission the power to directly issue cease and desist orders. The Erlenborn substitute would force it to go through the already overloaded courts.

The Hawkins bill would empower the Commission to handle its own litigation. The substitute would have the Attorney General represent the EEOC in appeals. In this year of our Lord 1971 I believe the substitute's potential for abuse does not require explanation.

The bill permits class action; the substitute does not.

In short, the substitute leaves those who have suffered employment discrimination to the mercies of the Attorney General. It forces them to suffer the delays of our overloaded courts, and it adds to the over loading even more by preventing class decisions.

rge my colleagues to cast their votes for true liberty and justice
ll, by voting for the original bill and against the substitute.
. Robison of New York. Mr. Chairman, I am supporting—and
d to vote for—the committee bill, H.R. 1746. I recognize that there
avorable things which can be said about both the committee bill
he proposed substitute, H.R. 9247; and I recognize, too, that sev-
utstanding business leaders in the Nation and in my congressional
ict have expressed the opinion that the committee bill places an
ir burden on segments of the business community. But, on balance,
l the committee bill gives us the best chance to further equal em-
ment opportunities for all American workers, and does so in a
ner consistent with the themes of justice and fairness which are
ghtfully important to my friends in the business community.
ere is little debate today about the necessity for some action.
vone appears to agree that more can—and should—be done at the
al level to insure all citizens equal access to available job markets.
ments of the committee bill and the substitute bill both agree that
qual Employment Opportunity Commission needs a form of en-
ment power. The only question is what kind of enforcement
r is the fairest and most effective to all involved.
e substitute bill would permit EEOC attorneys to sue in Federal
ct courts in cases where the EEOC has found reasonable cause
ieve a violation has occurred. In the abstract, this seems reason-
nough. But litigation in the Federal courts can be a lengthy,
xpensive process—to everyone concerned. The average length
ne for a Federal court action, for example, is 19 months. By
ng the district courts with all Federal job discrimination cases,
backlog can only increase. Meanwhile, those allegedly discrimi-
against are still frozen from a possible job opportunity. In this
of case, I doubt the effectiveness of such enforcement; and I think
ess leaders should also realize that defending actions in this way
ng to be an expensive proposition indeed.
e committee bill, on the other hand, proposes to give EEOC au-
zation to issue complaints, hold hearings, and where an un-
l employment practice is found, issue appropriate orders, subject
urse, to judicial review. This "cease-and-desist" method of en-
ment is the same type of mechanism given to virtually every other
al regulatory agency and is the same adopted by 32 of the 37
s which have agencies to enforce equal employment opportunity
—including New York.
course, if a full hearing is demanded, a final decision might still
several months to be reached—although not nearly as long as the
ge Federal court action—but since the agency would have "cease-
desist" authority, it should be able to settle complaints much more
litiously without going to hearing. This has been the experience
e NLRB, for example, where 95 percent of its cases do not go to
ng. This is as much a protective device for the businessman as it
the complainant since it cuts off the threat of scurrilous com-
ts dragging them into extensive and expensive litigation.
ere appears to be little grievance about the operation of the State
ies already in existence which have powers roughly equivalent
ose proposed in the committee bill. At least, I have never had a

business complain to me about the operation in New York. I suspect this is the case because due process for all parties is built into the mechanism used by the State agencies, just as it is built into Federal regulatory efforts by means of the Administrative Procedure Act. This act would apply to the powers given to the EEOC, just as it applies to actions taken by the other Federal regulatory agencies.

Under the APA, fair notice is required to all parties, just as all parties have the right to present their cases before both the hearing examiner and the Commission, to rebut adverse evidence, and to cross-examine witnesses. The hearing examiners are isolated from the rest of the Agency, and are prohibited from taking advice from the Agency's personnel—to preserve objectivity. The hearing examiners are recruited not by the agency, but by the Civil Service Commission through a process of competitive examinations: and therefore, they should be as independent and fair as any part of the Federal judiciary. Finally, the ultimate safeguard of the rights of the parties is the right of review in a U.S. court of appeals.

I believe that guaranteeing all Americans—irrespective of race, color or creed—an equal chance for employment is surely as primary a Federal priority as those functions presently carried out by such agencies as the Federal Trade Commission, the Securities and Exchange Commission, the Interstate Commerce Commission, the Federal Communications Commission, and so forth. What better way to support the President's call for a rejuvenated "work ethic" in this country than to unequivocally demand equal access to all Americans for available job opportunities?

This is no radical notion, but the most basic of rights we are discussing. This is no bipartisan measure, but a concept which should be supported by Members of both parties who are concerned with effective enforcement of fair employment practices. As a Republican, I feel no small obligation to my party's history of supporting the causes of equal opportunity and personal dignity. As an American, I would consider it the greatest of hyprocrisies to give lip service to equality if we are not prepared to enforce such equality in the most effective manner possible.

Mr. Shour. Mr. Chairman, I take strong exception to H.R. 1746 as it has been reported out of committee and urge my fellow Members to vote against the bill.

Equal opportunity for job placement is a crucial issue, one of the most important social matters at this point in our Nation's history. Yet, H.R. 1746 goes beyond the proper limits of governmental control by granting powers to a commission that are powers only properly granted to courts of law.

To decide whether one party is right and the other party wrong is the very essence of jurisprudence. The court system is designed to insure that fairness is the byword of that decisionmaking. A commission is not. Many Federal boards and commissions regulate various things from electricity to use of the public airways. But human beings are not kilovolts or radio waves. They are people, with distinctly different characteristics. In governing kilovolts and radio waves, we deal with specifics. Certain amounts can be ascertained as the right amount for each does its job to the same degree. Yet human beings are not so constructed. In deciding distinctly human issues, there is a great deal of

between the opposite ends of the spectrum. A computer can be
amed to decide right from wrong. But there are shades of gray
are a permanent part of the human condition. The American
s are designed to balance all those side issues and resolve any
oversy with an equitable solution.
. Chairman, it is sheer folly to prostitute the court's role in render-
qual justice for all, in favor of granting judicial powers to a com-
on that cannot avoid bias and political pressure. Unless claims of
mination are kept in the judicial system's area of responsibility,
e negating any further efforts to combat discrimination in this
ry, because we cannot guarantee fairness. The courts alone are
ed to accomplish the task of making fair, unbiased decisions.
must, as the law making body of this great land, ask ourselves
l questions in weighing the merits of H.R. 1746 and other anti-
minatory legislation.
st. Are we, by virtue of legislating a quasi-judicial function onto
mission, accomplishing something far different than the original
of equal opportunity legislation? Are we now moving toward
g American employers to be biased toward minority applicants
se they are members of a minority? Have we inadvertently
d a monstrosity that is coercing employers to hire a black, or
no, or woman, or anyone else because they are black, or Mexican-
ican, or female, with only secondary consideration for the quali-
ns of the applicant for the actual job to be performed?
ond. Are we, in our self-righteous zeal to benefit the minorities,
ng on the rest of America? Are we thus creating through H.R.
nd its provisions for judicial action by the Commission, not more
ty before employers, but discrimination by them in their hiring?
h prejudicial hiring for, any different than the prejudice against
puritanically condemn? Are we thus forcing employers to prac-
egal discrimination because of race?
rd. Is the day far off when we will see a white man bring forward
plaint that another man was hired instead of himself, not because
her man was better qualified but because the business needed to
heir quota of persons of the other man's color?
ny feel in this country that equal employment opportunity is
dent on what color you are, just like it was years ago, only now
lor has been reversed. That, gentlemen is racial discrimination,
s much now as 20 years ago, and legislation like H.R. 1746 does
away with it, it promotes it. We are allowing equal opportunity
nforced only for one segment of the population, while ignoring,
east not applying with as great a zeal, the same right to all other
nts of the society.
ial harmony, being a very sensitive and crucial issue, must be
ed to the letter of the word, equal. The only way we can insure
artisan, constitutionally sound efforts toward such harmony is
gh this Nation's courts, not by usurping the responsibilities of the
by granting commissions far-reaching powers with wide-
g possibilities.
losing, I ask each of you to look deep inside yourselves and ask:
rejudice for, somehow, different than prejudice against?"
does one create the other, with prejudice by any other name,
lice still the same?

Mr. RARICK. Mr. Chairman, the people of my district believe in the opportunity for every individual to fulfill his God-given talents and abilities, but they also feel it not the proper role for Congress to mislead people into believing Government can insure this right through legalized program of discrimination. This is true even by "equal employment opportunity," the Government intended that the individual best qualified would get the job, regardless of race, religion, or national origin.

But, unfortunately, this is not the case. Time and experience have proven that what this Government means by "equal employment opportunity" is not the great American ideal that the individual best qualified gets the job, but rather that an employer is coerced into hiring a certain percentage of minority groups to maintain judicially constructed racial proportions. It is no longer the question of getting the job done—pragmatism, that great American social philosophy is dead. Government does not concern itself with getting the job done producing a competitive product, or making a profit: Government under EEOC only worries if there is a proper racial balance of employees assigned and on the job.

Under the EEOC rulings, race becomes the rule and guide, not opportunity. Violation of equal employment regulations is presumed if racial quotas are not met. The EEOC runs the employment, not the employer or businessman. The practical result is that the employer is forced to racial hiring practices guided by judicially constructed percentages to stay out of trouble and avoid expensive legal actions.

What has occurred and destroyed the State public school system of this great Nation now threatens to destroy the laboring system that has built America. Just as Federal courts have moved into communities and demanded an unworkable liberal application of proper "racial proportions" in the public schools, this EEOC, an agency of the Government, has moved into city after city and instituted plans that require certain minority percentages in labor and employment on Government jobs. The end is not in sight as the Federal Government moves from city to city destroying the makeup of the laboring force by removing all qualifications for employment and insisting on unworkable racial proportions, regardless of experience, training, or productivity.

We have even seen recently in this city, our Nation's Capital, the idea advanced that the requirement of a high school diploma and civil service test be dropped in consideration for employment as a district fireman. The employment criteria was not going to be dropped because of inability to get qualified men, but simply to let unqualified minority applicants be guaranteed employment.

These practices, however, are not the extent or the limit of the governmental attempt to provide the minority groups with compensatory advantages rather than "equal employment."

One of the glaring examples of actual favoritism practiced by this Government occurs in the Small Business Administration's practice of letting a Government contract without the benefit of competitive bidding. Known as "Project M," this operation has appeared several times recently in the course of inquiries I made in behalf of my constituents concerning SBA matters. Two letters that I received on May 27 of this year indicate the extent of favoritism engaged in the opera-

I would like to call the attention of my colleagues to the relevant
ges.
om a letter I received from the regional administrator of the GSA
sponse to an inquiry I made concerning the construction of a
ing one of my constituents was interested in bidding on:

do not plan to handle the construction of this building through normal
ising and bidding procedures. We are negotiating with the firm of Griffin
utler of New Orleans, Louisiana, as a minority enterpreneur under Section
of the Small Business Act. Under this program, qualified minority or dis-
taged contractors are assisted in entering the Government contracting field
h direct negotiation with the General Services Administration with assist-
rom the Small Business Administration.

om a letter I received from the Administrator of SBA in response
inquiry I made concerning the practice of letting contracts to
rity firms without advantage of competitive bidding:

er Section 8(a) of the Small Business Act, the Small Business Administra-
empowered to enter into contracts with other Federal agencies and to
ubcontract the performance of the work to others. Within SBA, the Office
iness Development is endeavoring by use of this tool to assist in the estab-
nt and strengthening of manufacturing, construction, and service-related
wned and operated by "disadvantaged" persons. Section 8(a) contracts are
used to assist these disadvantaged firms to achieve in a few years a truly
itive position in both the commercial and Government marketplaces.

s SBA practice of awarding contracts to minority firms without
t of competitive bidding disturbed the construction industry of
iana and they asked the Comptroller General's office to institute
mediate review of this decision with representatives from the
al construction organizations present and allowed to testify.
rtunately, their request was not granted, perhaps because the
troller General's office knew that such a hearing would publicize
nd for all the prejudicial practices engaged in by the SBA in
me of "equal opportunity."
wever, perhaps the last straw in this move by the Government
e the minority groups every advantage occurred recently here
shington when the Department of Transportation offered "tech-
assistance to minority contractors, such as from accountants and
ss advisers, that will allow the firms to develop and submit the
r bids."
ould like to call the attention of my colleagues to certain relevant
es from a newspaper article detailing this announcement and
d them that what has occurred here in Washington can and will
elsewhere unless this Congress acts to defeat the bill under con-
tion.
m the news report, I read:

[From the Washington Evening Star, Sept. 6, 1971]

MINORITY FIRMS TO GET AID IN METRO BIDDING

(By Fred Barnes)

ials of the Washington area subway agency have been told that the Trans-
on Department will finance a special project to assist minority group
bidding on Metro construction contracts.
project will offer technical assistance to minority contractors, such as
ccountants and business advisers, that will allow the firms to develop and
the proper bids.

If the project produces the desired result—the award of more Metro cont to black companies—it could go a long way toward easing the controversy the subway agency's contracting practices.

Metro general manager Jackson Graham said Transportation officials are p ising "some positive response to our recommendation for a federally-funded nical assistance program by mid-October."

He told the Metro board of directors last week that Transporta officials "are aware of the board's desire to stimulate interest a minority firms on a nationwide basis and indications are that will be taken into account in connection with the technical assist program."

Since the project "is geared to addressing the basic problems fa minority contractors," Graham said, it "will take some time to p duce solid results, but there is every reason to believe it can pro the kind of enduring assistance that will contribute heavily in the l run to the cause of minority entrepreneurship."

Metro's request that the project be established came after the F Jerry A. Moore Jr., a D.C. City councilman and vice chairman of Metro board, charged that the agency was "openly hostile" to b contractors. Moore claimed that Metro's contracting procedures such that black firms are often shut out of the bidding.

GRAHAM'S REPLY

Graham and other Metro officials responded that many small b contractors were not well versed enough in the bidding procedure join the competition for subway contracts.

Out of the first $300 million in contracts and subcontracts for M construction, only about $1 million has gone to minority outfits. T amount, Moore said, "is not encouraging in a project of this size."

The Transportation-financed project would teach minority con tors "management expertise," whether they were seeking to bid Metro contracts or other Government agency contracts.

One important area in which the firms could get aid is estimat their costs for a particular construction job. Some firms, Metro offic feel, have been unable to bid because they haven't been able to ga accurately what their expenses would be.

The Government grant for the project—probably about $200,00 $250,000 for a year—will go to one of several private groups, suc the predominantly black Washington Area Contractors Associat which say they would like to run it.

Metro itself cannot run the project because that would create a c flict-of-interest. The agency would be aiding some firms in submitt bids and then would have to turn around and make an official rec mendation concerning these same bids.

OBJECT TO PROPOSAL

Metro staff officials and suburban members of the Metro board have s ported the project idea from the beginning, but they are opposed to Moo proposal that some contracts be set aside for bidding solely by mino firms.

This type of bidding would be carried out under a program run by Small Business Administration. Metro general counsel John R. Kennedy, h ever, says the subway agency cannot legally join the program, though torneys for SBA, the Commerce Department and the Transportation Dep ment disagree.

e only logical conclusion is that our Government will soon be g us to guarantee that these minority firms who get the bid be- of free Government assistance will be able to complete the job. Government has become an underwriter of the contract bond for that it submitted so that some minority contractor could get ob, I ask that a news report on this practice follow my remarks. is hardly equal opportunity in the American tradition.

epeat, Mr. Chairman, the people of my district believe that any has the opportunity to fulfill his God-given talents, but through wn efforts, not because this Government has passed laws giving otal and complete advantages in getting the job opportunity and en willing to do his work so that he can hold his position.

ntend to cast my people's vote against H.R. 1746, the bill that l further promote preferential treatment for certain minority ican workers—a legalized pattern or program of discrimination. was individual opportunity that made this country great, not nteed privileges and officious political intermeddling. I include llowing:

[From the Washington Evening Star, Sept. 15, 1971]

BLACK-OWNED FIRM GETS $311,254 SUBWAY JOB

Washington area subway agency, embroiled in a dispute over whether n Metro contracts go to minority group firms, has awarded a $311,254 uction contract to a black-owned Washington company.

s the largest contract yet given to a minority firm by Metro, and it hap- only after an eleventh hour promise by the Small Business Administration vide 90 percent of the bonding for the construction job.

contract went yesterday to C&C Construction Co., 1921 Pennsylvania NW, to build a riding stable in Rock Creek Park that will replace the zed for subway construction.

company submitted the low bid on the contract months ago, but the award eld up for several weeks because its bonding wasn't in line with Metro cations.

ro officials and representatives of the firm attempted to work out a suit- rrangement, but the matter remained unresolved as the deadline neared day.

n SBA agreed to provide some of the bonding. A local insurance firm al- had agreed to provide 10 percent if SBA would pick up the other 90 t.

BA had not acted by last midnight, a new round of bidding would have on the stable contract, with the prospect that the black-owned firm might een unable to submit the low bid again.

dispute over Metro contracting practices stems from the fact that out agency's first $300 million in contracts, only $1 million went to minority

Rev. Jerry A. Moore Jr., vice chairman of the Metro board of directors, harged that the agency's contracting procedures are such that small mi- firms are often shut out of bidding.

re has proposed that some Metro contracts be set aside for bidding solely nority firms, but Metro staff officials and suburban board members op- his. Moore also is seeking to have Metro contracts forced to give a cer- rcentage of their subcontracts to minority outfits.

n of these proposals are scheduled to be voted on by the Metro board it meets Thursday, and the prospects appear slim that Moore has won n votes for them to be approved.

. FISHER. Mr. Chairman, I shall vote for the Erlenborn sub-, and then, if it is approved—or whether it is or not—I shall gainst the pending measure on final passage.

It is my considered judgment that the pending legislation is u necessary, unfair, inappropriate, and unacceptable to American e ployers who would be affected. I am equally convinced that the mea ure is opposed by the overwhelming majority of the American wo force.

The pending bill would expand and extend bureaucratic cont over industry and other private employment with total disregard i the property rights of those who would be subject to the arbitra power which would be given to the Equal Employment Opportun Commission.

The measure gives to this agency vast authority, backed by fu judicial and police enforcement powers of the Government. Thus Government agency in Washington would be empowered to dicta to an employer whom he can hire, whom he can fire, and whom i can promote—with no right of trial by jury allowed.

Arbitrary exercise of this power could make or break a small bu ness enterprise, and play havoc with the right to employment a career opportunities of many individual workers.

It would deny due process, where valuable personal and proper rights are directly involved.

In a grasp for more bureaucratic power, the bill extends EEO jurisdiction over State and local government employees, and inde invades the courthouses with authority to dictate who the deputy clerks, and other workers may be or who they may not be. It ev invades the schools and employment practices involved there.

This ambitious proposal for more power to be lodged in an u elected Washington agency would give that arm of the Federal Go ernment authority to act as complainant, investigator, prosecuto judge, and jury—all racked up in one package.

As one man pointed out, this measure would create the amazi spectacle of a governmental agency filing a claim with itself again whomsoever it chooses—and then going through a grotesque ceremo of investigating and reporting to itself that such claim should b pressed—then proceeding as prosecutor to present the case to its in a "hearing" before itself—solemnly asking itself to render a de sion which it desires rendered, and finally delivering the judgment a decree which it has besought of itself.

Mr. Chairman, this agency—EEOC—has already established reputation for engaging in discrimination itself. An examination some of its decisions will confirm that fact. Its damage has been som what mitigated, however, because its enforcement powers are large confined to conciliation and agreeable settlements. If not abused, th authority could serve a useful purpose in some instances, although th system lends itself to harassment and time-consuming interfere with normal business activities.

Now, in this legislation, it is for the first time proposed that EEO be given authority to issue cease and desist orders, which should b exercised by a court of competent jurisdiction. That is the way it done at present—through judicial processes.

The present EEOC is a product of the Great Society. It has alread expanded far beyond any original plans. And the cost of it has adde significantly to deficit financing. Enactment of this bill, with all th vast expansion that is envisioned, would add greatly to the number personnel and the added involvement in private enterprise.

Mr. Chairman, this is typical of how a Government agency, once the books, grows and grows and grows. No wonder the Federal Go ernment is getting so big. No wonder American people complain

about actions affecting them, over which they have no control—
ver which their elected representatives have little if any control.
ere is an old truism which goes like this:

is a monster of such frightful mien,
o be hated needs but to be seen;
seen too oft—familiar with its face,
first despise, then pity, then embrace.

m afraid that is what is happening here. Step by step, power
ontrol over individuals is expanded. The matter of discrimination
ployment, when it occurs, should be handled by a process of con-
on. The average businessman is reasonable and sensible. In a
y competitive field, in his employment practices, he is obliged to
people who can get along, attract business for him, and produce
than some other applicant for the job. That system puts a premi-
merit and productivity. He should not be put in a straight
in exercising his judgment in deciding on an employee's worth
his particular needs. Every businessman in America is complain-
bout too much Government control over decisions which he is
better able to make.

ave already said I am supporting the pending substitute offered
gentleman from Illinois (Mr. Erlenborn). It would water down
ake much less offensive the provisions of H.R. 1746. I do hope
be approved.

CHAIRMAN. All time has expired.

question is on the amendment in the nature of a substitute of-
by the gentleman from Illinois (Mr. Erlenborn).

TELLER VOTE WITH CLERKS

ERLENBORN. Mr. Chairman, I demand tellers.

ers were ordered.

ERLENBORN. Mr. Chairman, I demand tellers with clerks.

ers with clerks were ordered.

PARLIAMENTARY INQUIRY

DENT. Mr. Chairman, a parliamentary inquiry.

CHAIRMAN. The gentleman will state it.

DENT. Mr. Chairman, a vote in the affirmative will be a vote for
rlenborn amendment in the nature of a substitute; and a vote
t it, a no vote, will be a vote that will preserve the opportunity
rther amendments. Is that correct?

CHAIRMAN. The Chair will state the proposition. The question
on the Erlenborn amendment, the amendment in the nature of a
ute. A vote of "aye" will be a vote in favor of the substitute. A
f "no" will be a vote against the substitute as offered by the gen-
from Illinois (Mr. Erlenborn).

CHAIRMAN appointed as tellers Messrs. Erlenborn, Dent, Haw-
nd Steiger of Wisconsin.

Committee divided.

CHAIRMAN. Twelve minutes have expired. Are there any Mem-
the Chambers who have not voted and wish to vote?

Mr. FULTON of Pennsylvania. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FULTON of Pennsylvania. Mr. Chairman, does not the rule explicitly state that the 12 minutes is the minimum? So, there is no 15-minute expiration. Any Member may vote so long as he is in the Chamber before the final report is made; is that not correct?

The CHAIRMAN. The Chair has so ruled.

Is there any Member in the Chamber who has not voted but who wishes to vote?

Mr. FULTON of Pennsylvania. Mr. Chairman, a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FULTON of Pennsylvania. It is definite, then, that there is no maximum time limitation on a recorded teller vote?

The CHAIRMAN. Not until the vote is so announced.

The Committee divided, and the tellers reported that there were—ayes 200, noes 194, not voting 40, as follows:

[Roll No. 261]

[Recorded Teller Vote]

AYES—200

Abernethy	Clausen, Don H.	Goodling
Andrews, Ala.	Cleveland	Griffin
Andrews, N. Dak.	Collier	Gross
Archer	Collins, Tex.	Grover
Arends	Colmer	Hagan
Ashbrook	Conable	Haley
Baker	Crane	Hall
Baring	Daniel, Va.	Hammerschmidt
Belcher	Davis, Ga.	Hansen, Idaho
Bell	Davis, Wis.	Harsha
Bennett	Delaney	Harvey
Betts	Dellenback	Hébert
Bevill	Dennis	Henderson
Blackburn	Devine	Hillis
Bow	Dickinson	Hosmer
Bray	Dorn	Hull
Brinkley	Dowdy	Hunt
Broomfield	Downing	Hutchinson
Brotzman	Duncan	Ichord
Brown, Mich.	du Pont	Jonas
Broyhill, N.C.	Edwards, Ala.	Jones, Ala.
Broyhill, Va.	Erlenborn	Jones, N.C.
Buchanan	Esch	Jones, Tenn.
Burke, Fla.	Evins, Tenn.	Keating
Burleson, Tex.	Findley	Keith
Byrnes, Wis.	Fisher	Kemp
Byron	Flowers	King
Cabell	Flynt	Kuykendall
Caffery	Ford, Gerald R.	Kyl
Camp	Forsythe	Landgrebe
Carter	Fountain	Landrum
Casey, Tex.	Frelinghuysen	Latta
Cederberg	Fuqua	Lennon
Chamberlain	Galifianakis	Lent
Chappell	Gettys	Lloyd
Clancy	Gibbons	Lujan

Price, Tex.
Purcell
Quie
Quillen
Rarick
Reid, Ill.
Rhodes
Roberts
Robinson, Va.
Rogers
Rousselot
Runnels
Ruppe
Ruth
Sandman
Satterfield
Scherle
Schmitz
Schneebeli
Schwengel
Scott
Shriver
Sikes
Skubitz
Smith, Calif.
Smith, N.Y.
Snyder
Spence
Springer
Steiger, Ariz.
Steiger, Wis.
Stephens
Stubblefield
Stuckey
Talcott
Taylor
Teague, Calif.
Terry
Thompson, Ga.
Thomson, Wis.
Thone
Veysey
Waggonner
Wampler
Ware
Watts
Whalley
White
Whitehurst
Whitten
Wiggins
Williams
Wilson, Bob
Winn
Wright
Wyatt
Wylie
Wyman
Young, Fla.
Young, Tex.
Zion

NOES—194

Celler
Chisholm
Clay
Collins, Ill.
Conte
Conyers
Corman
Cotter
Coughlin
Culver
Daniels, N.J.
Danielson
Davis, S.C.
de la Garza
Dellums
Denholm
Dent
Diggs
Dingell
Donohue
Dow
Drinan
Dulski
Eckhardt
Edmondson
Edwards, Calif.
Eilberg
Fish
Flood
Foley
Ford, William D.
Fraser
Frenzel
Fulton, Pa.
Fulton, Tenn.
Gallagher
Garmatz
Gaydos
Giaimo
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Gude
Halpern
Hamilton
Hanley
Hanna
Harrington
Hathaway
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hicks, Mass.
Hicks, Wash.
Hogan
Holifield
Horton
Howard
Hungate
Jacobs

Johnson, Calif.	Mosher	Ryan
Kastenmeier	Moss	St Germain
Kazen	Murphy, N.Y.	Sarbanes
Kee	Nedzi	Saylor
Kluczynski	Nix	Scheuer
Koch	Obey	Shipley
Kyros	O'Hara	Sisk
Leggett	O'Konski	Slack
Link	O'Neill	Smith, Iowa
Long, Md.	Patten	Stanton, J. William
McClory	Pepper	Stanton, James V.
McCloskey	Perkins	Steed
McCormack	Peyser	Steele
McDade	Pike	Stratton
McDonald, Mich.	Podell	Symington
McFall	Price, Ill.	Teague, Tex.
McKay	Pucinski	Thompson, N.J.
Macdonald, Mass.	Randall	Tiernan
Madden	Rangel	Udall
Matsunaga	Rees	Ullman
Meeds	Reid, N.Y.	Van Deerlin
Melcher	Reuss	Vanik
Metcalfe	Riegle	Vigorito
Mikva	Robison, N.Y.	Waldie
Miller, Calif.	Rodino	Whalen
Mills, Ark.	Roe	Wilson, Charles H.
Minish	Roncalio	Wolff
Mink	Rooney, N.Y.	Wydler
Mitchell	Rooney, Pa.	Yates
Monagan	Rosenthal	Yatron
Moorhead	Rostenkowski	Zablocki
Morgan	Roush	Zwach
Morse	Roy	

NOT VOTING—40

Abbitt	Gonzalez	Pryor, Ark.
Alexander	Gubser	Railsback
Anderson, Tenn.	Hansen, Wash.	Roybal
Brown, Ohio	Hastings	Sebelius
Clark	Jarman	Seiberling
Clawson, Del	Johnson, Pa.	Shoup
Derwinski	Karth	Stafford
Dwyer	Long, La.	Staggers
Edwards, La.	McCulloch	Stokes
Eshleman	McEwen	Sullivan
Evans, Colo.	McKinney	Vander Jagt
Fascell	Mollohan	Widnall
Frey	Montgomery	
Goldwater	Murphy, Ill.	

So the amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Adams, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1746) to further promote equal employment opportunities for American workers, pursuant to House Resolution 542, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

Mr. PERKINS. Mr. Speaker, on that I demand the yeas and nays.
The yeas and nays were ordered.
The question was taken; and there were—yeas 202, nays 197, not voting 34, as follows:

[Roll No. 262]

YEAS—202

rnethy	Erlenborn	Mailliard
rews, Ala.	Esch	Mann
rews, N. Dak.	Evins, Tenn.	Martin
ier	Findley	Mathias, Calif.
ds	Fisher	Mathis, Ga.
rook	Flowers	Mayne
r	Flynt	Mazzoli
ng	Ford, Gerald R.	Michel
ier	Forsythe	Miller, Ohio
	Fountain	Mills, Md.
ett	Frelinghuysen	Minshall
	Fuqua	Mizell
l	Galifianakis	Myers
kburn	Gettys	Natcher
	Gibbons	Nelsen
	Goodling	Nichols
kley	Griffin	Passman
nfield	Gross	Patman
man	Grover	Pelly
n, Mich.	Gubser	Pettis
hill, N.C.	Hagan	Pickle
hill, Va.	Haley	Pirnie
anan	Hall	Poage
e, Fla.	Hammerschmidt	Poff
son, Tex.	Hansen, Idaho	Powell
s, Wis.	Harsha	Preyer, N.C.
	Harvey	Price, Tex.
l	Hébert	Purcell
ry	Henderson	Quie
	Hillis	Quillen
r	Hosmer	Rarick
, Tex.	Hull	Reid, Ill.
berg	Hunt	Rhodes
berlain	Hutchinson	Roberts
pell	Ichord	Robinson, Va.
y	Jonas	Rogers
en, Don H.	Jones, Ala.	Rousselot
land	Jones, N.C.	Runnels
r	Jones, Tenn.	Ruppe
s, Tex.	Keating	Ruth
r	Keith	Sandman
le	Kemp	Satterfield
	King	Scherle
l, Va.	Kuykendall	Schmitz
, Ga.	Kyl	Schneebeli
, Wis.	Landgrebe	Schwengel
ey	Landrum	Scott
nback	Latta	Shriver
is	Lennon	Sikes
e	Lent	Skubitz
nson	Lloyd	Smith, Calif.
	Lujan	Smith, N.Y.
y	McClure	Snyder
ing	McCollister	Spence
n	McKevitt	Springer
nt	McMillan	Steiger, Ariz.
rds, Ala.	Mahon	Steiger, Wis.

Stephens
Stubblefield
Stuckey
Talcott
Taylor
Teague, Calif.
Terry
Thompson, Ga.
Thomson, Wis.
Thone
Vander Jagt
Veysey
Waggonner
Wampler
Ware
Watts
Whalley
White
Whitehurst
Whitten
Wiggins
Williams
Wilson, Bob
Winn
Wright
Wyatt
Wylie
Wyman
Young, Fla.
Young, Tex.
Zion

NAYS—197

Abourezk
Abzug
Adams
Addabbo
Anderson, Calif.
Anderson, Ill.
Annunzio
Ashley
Aspin
Aspinall
Badillo
Barrett
Begich
Bergland
Biaggi
Biester
Bingham
Blanton
Blatnik
Boggs
Boland
Bolling
Brademas
Brasco
Brooks
Burke, Mass.
Burlison, Mo.
Burton
Byrne, Pa.
Carey, N.Y.
Carney
Celler
Chisholm
Clay
Collins, Ill.
Conte
Conyers
Corman
Cotter
Coughlin
Culver
Daniels, N.J.
Danielson
Davis, S.C.
de la Garza
Dellums
Denholm
Dent
Diggs
Dingell
Donohue
Dow
Drinan
Dulski
Eckhardt
Edmondson
Edwards, Calif.
Eilberg
Fascell
Fish
Flood
Foley
Ford, William D.
Fraser
Frenzel
Fulton, Pa.
Fulton, Tenn.
Gallagher
Garmatz
Gaydos
Giaimo
Gonzalez
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Gude
Halpern
Hamilton
Hanley
Hanna
Harrington
Hathaway
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hicks, Mass.
Hicks, Wash.
Hogan
Holifield
Horton
Howard
Hungate
Jacobs
Johnson, Calif.
Kastenmeier
Kazen
Kee
Kluczynski
Koch
Kyros
Leggett
Link
Long, Md.
McClory
McCloskey
McDade
McDonald, Mich.
McFall
McKay
Macdonald, Mass.
Madden
Matsunaga
Meeds
Melcher
Metcalfe
Mikva
Miller, Calif.
Mills, Ark.
Minish
Mink
Mitchell
Monagan
Moorhead
Morgan
Morse
Mosher
Moss
Murphy, N.Y.
Nedzi
Nix
Obey
O'Hara
O'Konski
O'Neill
Patten
Pepper
Perkins
Peyser
Pike
Podell
Price, Ill.
Pucinski
Randall
Rangel
Rees
Reid, N.Y.
Reuss
Riegle
Robison, N.Y.
Rodino
Roe
Roncalio

ey, N.Y.	Slack	Ullman
ey, Pa.	Smith, Iowa	Van Deerlin
nthal	Staggers	Vanik
enkowski	Stanton, J. William	Vigorito
h	Stanton, James V.	Waldie
	Steed	Whalen
	Steele	Wilson, Charles H.
ermain	Stokes	Wolff
anes	Stratton	Wydler
or	Symington	Yates
uer	Teague, Tex.	Yatron
rling	Thompson, N.J.	Zablocki
ey	Tiernan	Zwach
	Udall	

NOT VOTING—34

t	Goldwater	Montgomery
nder	Hansen, Wash.	Murphy, Ill.
rson, Tenn.	Hastings	Pryor, Ark.
n, Ohio	Jarman	Railsback
	Johnson, Pa.	Roybal
son, Del	Karth	Sebelius
inski	Long, La.	Shoup
r	McCormack	Stafford
rds, La.	McCulloch	Sullivan
man	McEwen	Widnall
s, Colo.	McKinney	
	Mollohan	

the amendment was agreed to.

ie Clerk announced the following pairs:

this vote:

Montgomery for, with Mr. Evans of Colorado against.
Shoup for, with Mr. Karth against.
Frey for, with Mrs. Hansen of Washington against.
Johnson of Pennsylvania for, with Mr. Mollohan against.
Del Clawson for, with Mr. Stafford against.
Eshleman for, with Mr. McCulloch against.
Railsback for, with Mr. McKinney against.
Abbitt for, with Mr. Pryor of Arkansas against.
Derwinski for, with Mr. Alexander against.

ntil further notice:

Roybal with Mr. McEwen.
Murphy of Illinois with Mr. Sebelius.
Anderson of Tennessee with Mr. Widnall.
Clark with Mr. Goldwater.
Jarman with Mr. Long of Louisiana.
Edwards of Louisiana with Mr. McCormack.
Sullivan with Mr. Brown of Ohio.

e result of the vote was announced as above recorded.

e SPEAKER. The question is on the engrossment and third reading e bill.

e bill was ordered to be engrossed and read a third time, and ead the third time.

MOTION TO RECOMMIT OFFERED BY MR. ASHBROOK

. ASHBROOK. Mr. Speaker, I offer a motion to recommit.

e SPEAKER. Is the gentleman opposed to the bill?

Mr. ASHBROOK. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Ashbrook moves that the bill H.R. 1746 be recommitted to the Committee on Education and Labor.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

Mr. DENT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 130, nays 270, not voting 33, as follows:

[Roll No. 263]

YEAS—130

Abernethy	Evins, Tenn.	Minish
Addabbo	Fisher	Mink
Andrews, Ala.	Flood	Moorhead
Annunzio	Flowers	Morgan
Badillo	Flynt	Murphy, N.Y.
Baker	Ford, William D.	Nedzi
Baring	Gallagher	Nichols
Barrett	Garmatz	O'Hara
Begich	Gettys	Patten
Bevill	Giaimo	Poage
Biaggi	Grasso	Price, Ill.
Bingham	Green, Oreg.	Purcell
Blatnik	Green, Pa.	Randall
Brademas	Griffin	Rarick
Brasco	Griffiths	Reid, N.Y.
Brinkley	Gross	Riegle
Brooks	Hagan	Robinson, Va.
Broyhill, Va.	Haley	Rodino
Burleson, Tex.	Hall	Roe
Burlison, Mo.	Halpern	Rooney, Pa.
Byrne, Pa.	Harrington	Rostenkowski
Cabell	Hathaway	Runnels
Caffery	Hébert	Scherle
Celler	Helstoski	Schmitz
Chappell	Henderson	Scott
Chisholm	Holifield	Shipley
Clay	Howard	Slack
Collins, Ill.	Hull	Snyder
Conyers	Hungate	Spence
Corman	Jacobs	Staggers
Cotter	Johnson, Calif.	Steed
Daniels, N.J.	Jones, Ala.	Stephens
Danielson	Jones, N.C.	Stokes
Davis, Ga.	Jones, Tenn.	Stuckey
Davis, S.C.	Kazen	Teague, Tex.
Dellums	Kee	Thompson, Ga.
Denholm	Landgrebe	Thompson, N.J.
Dent	Landrum	Vanik
Diggs	Lennon	Whitten
Dorn	McDade	Wolff
Dowdy	Mahon	Yates
Drinan	Mathis, Ga.	Young, Tex.
Eckhardt	Mills, Ark.	
Edmondson	Mills, Md.	

NAYS—270

rezk
g
ıs
rson, Calif.
rson, Ill.
ews, N. Dak.
er
ıs
rook
y
all
er
tt
ınd
r
burn
on
d
g
ıfield
nan
ı, Mich.
ı, Ohio
ill, N.C.
nan
, Fla.
, Mass.
n
s, Wis.
, N.Y.
y
Tex.
berg
berlain
n. Don H.
ınd
s. Tex.
r
le
lin
, Va.
Wis.
arza
y
back
s
son
l

Donohue
Dow
Downing
Dulski
Duncan
du Pont
Edwards, Ala.
Edwards, Calif.
Eilberg
Erlenborn
Esch
Fascell
Findley
Fish
Foley
Ford, Gerald R.
Forsythe
Fountain
Fraser
Frelinghuysen
Frenzel
Fulton, Pa.
Fulton, Tenn.
Fuqua
Galifianakis
Gaydos
Gibbons
Gonzalez
Goodling
Gray
Grover
Gude
Hamilton
Hammerschmidt
Hanley
Hanna
Hansen, Idaho
Harsha
Harvey
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Hicks, Mass.
Hicks, Wash.
Hillis
Hogan
Horton
Hosmer
Hunt
Hutchinson
Ichord
Jonas
Kastenmeier
Keating
Keith
Kemp
King
Kluczynski
Koch
Kuykendall
Kyl
Kyros

Latta
Leggett
Lent
Link
Lloyd
Long, Md
Lujan
McClory
McCloskey
McClure
McCollister
McCormack
McDonald, Mich.
McFall
McKay
McKevitt
McMillan
Macdonald, Mass.
Madden
Mailliard
Mann
Martin
Mathias, Calif.
Matsunaga
Mayne
Mazzoli
Meeds
Melcher
Metcalfe
Michel
Mikva
Miller, Calif.
Miller, Ohio
Minshall
Mitchell
Mizell
Monagan
Morse
Mosher
Moss
Myers
Natcher
Nelsen
Nix
Obey
O'Konski
O'Neill
Passman
Patman
Pelly
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Pirnie
Podell
Poff
Powell
Preyer, N.C.
Price, Tex.
Pucinski

Quie	Seiberling	Vander Jagt
Quillen	Shriver	Veysey
Rangel	Sikes	Vigorito
Rees	Sisk	Waggonner
Reid, Ill.	Skubitz	Waldie
Reuss	Smith, Calif.	Wampler
Rhodes	Smith, Iowa	Ware
Roberts	Smith, N.Y.	Watts
Robison, N.Y.	Springer	Whalen
Rogers	Stanton, J. William	Whalley
Roncalio	Stanton, James V.	White
Rooney, N.Y.	Steele	Whitehurst
Rosenthal	Steiger, Ariz.	Wiggins
Roush	Steiger, Wis.	Williams
Rousselot	Stratton	Wilson, Bob
Roy	Stubblefield	Wilson, Charles H.
Ruppe	Symington	Winn
Ruth	Talcott	Wright
Ryan	Taylor	Wyatt
St Germain	Teague, Calif.	Wydler
Sandman	Terry	Wylie
Sarbanes	Thomson, Wis.	Wyman
Satterfield	Thone	Yatron
Saylor	Tiernan	Young, Fla.
Scheuer	Udall	Zablocki
Schneebeli	Ullman	Zion
Schwengel	Van Deerlin	Zwach

NOT VOTING—33

Abbitt	Gubser	Murphy, Ill.
Alexander	Hansen, Wash.	Pryor, Ark.
Anderson, Tenn.	Hastings	Railsback
Clark	Jarman	Roybal
Clawson, Del	Johnson, Pa.	Sebelius
Derwinski	Karth	Shoup
Dwyer	Long, La.	Stafford
Edwards, La.	McCulloch	Sullivan
Eshleman	McEwen	Widnall
Evans, Colo.	McKinney	Ashbrook
Frey	Mollohan	
Goldwater	Montgomery	

So the motion to recommit was rejected.
The Clerk announced the following pairs:

Mr. Montgomery with Mr. Derwinski.
Mr. Evans of Colorado with Mr. Del Clawson.
Mr. Karth with Mr. Shoup.
Mrs. Hansen of Washington with Mrs. Dwyer.
Mr. Alexander with Mr. Johnson of Pennsylvania.
Mr. Mollohan with Mr. Hastings.
Mr. Pryor of Arkansas with Mr. Eshleman.
Mr. Roybal with Mr. Railsback.
Mr. Murphy of Illinois with Mr. McKinney.
Mrs. Sullivan with Mr. Widnall.
Mr. Anderson of Tennessee with Mr. Gubser.
Mr. Abbitt with Mr. Frey.
Mr. Clark with Mr. Stafford.
Mr. Hagan with Mr. McEwen.
Mr. Harman with Mr. McCulloch.
Mr. Long of Louisiana with Mr. Sebelius.
Mr. Edwards of Louisiana with Mr. Goldwater.

Messrs. HANLEY, BOGGS, BOLAND, FULTON of Tennessee, CARNEY, ASHLEY, ADAMS, HICKS of Washington, KYROS, EDWARDS of California

ERSON of California, Dow, ROY, ST GERMAIN, DONOHUE, KUYKEN-L, CONTE, and GUDE changed their votes from "yea" to "nay."
Messrs. MORGAN, STAGGERS, CHAPPELL, and GROSS changed their s from "nay" to "yea."
he result of the vote was announced as above recorded.
he SPEAKER. The question is on the passage of the bill.
r. PERKINS. Mr. Speaker, on that I demand the yeas and nays.
he yeas and nays were ordered.
he question was taken; and there were—yeas 285, nays 106, not ng 42 as follows:

[Roll No. 264]

YEAS—285

g	Chamberlain	Gaydos
ıs	Clancy	Gibbons
bbo	Clausen, Don H.	Gonzalez
rson, Calif.	Collier	Goodling
rson, Ill.	Collins, Ill.	Gray
ews, N. Dak.	Conable	Green, Pa.
nzio	Conte	Grover
is	Corman	Gude
y	Cotter	Halpern
ı	Coughlin	Hamilton
lo	Culver	Hanley
tt	Daniels, N.J.	Hanna
er	Danielson	Hansen, Idaho
	Davis, Wis.	Harrington
ett	de la Garza	Harsha
and	Delaney	Harvey
	Dellenback	Hawkins
i	Dennis	Hays
er	Dingell	Hechler, W. Va.
nam	Donohue	Helstoski
on	Dow	Hicks, Mass.
ik	Downing	Hicks, Wash.
s	Dulski	Hillis
ıd	Duncan	Hogan
ıg	du Pont	Holifield
	Eckhardt	Horton
mas	Edwards, Ala.	Hosmer
o	Edwards, Calif.	Howard
	Eilberg	Hunt
ks	Erlenborn	Hutchinsn
nfield	Esch	Ichord
man	Evins, Tenn.	Jacobs
n. Mich.	Fascell	Johnson, Calif.
n. Ohio	Findley	Jonas
ill, N.C.	Fish	Jones, N.C.
man	Flood	Kastenmeier
. Fla.	Foley	Keating
. Mass.	Ford, Gerald R.	Keith
son, Mo.	Forsythe	King
n	Fountain	Kluczyski
. Pa.	Fraser	Koch
s, Wis.	Frelinghuysen	Kyl
ı	Frenzel	Kyros
. N.Y.	Fulton, Pa.	Latta
y	Fulton, Tenn.	Leggett
r	Fuqua	Lent
. Tex.	Galifianakis	Link
berg	Gallagher	Lloyd
	Garmatz	Long, Md.

Lujan
McClory
McCloskey
McClure
McCollister
McDade
McDonald, Mich.
McFall
McKay
McKevitt
Macdonald, Mass.
Madden
Mailliard
Mann
Martin
Mathias, Calif.
Matsunaga
Mayne
Mazzoli
Meeds
Melcher
Metcalfe
Michel
Mikva
Miller, Calif.
Miller, Ohio
Minish
Minshal
Mitchell
Monagan
Moorhead
Morgan
Morse
Mosher
Moss
Murphy, N.Y.
Myers
Natcher
Nelsen
Nix
Obey
O'Konski
O'Neill
Patten
Pelly
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Pirnie
Podell
Poff
Preyer, N.C.
Price, Ill.
Price, Tex.
Pucinski
Quie
Quillen
Rangel
Rees
Reid, Ill.
Reid, N.Y.
Reuss
Rhodes
Riegle
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio
Rooney, N.Y.
Rooney, Pa.
Rosenthal
Rostenkowski
Roush
Roy
Ruppe
Ryan
St Germain
Sandman
Sarbanes
Saylor
Scheuer
Schneebeli
Schwengel
Seiberling
Shriver
Sisk
Skubitz
Smith, Calif.
Smith, Iowa
Smith, N.Y.
Springer
Stanton, J. William
Stanton, James V.
Steele
Steiger, Ariz.
Steiger, Wis.
Stokes
Stratton
Talcott
Taylor
Teague, Calif.
Terry
Thompson, N.J.
Thomson, Wis.
Thone
Tiernan
Ullman
Van Deerlin
Vander Jagt
Vanik
Veysey
Vigorito
Waldie
Wampler
Ware
Whalen
Whalley
White
Whitehurst
Wiggins
Williams
Wilson, Charles H.
Winn
Wolff
Wright
Wyatt
Wydler
Wylie
Wyman
Yates
Yatron
Zablocki
Zion
Zwach

NAYS—106

Abernethy
Abourezk
Andrews, Ala.
Archer
Aspinall
Baker
Baring
Begich
Bevill
Blackburn
Brinkley
Broyhill, Va.
Burleson, Tex.
Cabell
Caffery
Camp
Chappell
Chisholm
Clay
Collins, Tex.
Colmer
Conyers
Crane
Daniel, Va.
Davis, Ga.
Davis, S.C.
Dellums
Denholm
Dent
Devine
Dickinson
Diggs
Dorn
Dowdy
Drinan
Edmondson
Fisher
Flowers
Flynt
Ford, William D.
Gettys
Giaimo
Grasso
Green, Oreg.
Griffin
Griffiths
Gross
Hagan
Haley
Hall
Hammerschmidt
Hébert
Heckler, Mass.
Henderson

te	O'Hara	Sikes
Ala.	Passman	Slack
Tenn.	Patman	Snyder
	Poage	Spence
	Powell	Staggers
	Purcell	Steed
ndall	Randall	Stephens
rebe	Rarick	Stubblefield
ım	Roberts	Stuckey
a	Robinson, Va.	Teague, Tex.
an	Rousselot	Thompson, Ga.
	Runnels	Waggonner
, Ga.	Ruth	Watts
Ark.	Satterfield	Whitten
ld.	Scherle	Young, Fla.
	Schmitz	Young, Tex.
	Scott	
	Shipley	

NOT VOTING—42

ler	Gubser	Mollohan
n, Tenn.	Hansen, Wash.	Montgomery
k	Hastings	Murphy, Ill.
	Hathaway	Pryor, Ark.
	Jarman	Railsback
n, Del	Johnson, Pa.	Roybal
nd	Karth	Sebelius
ski	Kemp	Shoup
	Long, La.	Stafford
s, La.	McCormack	Sullivan
an	McCulloch	Symington
Colo.	McEwen	Udall
	McKinney	Widnall
ter	Mizell	Wilson, Bob

he bill was passed.

Clerk announced the following pairs:

this vote:

Evans of Colorado for, with Mr. Montgomery against.
Del Clawson for, with Mr. Ashbrook against.

il further notice:

Clark with Mr. Widnall.
Hathaway with Mr. Cleveland.
Hansen of Washington with Mr. Goldwater.
Alexander with Mr. Derwinski.
Sullivan with Mrs. Dwyer.
Udall with Mr. Kemp.
Karth with Mr. Gubser.
Mollohan with Mr. McKinney.
Pryor of Arkansas with Mr. Shoup.
Roybal with Mr. Bob Wilson.
Murphy of Illinois with Mr. Railsback.
Symington with Mr. Johnson of Pennsylvania.
Anderson of Tennessee with Mr. McCulloch.
McCormack with Mr. Stafford.
Abbitt with Mr. Sebelius.
Jarman with Mr. Eshleman.
Edwards of Louisiana with Mr. Mizell.
Long of Louisiana with Mr. Frey.
Hastings with Mr. McEwen.

result of the vote was announced as above recorded.

otion to reconsider was laid on the table.

CLERK AUTHORIZED TO MAKE TECHNICAL AMENDMENTS IN ENGROSSMEN OF H.R. 1746

Mr. ERLENBORN. Mr. Speaker, I ask unanimous consent that t Clerk, in the engrossment of the bill, be authorized to make technic amendments to conform the bill with existing law and to correct a incorrect cross-references due to redesignation of subsections (through (k) as subsections (g) through (l) in section 706 of the Civ Rights Act of 1964.

The SPEAKER. Is there objection to the request of the gentleman fro Illinois?

There was no objection.

PERSONAL EXPLANATION

Mr. SEIBERLING. Mr. Speaker, I would like to simply say that I w on the Senate side at the time of the teller vote on H.R. 1746. Had been present, I would have voted for the committee bill and against t Erlenborn substitute.

GENERAL LEAVE

Mr. BOGGS. Mr. Speaker, I ask unanimous consent that all Membe may have 5 legislative days in which to extend their remarks duri general debate yesterday and today in connection with H.R. 1746.

The SPEAKER. Is there objection to the request of the gentleman fro Louisiana?

There was no objection.

CORRECTION OF VOTE

Mr. HAGAN. Mr. Speaker, on rollcall No. 263 I am recorded as n voting. I was present and voted "yea." I ask unanimous consent th the permanent Record be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman fro Georgia?

There was no objection.

[From the Congressional Record—Senate, Sept. 17, 1971]

HOUSE BILLS REFERRED

following bills were each read twice by their titles and referred Committee on Labor and Public Welfare:

1746. An act to further promote equal employment opportunities for n workers; and

0936. An act to amend the Federal Food, Drug, and Cosmetic Act to pro- a current listing of each drug manufactured, prepared, propagated, ded, or processed by a registrant under that act, and for other purposes.

92D CONGRESS
1ST SESSION

H. R. 1746

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 1971

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 (f) (6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General

under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an em-

ployer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within five days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed within one hundred and eighty days after the alleged unlaw-

ful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent

named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) are redesignated as subsections (g) through (l), respectively, and, in newly designated subsection (k) the reference to subsection (i) is changed to subsection (j), and the following new section is added after section 706(e) thereof:

"(f) Whenever a charge is filed with the Commission

and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlaw-

ful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

Passed the House of Representatives September 16, 1971.

Attest: W. PAT JENNINGS,

Clerk.

[From the Congressional Record—Senate, Sept. 30 1971]

AL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

By Mr. DOMINICK:

2617. A bill to further promote equal employment opportunities merican workers. Referred to the Committee on Labor and Pub- elfare.

. DOMINICK. Mr. President, I send to the desk for introduction and ask unanimous consent that its text be printed at the con- n of my remarks.

is clear that the time has come for Congress to provide an en- ment procedure to make a reality out of the purposes and policies tle VII of the Civil Rights Act of 1964. The Equal Employment rtunity Commission is charged with enforcing the law against mination on the basis of race, creed, color or religion in employ- But it is limited in the actions it can take to remedy a violation law. Beyond mediation and voluntary compliance, it can do lit- enforce the law. We must allow the EEOC a means of strong in those cases where it cannot resolve a case through iation.

course, the mechanism which we provide must also be fair and ct the rights of those who are being charged with a violation— ner it be a labor union or an employer. I believe that the superior od for achieving the proper balance between the need to give C enforcement powers and the rights of those charged with vio- s of the law is to permit the EEOC to sue in U.S. district courts it has investigated a charge and found reasonable cause to be- violation of the act has occurred.

is approach is superior for several reasons. First it provides a ination of the expertise of the EEOC in investigating, process- nd conciliating unfair employment cases with the expertise and endence of the Federal courts. The equal employment area is which produces strong emotions among all parties—those dis- nated against, those accused of discriminating, and even those ed with enforcing the law. I believe that these strong emotions d be tempered by restraint when the adjudication of rights is at The Federal courts are best able to provide the tempering int which will allow for a rational resolution of the issues of any case.

ond, the court approach is necessary in order to preserve the ional separation of powers which we as a nation so highly cher- nd protect. Last year this body passed legislation which would authorized employees of the EEOC to initiate charges, investi- the same charges, issue a complaint, prosecute the complaint, icate the merits of the case, and then hear any appeals on the case. In addition, attorneys' fees and discovery fees were allowed

to charging parties. While none of these powers is unprecedented, I believe that the combination of authorities which this approach would grant EEOC is without parallel in the entire Federal Government. We cannot permit EEOC to conduct "star chamber" proceedings contrary to our Anglo-American legal tradition.

Therefore, Mr. President, I believe that we should grant to the EEOC the right to go into Federal district court to prosecute those it feels has violated the law. This will remove the quasi-judicial function from the hands of those who are also prosecutor, investigator, and enforcer. The judicial function is the most critical and must be ringed about with the greatest of safeguards. By putting it in the court system, we preserve the safeguards of the respondent and still permit EEOC to be vigorous in the prosecution of cases. Before the court EEOC can take a strong adversary position without fear of accusations of institutional bias. My bill will establish this mechanism. Therefore, I urge my colleagues to examine this question closely and join with me in seeking a fair balance between the need for enforcement and for fair and equitable procedures for all parties.

There being no objection, the bill (S. 2617), was ordered to be printed in the Record.

(A copy of S. 3617, referred to, may be found on p. 335.)

92D CONGRESS
1ST SESSION

S. 2617

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1971

Mr. DOMINICK introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 (f) (6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General

under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an em-

ployer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within five days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informed methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed within one hundred and eighty days after the alleged unlaw-

ful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or

refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) are redesignated as subsections (g) through (l), respectively, and, in newly designated subsection (k) the reference to

subsection (i) is changed to subsection (j), and the following new section is added after section 706(e) thereof:

"(f) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative

action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

[From the Congressional Record—Senate, Oct. 28, 1971]

REPORTS OF COMMITTEES

following reports of committees were submitted:

Ir. WILLIAMS, from the Committee on Labor and Public Wel-
ith an amendment:

15. A bill to further promote equal employment opportunities
nerican workers, together with individual and supplemental
Rept. No. 92–415).

[r. WILLIAMS, from the Committee on Labor and Public Wel-
thout recommendation:

1746, An act to further promote equal employment opportuni-
American workers (Rept. 92–416).

Calendar No. 412

92D CONGRESS
1ST SESSION

S. 2515

[Report No. 92–415]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 1971

Mr. BYRD of West Virginia (for Mr. WILLIAMS) (for himself, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MCGOVERN, Mr. MAGNUSON, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. SCOTT, Mr. SCHWEIKER, Mr. STEVENSON, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

OCTOBER 28, 1971

Reported by Mr. WILLIAMS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1971".~~

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) In subsection (b) strike out all before *"Provided further"*, and insert in lieu thereof the following:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (c) strike out between "(A)" and "and such labor organization", and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, or (B) eight or more thereafter,"

(5) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e-2) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its religious activities."

SEC. 4. (a) Subsections (a) through (c) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5 (a) - (c)) are amended to read as follows:

"(a) The Commission is empowered, as hereinafter

provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission upon the request of any person claiming to be aggrieved, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') as soon as practicable thereafter and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlaw-

ful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after pro-

ceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered or certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local

law; unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(c) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(d) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon

the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other person a right to intervene or to file briefs or make oral arguments an amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure for the district courts of the United States.

"(h) If the Commission finds that the respondent has

engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organizations, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: *Provided*, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged

unlawful employment practice and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsections (l) through (n) and the provisions of those subsections shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsections (h) or (i) of this section shall be determined on the record. Section 554, 555, 556, and 557 of title 5 of the United States Code shall apply to such proceedings.

"(k) Any party aggrieved by a final order of the Commission granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals for the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days after the service of such order, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to any other party to the proceeding before the Commission, and thereupon the Commission shall file in the court the record in the proceeding as provided in section

2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant to the petitioner or any other party, including the Commission, such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its mem-

ber, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) The Commission may petition any United States court of appeals for the circuit in which the unlawful employment practice in question occurred or in which the respondent resides or transacts business, for the enforcement of its order and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that its order be enforced and for appropriate temporary relief or restraining order. The Commission shall file in court with its petition the record in the proceeding as provided in section 2112

of title 28, United States Code. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the Commission. Upon the filing of such petition, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant to the Commission, or any other party, such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. No objection that has not been urged before the Commission, its members, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission,

its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(m) If no petition for review, as provided in subsection (k), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Commission under subsection (l) after the expiration of such sixty-day period. The clerk of the court of appeals in which such petition for enforcement is filed shall forwith enter a decree enforcing the order of the Commission and shall submit a copy of such decree to the

Commission, the respondent named in the petition, and to any other parties to the proceeding before the Commission.

"(n) If within ninety days after service of the Commission's order, no petition for review has been filed as provided in subsection (k), and the Commission has not sought enforcement of its order as provided in subsection (l), any person entitled to relief under the Commissioner's order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the unlawful employment practice in question occurred, or in which a respondent named in the order resides or transacts business. The provisions of subsection (m) shall apply to such petitions for enforcement.

"(o) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by attorneys appointed by the Commission.

"(p) Whenever a charge is field with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding, the Commission shall, after it issues a complaint, bring an action for appropriate temporary or preliminary relief pending its final dis-

position of such charge, or until the filing of a petition under subsections (k), (l), (m), or (n) of this section, as the case may be, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a)(2) thereof, shall govern proceedings under this subsection.

"(q)(1) If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Com-

mission has neither issued a complaint under subsection (f) nor entered into an agreement under subsection (f) or (i) which is acceptable to the Commission and to the person aggrieved, the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto, except that, upon timely application, the court in its discretion may permit the Commission to intervene in such civil action if the Commission certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

"(2) The right of an aggrieved person to bring a civil action under paragraph (1) of this subsection shall terminate once the Commission has issued a complaint under subsection (f), or has entered into an agreement under subsection (f) or (i) which is acceptable to the Commission and to the person aggrieved: *Provided*, That if after issuing a complaint the Commission has not issued an order under subsection (h) within a period of one hundred and eighty days of the issuance of the complaint, the Commission shall so notify the person aggrieved and a civil action may be brought against the respondent named in the charge at any time prior to the Commission's issuance of an order under subsection (h): *Provided further*, That if the person aggrieved files a civil action against the respondent during the period from one hundred and eighty days to one year after the issuance of the complaint such person shall notify the Commission of such action and the Commission may petition the court not to proceed with the suit. The court may dismiss or stay any such action upon a showing that the Commission has been acting with due diligence on the complaint, that the Commission anticipates the issuance of an order under subsection (h) within a reasonable period of time, that the case is exceptional, and that extension of the Commission's jurisdiction is warranted."

(l) Subsections (f) through (k) of section 706 of such Act and references thereto are redesignated as subsections (r) through (w), respectively.

(c) Section 706(r) of such Act, as redesignated by this section, is amended by adding at the end the following sentence: "Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper."

(d) Section 706(u) and (v) of such Act, as redesignated by this section, are amended (1) by striking out "(e)" and inserting in lieu thereof "(q)", and (2) by striking out "(i)" and inserting in lieu thereof "(u)".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(c) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (d) and (e) of this section.

"(d) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the Attorney General or Acting Attorney General, as appropriate.

"(e) subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: *Provided*, That all such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof."

SEC. 6. (a) Subsections (b), (c), and (d) of section 709 of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions

and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, may pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class or persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall pre-

scribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the

court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

(b) Section 709 of the Civil Rights Act of 1964 is amended by: (1) redesignating section 709(c) as 709(f)

and (2) by adding immediately after section 709(d) as amended, the following subsection (e):

"(e) Any record or paper required by section 709(e) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission or its representative, or to the Attorney General or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the members of the Commission nor its representative, or the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e-9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized

agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply: *Provided*, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c)(1) Section 704(a) of such Act is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704(a).

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," and (B) inserting a comma and the words "or relating to admis-

sion to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d)(1) The second sentence of section 705(a) is amended by inserting before the period at the end thereof a comma and the following: "and all members of the Commission shall continue to serve until their successors are appointed and qualified: *Provided*, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted".

(2) The fourth sentence of section 705(a) of such Act is amended to read as follows: "The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearings examiners, and employees as he deems necessary to assist it in the performance of its functions and fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment,

removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(c) Section 705(g)(1) of such Act is amended by inserting at the end thereof the following: ", and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))".

(f) Section 705(g)(6) of such Act is amended to read as follows:

"(6) to intervene in a civil action brought by an aggrieved party under section 706."

(g) Section 713 of such Act is amended by adding at the end thereof the following new subsections:

"(e) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i), (k), and (l) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission

agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided*, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

(b) Section 711 of such Act is amended by striking out "section 111" and inserting in lieu thereof "sections 111 and 1114".

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(55) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

SEC. 10. Section 715 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended to read as follows:

"SEC. 715. All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Rights Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

~~"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT~~

~~"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), and in those portions of the government of the District of Columbia, and the legislative and judicial branches of the Federal Government having positions in the competitive service, shall be made free from any discrimination based on race, color, religion, sex, or national origin.~~

~~"(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder. and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders and instructions: *Provided*, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.~~

"(c) Within thirty days of receipt of notice given pursuant to subsection (b), of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 706 (q) through (w), as applicable, shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission which the Director of the Office of Management and Budget determines relate to nondiscrimination in Government employment are transferred to the Equal Employment Opportunity Commission.

"(f) This section shall become effective six months after the date of enactment of this Act.

"(g) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

SEC. 12. The amendments made by this Act to section

~~706 of the Civil Rights Act of 1964 shall not be applicable to charges filed with the Commission prior to the enactment of this Act.~~

That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1971".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, except that during the first year after the date of enactment of the

Equal Employment Opportunities Enforcement Act of 1971, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (e) strike out between "(A)" and "and such labor organization", and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, or (B) eight or more thereafter,"

(5) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–1) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its religious activities."

SEC. 4. (a) Subsections (a) through (e) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5(a)-(e)) are amended to read as follows:

"(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by an officer or employee of the Commission upon the request of any person claiming to be aggrieved, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') within ten days, and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the

charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a

person claiming to be aggrieved alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, except that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered or certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by an officer or employee of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the

practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days

after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon any respondent not a government, governmental agency, or political subdivision a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in such civil action. The provisions of section 706 (q) through (w),

as applicable, shall govern civil actions brought hereunder. Related proceedings may be consolidated for hearing. Any officer or employee of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person or persons aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant other persons a right to intervene or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure for the district courts of the United States.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such un-

lawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organizations, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title, except that (1) back pay liability shall not exceed that which has accrued more than two years prior to the filing of a charge with the Commission, and (2) interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the back pay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint ot be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the respondent for the elimination of the alleged unlawful employment practice and the Commission may at any time, upon reasonable notice, modify or set aside, in

whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsections (l) through (n) and the provisions of these subsections shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsections (h) or (i) of this section shall be determined on the record. Sections 554, 555, 556, and 557 of title 5 of the United States Code shall apply to such proceedings.

"(k) Any party aggrieved by a final order of the Commission granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals for the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days after the service of such order, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to any other party to the proceeding before the Commission, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction of the proceeding

and of the question determined therein, and shall have power to grant to the petitioner or any other party, including the Commission, such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent,

and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) The Commission may petition any United States court of appeals for the circuit in which the unlawful employment practice in question occurred or in which the respondent resides or transacts business, for the enforcement of its order and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that its order be enforced and for appropriate temporary relief or restraining order. The Commission shall file in court with its petition the record in the proceeding as provided in section 2112 of title 28, United States Code. A copy of such petition shall be forthwith transmitted by the clerk of the court to the

parties to the proceeding before the Commission. Upon the filing of such petition, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant to the Commission, or any other party, such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. No objection that has not been urged before the Commission, its members, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or

its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(m) If no petition for review, as provided in subsection (k), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Commission under subsection (l) after the expiration of such sixty-day period. The clerk of the court of appeals in which such petition for enforcement is filed shall forthwith enter a decree enforcing the order of the Commission and shall transmit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Commission.

"(n) If within ninety days after service of the Commission's order, no petition for review has been filed as provided in subsection (k), and the Commission has not sought enforcement of its order as provided in subsection (l), any person entitled to relief under the Commission's order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the unlawful employment practice in question occurred, or in which a respondent named in the order resides or transacts business. The provisions of subsection (m) shall apply to such petitions for enforcement.

"(o) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by attorneys appointed by the Commission.

"(p) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding, the Commission shall, after it issues a complaint, bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, or until the filing of a petition under subsections (k), (l), (m), or (n) of this section, as the case

may be, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a)(2) thereof, shall govern proceedings under this subsection.

"(q)(1) If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not issued a complaint under subsection (f), the Attorney General has not filed a civil action under subsection

(f), or the Commission has not entered into an agreement under subsection (f) or (i) to which the person aggrieved is a party, the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon the commencement of such civil action, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall take no further action with respect thereto, except that, upon timely application, the court in its discretion may permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action if the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than

sixty days pending termination of State or local proceedin
described in subsection (c) or (d) or the efforts of the Co
mission to obtain voluntary compliance.

"(2) The right of an aggrieved person to bring a civ
action under paragraph (1) of this subsection shall termina
once the Commission has issued a complaint under subsectio
(f) or the Attorney General has filed a civil action under sub
section (f), or the Commission has entered into an agreemen
under subsection (f) or (i) to which the person aggrieved i
a party, except that (1) if after issuing a complaint the Com
mission enters into an agreement under subsection (i) witho
the agreement of the person aggrieved, or has not issued a
order under subsection (h) within a period of one hundre
and eighty days of the issuance of the complaint, the Com
mission shall so notify the person aggrieved and a civil actio
may be brought against the respondent named in the charg
at any time prior to the Commission's issuance of an orde
under subsection (h) or, in the case of an agreement unde
subsection (i) to which the person aggrieved is not a party
within sixty days after receiving notice thereof from the Com
mission, and (2) where there has been no agreement unde
subsection (i), if the person aggrieved files a civil actio
against the respondent during the period from one hundred
and eighty days to one year after the issuance of the com
plaint such person shall notify the Commission of such actio

and the Commission may petition the court not to proceed with the suit. The court may dismiss or stay any such action upon a showing that the Commission has been acting with due diligence on the complaint, that the Commission anticipates the issuance of an order under subsection (h) within a reasonable period of time, that the case is exceptional, and that extension of the Commission's jurisdiction is warranted."

(b) Subsections (f) through (k) of section 706 of such Act and references thereto are redesignated as subsections (r) through (w), respectively.

(c) Section 706(r) of such Act, as redesignated by this section, is amended by adding at the end the following sentence: "Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper."

(d) Subsections (u) and (v) of section 706 of such Act, as redesignated by this section, are amended (1) by striking out "(e)" and inserting in lieu thereof "(q)", and (2) by striking out "(i)" and inserting in lieu thereof "(u)".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(c) Effective two years after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the functions of the Attorney General under this

section shall be transferred to the Commission, toge
with such personnel, property, records, and unexpe
balances of appropriations, allocations, and other funds
ployed, used, held, available, or to be made availabl
connection with such functions unless the President subm
and neither House of Congress vetoes, a reorganization p
pursuant to chapter 9, of title 5, United States Code, inc
sistent with the provisions of this subsection. The Commiss
shall carry out such functions in accordance with the p
visions of subsection (d) and (e) of this section.

"(d) Upon the transfer of functions provided for
subsection (c) of this section, in all suits commenced pursu
to this section prior to the date of such transfer, proceedi
shall continue without abatement, all court orders and d
crees shall remain in effect, and the Commission shall
substituted as a party for the United States of America, t
Attorney General, or the Acting Attorney General, a
appropriate.

"(e) Subsequent to the date of enactment of the Equ
Employment Opportunities Enforcement Act of 1971, th
Commission shall have authority to investigate and act o
a charge of a pattern or practice of discrimination, whethe
filed by or on behalf of a person claiming to be aggrieved
or by an officer or employee of the Commission. All such
actions shall be conducted in accordance with the procedures

set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof."

SEC. 6. (a) Subsections (b), (c), and (d) of section 709 of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e–8(b)–(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality

from requirements imposed under this section. The Com-
mission shall rescind any such agreement whenever it de-
termines that the agreement no longer serves the interes
of effective enforcement of this title.

"(c) Every employer, employment agency, and labo
organization subject to this title shall (1) make and kee
such records relevant to the determinations of whether
unlawful employment practices have been or are being com-
mitted, (2) preserve such records for such periods, and (3)
make such reports therefrom as the Commission shall pre-
scribe by regulation or order, after public hearing, as reason-
able, necessary, or appropriate for the enforcement of this
title or the regulations or orders thereunder. The Commission
shall, by regulation, require each employer, labor organiza-
tion, and joint labor-management committee subject to this
title which controls an apprenticeship or other training pro-
gram to maintain such records as are reasonably necessary to
carry out the purposes of this title, including, but not limited
to, a list of applicants who wish to participate in such pro-
gram, including the chronological order in which applica-
tions were received, and to furnish to the Commission upon
request, a detailed description of the manner in which per-
sons are selected to participate in the apprenticeship or other
training program. Any employer, employment agency, labor
organization, or joint labor-management committee which

believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with

the administration of a fair employment practice law infor
mation obtained pursuant to subsection (c) of this sectio
from any employer, employment agency, labor organizatio
or joint labor-management committee subject to the jurisdi
tion of such agency. Such information shall be furnished o
condition that it not be made public by the recipient agenc
prior to the institution of a proceeding under State or loca
law involving such information. If this condition is violate
by a recipient agency, the Commission may decline to hono
subsequent requests pursuant to this subsection."

(b) Section 709 of the Civil Rights Act of 1964 is
amended by: (1) redesignating subsection (e) or subsection
(f) and (2) by adding immediately after section 709(d) as
amended, the following subsection (e):

"(e) Any record or paper required by section 709(c)
of this title to be preserved or maintained shall be made
available for inspection, reproduction, and copying by the
Commission or its representative, or by the Attorney General
or his representative, upon demand in writing directed to the
person having custody, possession, or control of such record
or paper. Unless otherwise ordered by a court of the United
States, neither the members of the Commission or its rep-
resentative nor the Attorney General or his representative
shall disclose any record or paper produced pursuant to this
title, or any reproduction or copy, except to Congress or any

committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e–9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply. No subpoena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by

inserting the words "or applicants for membership" after the word "membership".

(c)(1) Section 704(a) of such Act is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704(a).

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs.", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) Section 705(a) of the Civil Rights Act of 1964 (785 Stat. 258, 42 U.S.C. 2000e–4(a)) is amended to read as follows:

*"SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, unless additional members are appointed as hereinafter provided in this subsection. Not more than the least number of members

sufficient to constitute a majority of the members of the Commission shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such members of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classi-

fication and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code. At any time after one year from the effective date of the Equal Employment Opportunities Enforcement Act of 1971, the Chairman of the Commission, if he determines that the appointment of additional members of the Commission would help to effectuate the purposes of this title, may request the President to appoint up to four additional members of the Commission. Upon receiving such a request, the President may appoint up to four additional members of the Commission by and with the advice and consent of the Senate. Such additional members shall be appointed for a term of five years. Upon the expiration of the term of appointment of any such additional member no further appointment to the same position shall be made and the total number of members of the Commission shall be reduced accordingly unless the Chairman of the Commission determines that the appointment of one or more additional members of the Commission continues to be necessary to better effectuate the purposes of this title and so advises the President."

(c) Section 705(g)(1) of such Act is amended by inserting at the end thereof the following: ", and to accept voluntary and uncompensated services, notwithstanding the

provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))".

(f) Section 705(g)(6) of such Act is amended to read as follows:

"(6) to intervene in a civil action brought by an aggrieved party under section 706."

(g) Section 713 of such Act is amended by adding at the end thereof the following new subsections:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i), (k), and (l) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to hearing, determining, ordering, certifying,

reporting or otherwise acting as to any work, business, o
matter. Nothing in this subsection authorizes the Commissio
to provide for persons other than those referred to in claus
(2) and (3) of subsection (b) of section 556 of title 5 o
the United States Code to conduct any hearing to whic
that section applies.

"(d) The Commission is authorized to delegate to an
group of three or more members of the Commission any o
all of the powers which it may itself exercise."

(h) Section 714 of such Act is amended by striking ou
"section 111" and inserting in lieu thereof "sections 111 and
1114".

SEC. 9. (a) Section 5314 of title 5 of the United State
Code is amended by adding at the end thereof the following
new clause:

"(58) Chairman, Equal Employment Opportunity
Commission."

(b) Clause (72) of section 5315 of such title is amended
to read as follows:

"(72) Members, Equal Employment Opportunity
Commission (8)."

(c) Clause (111) of section 5316 of such title is
repealed.

SEC. 10. Section 715 of the Civil Rights Act of 1964

(78 Stat. 265; 42 U.S.C. 2000e–14) is amended to read as follows:

"SEC. 715. All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246, as amended, relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this section, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States)

in military departments as defined in section 102 of title 5 United States Code, in executive agencies (other than th General Accounting Office) as defined in section 105 of tit 5, United States Code (including employees and applican for employment who are paid from nonappropriated funds) in the United States Postal Service and the Postal Ra Commission, in those units of the Government of the Distri of Columbia having positions in the competitive service, an in the legislative and judicial branches of the Federal Gov ernment having positions in the competitive service, shall b made free from any discrimination based on race, color, re ligion, sex, or national origin.

"(b) The Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropri ate remedies, including reinstatement or hiring of employee with or without back pay, as will effectuate the policies of thi section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carr out its responsibilities under this section. The Civil Servic Commission shall—

(1) be responsible for the annual review and ap proval of a national and regional equal employme opportunity plan which each department and agency an each appropriate unit referred to in section 717(a) shal submit in order to maintain an affirmative program o

equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

"(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for

carrying out the equal employment opportunity progra
and of the allocation of personnel and resources pr
posed by such department, agency, or unit to carry o
its equal employment opportunity program.

"(c) Within thirty days of receipt of notice of fin
action taken by a department, agency, or unit referred to
subsection 717(a), or by the Civil Service Commission upo
an appeal from a decision or order of such departme
agency, or unit on a complaint of discrimination based o
race, color, religion, sex or national origin, brought pursua
to subsection (a) of this section, Executive Order 114
or any succeeding Executive orders, or after one hundr
and eighty days from the filing of the initial charge with th
department, agency, or unit or with the Civil Service Com
mission on appeal from a decision or order of such depar
ment, agency, or unit until such time as final action ma
be taken by a department, agency, or unit, an employee o
applicant for employment, if aggrieved by the final disposit
of his complaint, or by the failure to take final action on h
complaint, may file a civil action as provided in section 70
(q), in which civil action the head of the department, agenc
or unit, as appropriate, shall be the defendant.

"(d) The provisions of section 706(q) through (w
as applicable, shall govern civil actions brought hereunde

"(e) Nothing contained in this Act shall relieve an

Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

Sec. 12. Section 716 of the Civil Rights Act of 1964 (42 U.S.C. 2000(e)–15, 78 Stat. 266) is amended by adding at the end thereof the following new subsection:

"(d) In the performance of their responsibilities under this Act, the Attorney General, the Chairman of the Civil Service Commission and the Chairman of the Equal Employment Opportunity Commission shall consult regarding their rules, regulations, and policies."

Sec. 13. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall not be applicable to charges filed with the Commission prior to the enactment of this Act.

Calendar No. 4

92D CONGRESS
1st Session

SENATE

Re
No. 92-

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

OCTOBER 28, 1971.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Labor and Public Welfa submitted the following

REPORT

together with

INDIVIDUAL AND SUPPLEMENTAL VIEWS

[To accompany S. 2515]

The Committee on Labor and Public Welfare, to which was refe the bill (S. 2515) to further promote equal employment opportu for American workers, having considered the same, reports favo thereon with an amendment (in the nature of a substitute) and re mends that the bill as amended do pass.

SUMMARY

The principal purpose of S. 2515 is to amend title VII of the Rights Act of 1964 to provide the Equal Employment Opport Commission with a method for enforcing the rights of those wo who have been subjected to unlawful employment practices.

The enforcement procedures provided for in S. 2515 includ issuance of a complaint by the Commission after an investigation efforts to conciliate, followed by a full administrative hearing o record, the issuance of a cease and desist order by the Commissio an opportunity for review by an appropriate court of appeals.

The bill confers upon the Commission the authority to proceed pattern and practice cases of discrimination, and phases out the A ney General's existing authority in such cases over a 2-year p The Secretary of Labor's enforcement functions under Exec Order 11246 as amended relating to nondiscrimination in employ by Government contractors and Federally assisted construction tractors are transferred to the Commission.

addition, S. 2515 expands coverage of Title VII, from those em-ers and labor organizations having 25 or more employees or mem- to those having eight or more employees or members one year r the date of enactment. The bill also includes coverage of em-ees of State and local governments with a provision that com-nts involving these employees will be litigated by the Attorney eral in U.S. district courts, and eliminates the exemption for em-ees of educational institutions.

he Civil Service Commission is given expanded authority to elim-e discrimination in Federal employment, and individual Federal loyees are expressly granted a right of private action to obtain f from such discrimination.

he time limitations on filing charges are expanded from 90 to 180 for a direct charge to the Commission and from 210 to 300 days a charge which is first brought under a State or local law. Back awards are limited to two years prior to the date a charge is filed the Commission. The bill also authorize the appointment of up to additional members of the Commission.

a result of six years experience with title VII, and in order to mmodate the enforcement power provided for in this bill, a num-of administrative changes are contained in S. 2515. They include nded record-keeping requirements and subpoena power, authority he Commission to conduct its own litigation, and additional pro-ons for aggrieved persons.

BACKGROUND

uring the 90th Congress, a bill to provide the Equal Employment ortunity Commission with power to issue cease and desist orders, 465, was reported by the Committee on Labor and Public Wel- but was not acted upon by the Senate. A closely comparable ure, S. 2453, was reported by the Committee during the 91st Con-s, and was passed by the Senate on October 1, 1970, by a vote of 24. This measure was not brought to a vote in the House of Rep-tatives, however.

September 14, 1971, a bill with similar cease and desist provi-, S. 2515, was introduced by Senator Byrd of West Virginia, for tor Williams and for 32 other Senators. Subsequently, on Septem-6, 1971, the House of Representatives passed H.R. 1746, a bill h would authorize the Equal Employment Opportunity Commis-to go into United States district courts on charges of discrimina-rather than to issue its own cease and desist orders. An identical o H.R. 1746, S. 2617, was introduced by Senator Dominick on ember 30, 1971.

ie Subcommittee on Labor held hearings on these three bills on ber 4, 6 and 7, 1971. S. 2515 was reported favorably by that Sub-mittee on October 14, 1971, and was considered by the full Com-ee on Labor and Public Welfare on October 19, 20, and 21, 1971, it was unanimously ordered reported to the Senate.

stimony was received from a number of Federal Government ials on these bills. The Chairman of the United States Commission ivil Rights, Reverend Theodore Hesburgh, testified in support of

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all of the provisions of S. 2515, including cease and desist enforcement powers, consolidation of Federal equal employment opportunity functions, and expansion of coverage to state and local government employees. William Brown III, Chairman of the Equal Employment Opportunity Commission testified in support of S. 2515's cease and desist authority with the reservation that it should also contain court enforcement for pending cases. He endorsed expanded coverage, although he was not in favor of consolidation of EEOC functions. David Norman, Assistant Attorney General, Civil Rights Division, Department of Justice testified in support of a court enforcement approach and against consolidation of functions. Laurence Silberman, Under Secretary of Labor testified against the transfer of the Executive Order program to the Commission, and Irving Kator, Assistant Executive Director of the Civil Service Commission presented testimony in opposition to the transfer of that Commission's equal employment opportunity functions to the Equal Employment Opportunity Commission.

Congressman Erlenborn of Illinois testified in behalf of a court enforcement approach and Congressman Walter Fauntroy testified on behalf of transferring the Civil Service equal employment opportunity functions to the Equal Employment Opportunity Commission.

Clarence Mitchell of the Leadership Conference on Civil Rights and the NAACP, Ken Meiklejohn on behalf of the AFL–CIO, Jack Greenberg of the NAACP Legal Defense and Education Fund., Inc., Joseph Rauh of the Leadership Conference on Civil Rights, Lucille Shriver of the National Federation of Business and Professional Women's Clubs, Olga Madar, Vice President, United Auto Workers, Esther Lawton and Daisy Fields of the Federally Employed Women and Doris Meissner of the National Women's Political Caucus testified in support of S. 2515, including its cease and desist enforcement functions, expanded coverage, and consolidation of functions.

Statements in support of S. 2515 were also received from: Donald E. Morrison, President, National Education Association; Reverend Dr. Ralph David Abernathy, President, Southern Christian Leadership Conference; Paul J. Minarchenko, Legislative Representative, American Federation of State, County and Municipal Employees—AFL–CIO; Hope Eastman, Acting Director, Washington Office, American Civil Liberties Union; William G. Lunsford, on behalf of Friends Committee on National Legislation; David A. Brody, Director, Washington Office, Anti-Defamation League of B'nai B'rith; National Council of Jewish Women; Ann Scott, Vice President—Legislation, The National Organization for Women; Mary Jean Collins Robson, President, Chicago Chapter, NOW; The League of Women Voters; Mrs. Sherman Ross, Chairman, Legislative Program Committee, American Association of University Women; Germaine Krettek, Director, American Library Association; Edward Taylor Anderson, Legislative Associate, Common Cause; and Julius W. Hobson, Washington, D.C.

Testimony in support of a court enforcement bill, S. 2617 or H.R. 1746, was also received from Gerard Smetana on behalf of the American Retail Federation and William Dunn on behalf of the Associated General Contractors. In addition, statements in support of those bills

e submitted by the National Association of Manufacturers, Cham- of Commerce of the United States and the American Protestant spital Association.

NEED FOR THE BILL

even years ago, in response to compelling national need and con-, Congress enacted Title VII of the Civil Rights Act of 1964 blic Law 88-352). By its action, Congress acknowledged the prev- ce of employment discrimination in the United States and the l for Federal legislation to deal with the problem of such discrimi- on. The Act also established the Equal Employment Opportunity mission (EEOC), whose operations were initiated on July 2, . It was the intention of Congress that the EEOC should be the nary Federal agency responsible for eliminating discriminatory loyment practices in the United States.

uring the 6 years since its inception, the EEOC has made an ic attempt to reduce the incidence of employment discrimination e Nation, and to ameliorate the conditions which have led to the stence of these practices. During this period, however, it has been nstrated that employment discrimination is even more pervasive tenacious than the Congress had assumed it to be at the time it d the Act. It affects employees in both the private and the public rs as well as those working in large and small establishments. It lso become clear that despite the national commitment of Con- to the goal of assuring equal employment opportunity for all our ns, the machinery created by the Civil Rights Act of 1964 is not l respects equal to that commitment.

e most striking deficiency of the 1964 Act is that the EEOC does ave the authority to issue judicially enforceable orders to back s findings of discrimination. In prohibiting discrimination in em- ment based on race, religion, color, sex or national origin, the Act limited the Commission's enforcement authority to "informal ods of conference, conciliation and persuasion."

a consequence, unless the Department of Justice concludes that ttern or practice of resistance to Title VII is involved, the burden btaining enforceable relief rests upon each individual victim of imination, who must go into court as a private party, with the and expense that entails, in order to secure the rights promised nder the law. Thus, those persons whose economic disadvantage a prime reason for enactment of equal employment opportunity isions find that their only recourse in the face of unyielding imination is one that is time consuming, burdensome, and all ften, financially prohibitive.

is failure to grant the EEOC meaningful enforcement powers proven to be a major flaw in the operation of Title VII. While tatutes dealing with discrimination in housing and in education ide appropriate enforcement powers for the agencies responsible he elimination of discrimination in those areas of the law, Title as it now stands, is little more than a declaration of national y. Regretably, the practices and policies of discrimination in em- ment are so deeply ingrained that the voluntary conciliation ap- h has not succeeded in adequately combating the existence of practices.

In 1964, employment discrimination tended to be viewed as a ser
of isolated and distinguishable events, for the most part due
ill-will on the part of some identifiable individual or organization,
was thought that a scheme that stressed conciliation rather than co
pulsory processes would be most appropriate for the resolution of t
essentially "human" problem, and that litigation would be necessa
only on an occasional basis. Experience has shown this view to be fal

Employment discrimination as viewed today is a far more compl
and pervasive phenomenon. Experts familiar with the subject n
generally describe the problem in terms of "systems" and "effec
rather than simply intentional wrongs, and the literature on the su
ject is replete with discussions of, for example, the mechanics
seniority and lines of progression, perpetuation of the present effe
of pre-act discriminatory practices through various institutional d
vices, and testing and validation requirements.[1] In short, the proble
is one whose resolution in many instances requires not only expe
assistance, but also the technical perception that the problem exis
in the first instance, and that the system complained of is unlawfu
This kind of expertise normally is not found in either the personn
or legal arms of corporations, and the result in terms of conciliatio
is often an impasse, with the respondent unwilling or unable t
understand the problem in the same way that the Commission pe
ceives it.

The resulting impasse between EEOC and the employer has playe
a large part in the present failure of Title VII. The employer realiz
that any attack on its policies by the EEOC presents largely an in
effectual threat. To comply with the Commission's interpretation of
problem, and to accord the appropriate relief, is a purely voluntar
matter with the respondent with no direct legal sanctions available t
EEOC. This absolute discretion available to respondents has no
proven conducive to the success of Title VII objectives. In cases posin
the most profound consequences, respondents have frequently ignore
the EEOC's findings, preferring rather to chance the unlikelihood tha
the complainant will pursue his claim further through the costly an
time-consuming process of court enforcement. The social consequence
have been extreme.

The failure of the voluntary conciliation approach is reflected i
the present EEOC workload statistics presented by its Chairman
William H. Brown, III. Since its inception, the Commission has re
ceived 81,000 charges. Of this number, the Commission has been abl
to achieve a totally, or even partially satisfactory conciliation in les
than half. This means that in a significant number of cases the ag
grieved individual was not able to achieve any satisfactory settlement
of his claim through the EEOC, and was forced to either give up his
or her claim or, if the necessary funds and time were available, t
pursue the case through the Federal courts.

[1] See e.g. "Developments in the Law—Employment Discrimination and Title VII o
the Civil Rights Act of 1964," 84 Harv. L. Rev. 1109 (1971). Cooper and Sobol, "Seniori
Its and Testing Under Fair Employment Laws: A General Approach To Objective Criteri
of Hiring and Promotion," 82 Harv. L. Rev. 1623 (1969). Blumrosen, "The Duty o
Fair Recruitment Under the Civil Rights Act of 1964," 22 Rutgers L. Rev. 465 (1968).
See also M. Severn, Legal Restraints on Racial Discrimination in Employment (1966); an
decisions in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Asbestos Workers, Loca*
Eagler, 407 F. 2d 1047 (C.A. 5 1969); *Quarles v. Phillip Morris*, 279 F. Supp. 50
(E.D. Va. 1968); *United States v. Local 189, United Papermakers*, 282 F. Supp. 39 (E.D.
La. 1968) and cases cited therein.

hile the above-noted number of charges is disturbing by its very it becomes even more significant when considered in light of the that each year the number of charges filed with the Commission inues to increase. For example, in FY 1970, 14,129 charges were with EEOC; in FY 1971, this number increased to 22,920 ges; and current estimates submitted by the Commission in- te that more than 32,000 charges will be filed this year. It is ob- s that without effective enforcement powers, the EEOC will be little more than a receptacle for charges of violations of Title and that an ever-increasing number of aggrieved individuals will ft without an adequate remedy for violations which are clearly ibited by the law.

he impact of this inability to obtain relief from employment dis- ination surfaces in another, more indicative set of facts—the eco- c disparities which presently affect this Nation's minorities and en.

a special report released this year by the Bureau of the Census, Social and Economic Status of Negroes in the United States," vidence is clear that while some progress has been made toward ring the economic position of the Nation's black population, the ed goal of social and economic equality is not yet anywhere near lity. For example, the report shows that the median family in- for Negroes in 1970 was $6,279, while the median income for es during the same period was $10,236. This earnings gap shows Negroes are still far from reaching their rightful place in ty.

pport for the above statement is provided by statistics in the us Bureau report which show that Negroes are concentrated in the r-paying, less prestigious positions in industry and are largely pre- d from advancement to the higher paid, more prestigious posi- . For example, while Negroes constitute about 10% of the labor , they account for only 3% of all jobs in the high-paying profes- l, technical, and managerial positions. In the nine industries with ighest earning capabilities (printing and publishing, chemicals, ary metals, fabricated metals, nonelectrical machinery, transpor- n equipment, air transportation, and instruments manufacture), oes hold only 1% of professional and managerial positions. On the hand, in the lowest paying laborer and service worker categories, oes account for 24% of all jobs.

is economic disparity is further reinforced by statistics which that the unemployment rate for Negroes is considerably higher that for whites. Figures available for 1970 show that while 4.0% hite males were unemployed, and the unemployment rate for all s was 5.4%, 9.3% of all Negroes were unemployed. Even in the gerial and professional positions, the area with the lowest unem- ment rate, Negro unemployment was 2.1% while white unemploy- was 1.7%.

ile statistics on Spanish-speaking Americans are not nearly as nt or as complete, available data indicates that this, the second- st ethnic minority group in the Nation, with approximately 7.5 n members, is in a similar situation. In 1969, the median family e for Spanish-speaking American families was $5,641. About of these families had incomes of less than $3,000. Both male and

female Spanish-speaking workers, as has already been shown to be t
case with Negroes, are also concentrated in the lower-paying occup
tions. Only 25% of employed Spanish-speaking males are in whi
collar jobs, compared to 41% of men for all other origins. On the oth
hand, 58.8% of Spanish-speaking males are concentrated in blue-coll
occupations. The statistics for Spanish-speaking women workers i
dicates a similar disparate distribution. Also, as with Negroes, Spanis
speaking workers suffer a higher unemployment rate when compar
to the white population. In 1969, 6.0% of Spanish-speaking America
were unemployed, compared to 3.5% for the rest of the Nation.

The situation for working women is no less serious. The dispara
treatment of women in this country has been shown in a series
studies undertaken by the Women's Bureau of the U.S. Departme
of Labor.[2] These studies show that there are aproximately 30 milli
employed women in the Nation, constituting about 38% of the to
work force. The number of working women has also increased ve
rapidly during the last two decades—between 1947 and 1968 the nu
ber of women in the civilian labor force increased by 75% while t
number of men during the same period increased only 16%. Despi
this large increase in the numbers of women in the work force, wom
continue to be relegated to low paying positions and are precluded fr
high-paying executive positions. Similarly, the rate of advanceme
for women is slower than for men in similar positions.

Information supplied by the U.S. Department of Labor's Wome
Bureau shows that 70% of all employed women work in order to pr
vide primary support for themselves or to provide a supplement
the incomes of their husbands which may be needed to meet housho
expenses. However, within established occupational categories, wom
are paid less for doing the same jobs as are done by men. For examp
in 1968, the latest year for which extensive data is presently availab
the median salary for all scientists was $13,200; for women scientis
the median saary was $10,000. Similarly, the median salary for a fu
time male factory worker was $6,738 while his female counterpa
could only expect to earn $3,991. This economic disparity is further e
phasized by figures which show that 60% of women but only 20%
men earned less than $5,000 per year, while only 3% of women b
28% of men earned $10,000 per year or more.

While some have looked at the entire issue of women's rights as
frivolous divertissement, this Committee believes that discriminati
against women is no less serious than other prohibited forms of di
crimination, and that it is to be accorded the same degree of concer
given to any type of similarly unlawful conduct. As a further poi
recent studies have shown that there is a close correlation between di
crimination based on sex and racial discrimination, and that bo
possess similar characteristics.[3] Both categories involve large, natur
classes, membership in which is beyond the individual's control; bo

[2] U.S. Department of Labor, *Fact Sheet on the Earnings Gap* (1971); U.S. Departm
of Labor, *Intensitalization of Women Workers* (1970); U.S. Department of Labor, Bulle
291, *1969 Handbook on Women Workers* (1969); U.S. Department of Labor, *Chang
Patterns of Women's Lives* (1970).

[3] See A. Montagu, *Man's Most Dangerous Myth* 181-4 (4th ed. 1964); G. Myrdal,
American Dilemma 1073-78 (2d ed. 1962). See also "Sex Discrimination and Equal P
tection: Do We Need a Constitutional Amendment?", 84 Harv. L. Rev. 1499 (197
Murphy & Eastwood, "Jane Crow and the Law: Sex Discrimination and Title V
34 Geo. Wash. L. Rev. 232 (1965).

olve highly visible characteristics on which it has been easy to draw
s, stereotypical distinctions. The arguments justifying different
tment of the sexes were also historically used to justify different
tment of the races.

While it is true that the extreme aspects of sex-discrimination as it
ted in the early part of the twentieth century have been dispelled,
women have now been granted the right to vote and may serve on
es, their status in employment is still subject to blatant discrimina-
. In a series of decisions in recent years, the courts have voided
loyment practices and policies which discriminate on the basis of
and have, accordingly, set the necessary legal precedents for deal-
with this form of discrimination.[1] However, despite the effort by
courts and EEOC, discrimination against women continues to
widespread; and is regarded by many as either morally or
iologically justifiable.

he Committee realizes that enactment of this bill will not auto-
cally end employment discrimination in this country. The bill
s no panaceas or guarantees of success. Despite several aspects of
peration of Title VII during these last 6 years which reflect major
ncements in securing equal employment opportunity for all Amer-
s, the results are, nonetheless, disappointing in terms of what
orities and women have a right to expect under the provisions of
law. Particularly disillusioning has been the Congressional estab-
ent of the EEOC without adequate enforcement; it has, in most
cts, proved to be a cruel joke to those complainants who have in
faith turned to the Federal government with the complaint of dis-
ination only to find, after a lengthy investigatory and conciliatory
ess, that the Government cannot compel compliance.

he accomplishment of Congress in enacting the Civil Rights Act
64 is further dimmed by the fact that this is the fourth effort since
time to enact suitable enforcement legislation. The time has come
Congress to correct the defects in its own legislation. The promises
ual job opportunity made in 1964 must be made realities in 1971.

Major Provisions of the Bill

CHANGES IN COVERAGE UNDER TITLE VII

e bill expands the coverage of Title VII in the following
cts:

Eight or more employees.—Section 701 of the Act (section 2 of the
is amended to expand the coverage of title VII to include em-
rs of eight or more persons, and labor organizations with eight
ore members. The Committee agrees with the Chairman of EEOC
discrimination should be attacked wherever it exists, and recog-
that small establishments have frequently been the most flagrant
tors of equal employment opportunity.

present, the jurisdiction of the EEOC extends to approximately
of the nation's non-agricultural work force (approximately 250,-
mployers and 37,800 labor organizations). By adding the provi-

[1] e.g. *Phillips* v. *Martin-Marietta Corp.* 400 U.S. 542 (1971); *Diaz* v. *Pan American Airways*, 442 F. 2d 385 (C.A. 5, 1971); *Weeks* v. *Southern Bell Telephone Co.*, 408 228 (C.A. 5, 1969); *Bowe* v. *Colgate Palmolive Co.*, 416 F. 2d 711 (C.A. 7, 1969)

sions as currently proposed, the jurisdiction of the EEOC wo encompass another 8% of the present work force, or approximat 6.5 million employees and about 90,000 employers.

The need for coverage in this area is obvious. The absence of EE jurisdiction over these small employers and labor organizations made it impossible for the Commission to compile sufficient inform tion in this area to pinpoint those areas where patterns or practices discrimination exist. As a consequence, it has not been possible to ins tute changes where necessary to insure compliance with the provisi of Title VII.

The Committee is not persuaded by arguments that the increas coverage will inundate EEOC with complaints and paperwork. the first instance, the proposition that the increased coverage w overwhelm the Commission with an unmanageable number of n cases is not convincing. This argument, which has traditionally be presented whenever a new jurisdictional area is opened up, has prov to be largely false in other areas of expanded Federal jurisdicti Also, it must be noted that although the proposed increase will res in coverage of more employers, these employers represent proportio ately fewer employees, therefore mitigating against any massive i flux of cases. The argument that the Commission will be overburden by additional paperwork is similarly alarmist. All EEOC reporti procedures are now fully computerized, and once the initial repr gramming is accomplished to account for the new coverage, the Co mittee believes that any additional burden will not be noticeable.

However, since the Commission will be undertaking several n areas of responsibility under the proposed legislation, the Committ recognizes that the Commission may have some difficulty in handli the increased caseload immediately. Therefore, the bill provides th the expansion take place one year after enactment of the bill.

2. *State and local governments.*—The bill would amend section 7 of the Act (section 2 of the bill) to broaden the jurisdictional cove age of title VII by deleting the existing exemptions for State and lo government employees. The Attorney General is given the author to bring civil actions involving unlawful employment practices co mitted by State and local governmental agencies.

The Committee believes that employees of State and local gover ments are entitled to the same benefits and protections in equal e ployment as the employees in the private sector of the economy.

There are at present approximately 10.1 million persons employed State and local governmental units. This figure represents an increa of over 2 million since 1964, and all indications are that the numb of State and local employees will continue to increase more rapidly du ing the next few years. Few of these employees, however, are afford the protection of an effective Federal forum for assuring equal e ployment opportunity. By amending the present section 701 to inclu State and local governmental units within the definition of an "em ployer" under Title VII, all State and local governmental employe would, under the provisions of the bill, have access to the remedi available under the Act.

report released in 1969 by the U.S. Commission on Civil Rights, All the People * * * By All the People," that Commission con- that:

> * * * State and local governments have failed to fulfill eir obligation to assure equal job opportunity * * * Not ly do State and local governments consciously and overtly scriminate in hiring and promoting minority group mem- rs, but they do not foster positive programs to deal with scriminatory treatment on the job.

eport's findings indicate that the existence of discrimination is uated by both institutional and overt discriminatory practices, at past discriminatory practices are maintained through *de facto* ated job ladders, invalid selection techniques, and stereotypical ceptions by supervisors regarding minority group capabilities. udy also indicates that employment discrimination in State and overnments is more pervasive than in the private sector.

nother report issued by the U.S. Commission on Civil Rights in Mexican Americans and the Administration of Justice in the vest," the Commission found that in the five Southwestern vith the highest concentration of Spanish-speaking Americans, epresentation in the vital area of law enforcement was signifi- disproportionate to their demographic distribution. The report hat in these five Southwestern states, Spanish-speaking Amer- who constitute approximately 12% of the population account for 2% of police officers and 6.11% of civilian employees associated w enforcement agencies.

failure of State and local governmental agencies to accord equal ment opportunities is particularly distressing in light of the ance that these agencies play in the daily lives of the average From local law enforcement to social services, each citizen in a nity is in constant contact with many local agencies. The impor- f equal opportunity in these agencies is, therefore, self-evident. democratic society, participatory government is a cornerstone l government. Discrimination by government therefore serves a destructive purpose. The exclusion of minorities from effective pation in the bureaucracy not only promotes ignorance of minor- blems in that particular community, but also creates mistrust, ion, and all too often hostility toward the entire process of ment.

Constitution is imperative in its prohibition of discrimination e and local governments. The Fourteenth Amendment guaran- al treatment of all citizens by States and their political subdi- and the Supreme Court has reinforced this directive by hold- t State action which denies equal protection of the laws to any even if only indirectly, is in violation of the Fourteenth ment.[5] It is clear that the guarantee of equal protection so extend to such direct action as discriminatory employment es.

Committee believes that it is an injustice to provide employees private sector with the assistance of an agency of the Federal

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g., *Shelly* v. *Kraemer*, 334 U.S. 1 (1948); *Burton* v. *Wilmington Parking Au* 65 U.S. 715 (1961).

Government in redressing their grievances while at the same time den ing assistance similar to State and local government employees. T last sentence of the Fourteenth Amendment, enabling Congr to enforce the Amendment's guarantees by appropriate legislati is frequently overlooked, and the plain meaning of the Consti tion allowed to lapse. The inclusion of State and local government em ployees within the jurisdiction of Title VII guarantees and prote tions will fulfill the Congressional duty to enact the "appropria legislation" to insure that all citizens are treated equally in th country.

The Supreme Court has further indicated that at least part of t extension of jurisdiction as contemplated by S. 2515 is a proper cons tutional exercise of power under the Commerce Clause. In its decisi in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), the Court upheld the exte sion of the Fair Labor Standards Act to certain classes of public em ployees as a legitimate exercise of congressional regulatory author under the Commerce Clause. The Court rejected the argument th Federal regulation of the employment practices of State and lo governments is an improper infringement upon the sovereignty of t States. Pointing out that the activities of State and local governme can affect commerce, it held:

> If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to Federal regulation.[6]

A question was raised in the Committee concerning the applicati of Title VII in the case of a Governor whose cabinet appointees a close personal aides are drawn from one political party. The Co mittee's intention is that nothing in this bill should be interpreted prohibit such appointments unless they are based on discriminato because of race, color, religion, sex or national origin. That intent is reflected in sections 703(h) and 706(w) of the law.

3. *Employees of educational institutions.*—The existing exempti for employees of educational institutions is eliminated by an amen ment to section 702 (sec. 3 of the bill).

There are at present over 120,000 educational institutions, wi approximately 2.8 million teachers and professional staff me bers and another 1.5 million non-professional staff members. Y all of these employees are, in effect, without an effective Federal re edy in the area of employment discrimination.

The presence of discrimination in the Nation's educational insti tions is no secret. Many of the most famous and best remembered ci rights cases have involved discrimination in education. This discri nation, however, is not limited to the students alone. Discriminato practices against faculty, staff, and other employees is also comm The practices complained of parallel the same kinds of illegal actio which are encountered in other sectors of business, and include illeg

[6] In rejecting the State sovereignty argument the Court cited a long series of deci holding that a State, when engaged in activities affecting interstate commerce, may be subject to Federal regulations. See *United States* v. *California*, 297 U.S. 175 (1936), *Board of Trustees* v. *United States*, 289 U.S. 48 (1932). See also, *Parden* v. *Terminal Rail Co.*, 377 U.S. 184 (1962).

policies, testing provisions which tend to perpetuate racial im-
es, and discriminatory promotion and certification techniques.[7]
n other areas of employment, statistics for educational institu-
ndicate that minorities and women are precluded from the more
ious and higher-paying positions, and are relegated to the more
and lower-paying jobs. While in elementary and secondary
systems Negroes accounted for approximately 10% of the total
r of positior , in the higher-paying and more prestigious posi-
n institutions of higher learning, blacks constituted only 2.2% of
itions, most of these being found in all-black or predominantly
institutions. Women are similarly subject to discriminatory pat-
Not only are they generally under-represented in institutions of
learning, but those few that do obtain positions are generally
ss and advanced more slowly than their male counterparts. Sim-
while women constitute 67% of elementary and secondary
teachers, out of 778,000 elementary and secondary school prin-
78% of elementary school principals are men and 94% of sec-
school principals are men.

Committee believes that it is essential that these employees be
he same opportunity to redress their grievances as are available
r employees in the other sectors of business. Accordingly, the
ittee has concluded that educational institutions, like other em-
s in the Nation, should report their activities to the Commission
ould be subject to the Act. There is nothing in the legislative
ound of Title VII, nor does any national policy suggest itself,
ort the present exemption. In fact, the Committee believes that
stence of discrimination in educational institutions is particu-
ritical. It is difficult to imagine a more sensitive area than educa-
nstitutions, where the youth of the Nation are exposed to a mul-
of ideas and impressions that will strongly influence their future
oment. To permit discrimination here would, more than in any
rea, tend to promote existing misconceptions and stereotypical
izations which in turn would lead to future patterns of
ination.

deral employment.—The bill adds to title VII a new section
ection 11 of the bill) making clear the obligation of the Fed-
overnment to make all personnel actions free from discrimi-
based on race, color, sex, religion or national orgin. The Civil
Commission, which presently has the responsibility under
ive Order 11478, is given the authority under this title to enforce
mployment opportunity in the Federal government.

Federal government, with 2.6 million employees, is the single
employer in the Nation. It also comprises the central policy-
and administrative network for the Nation. Consequently, its
s, actions, and programs strongly influence the activities of all
nterprises, organizations and groups. In no area is government
more important than in the area of civil rights.

prohibition against discrimination by the Federal government,
pon the due process clause of the Fifth Amendment, was judi-

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[7] *E.g. Armstead v. Starkville School District*, 325 F. Supp. 560 (N.D. Miss. 1971); *Singleton v. Jackson Municipal Separate School District*, 419 F. 2d 1211 (C.A. 5, 1969); *Kemp v. Wheatley School District*, 430 F. 2d 1359 (C.A. 8, 1970); *Wall v. Stanley County Board of Education*, 378 F. 2d 275 (C.A. 4, 1967). See also "A Municipal Corporation May be Sued Under the Civil Rights Act for Equitable Relief," 70 Colum. L. Rev. 1070 (1970).

cially recognized long before the enactment of the Civil Rights A of 1964.[8] Congress itself has specifically provided for nondiscrimin tion in the Federal government by stating that it is "the policy of t United States to insure equal employment opportunities for Feder employees without discrimination because of race, color, religion, se or national origin . . ." (5 U.S.C. § 7151). The primary responsibili for implementing this stated National objective has been granted to t Civil Service Commision pursuant to Executive Order 11246 (196 and more recently by Executive Order 11478 (1969). In his memora dum accompanying Executive Order 11478, President Nixon stat that "discrimination of any kind based on factors not relevant job performance must be eradicated completely from Feder employment." This was an important step forward in the field equal employment opportunity for Federal employees.

Progress has been made in this field, however, much remains to done. Statistical evidence shows that minorities and women contin to be denied access to a large number of government jobs, particular in the higher grade levels. The disparity can be clearly seen in figu presented in a recent report released by the Civil Service Commissio *Minority Group Employment in the Federal Government* (1970). O the basis of the figures presented therein, the following listing sho the percentage of minority group employees under the General Sche ule by grade level:

	Negro	Spanish-surnamed	American Indian	Ore
GS–1 through GS–4	21.8	3.0	1.8	
GS–5 through GS–8	13.5	2.2	.7	
GS–9 through GS–11	5.1	1.5	.5	
GS–12 through GS–13	2.7	.8	.2	
GS–14 through GS–15	1.7	.7	.2	
GS–16 through GS–18	1.4	.3	.1	

Minorities represent 19.4% of the total employment in the Feder government (15.0% are Negroes, 2.9% are Spanish-surnamed, 0.7 are American Indians, and 0.8% are Oriental). Their concentrati in the lower grade levels indicates that their ability to advance to t higher levels has been restricted.

In many areas, the pattern at regional levels is worse than t national pattern. For example, the committee notes with special co cern the particularly low percentage of Federal jobs held by Spanis surnamed persons in areas of high residential concentration of su persons, particularly in California and the Southwestern States, a expects the Commission to undertake a special study of this proble to develop programs to provide greater entry level and advancem employment opportunities for Spanish-surnamed persons.

The position of women in the Federal government has not fa any better. In testimony before the Senate Labor Subcommittee th year, Mrs. Daisy B. Fields, past president of Federally Employe Women (FEW), testified as to the distribution, by percent, of a women employed by the Federal government (approximately 665,0 or about 34%) as represented by the following breakdown:

	Perc
GS–1 through GS–6	76
GS–7 through GS–12	21
GS–13 and above	1

[8] See *Bolling* v. *Sharpe*, 347 U.S. 497 (1954) and cases cited therein.

inordinate concentration of women in the lower grade levels, eir conspicuous absence from the higher grades is again evident. feature of the present equal employment opportunity program deserves special scrutiny by the Civil Service Commission is the aint process. The procedure under the present system, intended to le for the informal disposition of complaints, may have denied yees adequate opportunity for impartial investigation and reso- of complaints.

der present procedures, in most cases, each agency is still respon- or investigating and judging itself. Although provision is made e appointment of an outside examiner, the examiner does not he authority to conduct an independent investigation, and his sions and findings are in the nature of recommendations to the y head who makes the final agency determination on whether s, in fact, discrimination in that particular case. The only appeal the Board of Appeals and Review in the Civil Service ission.

testimony before the Labor Subcommittee reflected a general f confidence in the effectiveness of the complaint procedure on rt of Federal employees. Complaints have indicated skepticism ing the Commission's record in obtaining just resolutions of aints and adequate remedies. This has, in turn, discouraged per- rom filing complaints with the Commission for fear that doing only result in antagonizing their supervisors and impairing ture hope of advancement. The new authority given to the Civil e Commission in the bill is intended to enable the Commission to ider its entire complaint structure and the relationships between ployee, agency and Commission in these cases.

ther task for the Civil Service Commission is to develop more ise in recognizing and isolating the various forms of discrimina- hich exist in the system it administers. The Commission should ecially careful to ensure that its directives issued to Federal es address themselves to the various forms of systemic discrimi- in the system. The Commission should not assume that employ- discrimination in the Federal Government is solely a matter of ous intent on the part of individuals. It apparently has not recognized that the general rules and procedures that it has lgated may in themselves constitute systemic barriers to minori- d women. Civil Service selection and promotion techniques and ements are replete with artificial requirements that place a m on "paper" credentials. Similar requirements in the private of business have often proven of questionable value in predict- performance and have often resulted in perpetuating existing s of discrimination (see e.g. *Griggs* v. *Duke Power Co.*, supra he inevitable consequence of this kind of a technique in Feder- loyment, as it has been in the private sector, is that classes of s who are socio-economically or educationally disadvantaged a very heavy burden in trying to meet such artificial qualifica-

in these and other areas where discrimination is institutional, than merely a matter of bad faith, that corrective measures to be urgently required. For example, the Committee expects vil Service Commission to undertake a thorough re-examination

of its entire testing and qualification program to ensure that standards enunciated in the *Griggs* case are fully met.

The Civil Service Commission's primary responsibility over personnel matters in the Government does create a built-in conf of interest for examining the Government's equal employment opp tunity program for structural defects which may result in a lack true equal employment opportunity. Yet, the Committee was p suaded that the Civil Service Commission is sincere in its dedicat to the principles of equal employment opportunity enunciated Executive Order 11478 and that the Commission has the will and sire to overcome any such conflict of interest. In order to assist Commission in accomplishing its goals and to make clear the C gressional expectation that the Commission will take those furt steps which are necessary in order to satisfy the goals of Execut Order 11478, the Committee adopted in Section 707(b) of the specific requirements under which the Commission is to function developing a comprehensive equal employment opportunity progr

Thus the provision in section 717(b) for applying "appropr remedies" is intended to strengthen the enforcement powers of the C Service Commission by providing statutory authority and support ordering whatever remedies or actions by Federal agencies are nece to ensure equal employment opportunity in Federal employment. Re edies may be applied as a result of individual allegations of discri ination, CSC investigation of equal employment opportunity pr grams in Federal agencies or their field installations, or fr review of agency plans of action and progress reports. Remedies m be in terms of action required to correct a situation regarding single employee or group of employees or broader management tion to correct systemic discrimination and to improve equal emple ment opportunity program effectiveness to bring about need progress. The Commission is to provide Federal agencies with nec sary guidance and authority to effectuate necessary remedies in dividual cases, including the award of back pay, reinstatement hiring, and immediate promotion where appropriate.

The bill also directs the Commission to require each Federal depar ment and agency (including appropriate units of the District Columbia Government) to prepare an equal employment opportuni affirmative plan of action at least annually. The Commission is review, modify, and approve each department or agency develop with full consideration of particular problems and employme opportunity needs of individual minority group populations with each geographic area. These legislative directions are, of course, intended to limit the Commission in requiring the establishment affirmative equal employment opportunity plans for any agency lev including local installations as needed; indeed, the Committee pects the Commission to require that agency plans include speci regional plans for particularly large Federal regional installatio and other regional offices with deficient records of progress in equ employment opportunity. The Committee recognizes that this n emphasis on regional installation equal employment opportuni and action plans will require a greater commitment of both agency a Civil Service Commission personnel to planning and enforcem activities and expects the Civil Service Commission to ensure th

affing additions will be made both at the national and regional evels. Finally, to lend the greatest credibility to its equal em- ent opportunity efforts at a national and regional level, the ission should review and revise its own equal employment plan and implementation, particularly at its regional offices gher grade levels, to ensure that its own record in this field iplary and thus a model for all other Federal agencies.

bill requires the Commission to obtain, on at least a semi-annual ninority group employment and such other data as are neces- r effective evaluation by the Commission and the public of each ment's, agency's or unit's record of equal employment oppor- achievement and to publish at least semi-annually full statistical ier reports (comparable to the report now published annually) al employment opportunity progress. In evaluating agency or approval, the Commission is also directed to study and ine the appropriate allocation of personnel and resources com- to, and the qualifications to be established for top equal em- nt opportunity officials responsible for, carrying out program ibilities, including necessary affirmative action as well as pro- of individual discrimination cases, on both a central office and l (SMSA) basis.

Committee wishes to emphasize the significant reservoir of se developed by the EEOC with respect to dealing with prob- f discrimination. According, the committee strongly urges il Service Commission to take advantage of this knowledge and nce and to work closely with EEOC in the development and nance of its equal employment opportunity programs.

mportant adjunct to the strengthened Civil Service Commission ibilities is the statutory provision of a private right of action courts by Federal employees who are not satisfied with the or Commission decision.

estimony of the Civil Service Commission notwithstanding, the tee found that an aggrieved Federal employee does not have o the courts. In many cases, the employee must overcome a U.S. ment defense of sovereign immunity or failure to exhaust ad- ative remedies with no certainty as to the steps required to such remedies. Moreover, the remedial authority of the Com- and the courts has also been in doubt. The provisions adopted committee will enable the Commission to grant full relief to ed employees, or applicants, including back pay and immediate ement as appropriate. Aggrieved employees or applicants will ve the full rights available in the courts as are granted to in- ls in the private sector under title VII.

bill (section 717(c)) enables the aggrieved Federal employee plicant for employment) to file an action in the appropriate strict court after either a final order by his agency or a final f the Civil Service Commission on an appeal from an agency n or order in any personnel action in which the issue of dis- ation on the basis of race, color, religion, sex or national has been raised by the aggrieved person. It is intended e employee have the option to go to the appropriate court or the District Court for the District of Columbia ther the final decision within his agency on his appeal from

the personnel action complained of or after an appropriate appeal to the Civil Service Commission or after the elapse of 180 days from the filing of the initial complaint or appeal with the Civil Service Commission.

CHANGES IN ENFORCEMENT PROVISIONS

Section 4 of the bill revises section 706 of the act to enable the EEOC to process a charge of employment discrimination through the investigation, conciliation, administrative hearing, and judicial review stages.

The present act, which only allows the Commission to pursue charges through the informal methods of persuasion and conciliation, has, as already shown, proven to be seriously defective in providing an effective Federal remedy for violations of title VII. Since the compliance provisions of the present law, as regards the findings of the EEOC, are purely voluntary, and respondents have not generally been very agreeable to accepting EEOC decisions where discriminatory practices are found, the burden of relief has been placed upon the aggrieved individual's private right of action in the Federal courts.

This method has generally worked to the disadvantage of the aggrieved individuals. Since most title VII complainants are by the very nature of their complaint disadvantaged, the burden of going to court, initiating legal proceedings by retention of private counsel, and the attendant time delays and legal costs involved, have effectively precluded a very large percentage of valid title VII claims from ever being decided. This disparity between complainants and respondents in title VII litigation has been recognized by the courts which have characterized such litigation as a "modern day David and Goliath confrontation."[9] In such situations, the public has an overriding interest in protecting the individual from the denial of those rights which Congress has specifically provided.

To accomplish the stated purpose of title VII, the bill, while retaining the private right of action, provides, as well, for the elimination of unfair employment practices through a system of administrative hearings, Commission decisions and orders, and ultimate court review in appropriate cases—the method of enforcement which has long been utilized by other regulatory agencies.

The need to provide some form of direct enforcement power to the EEOC has been voiced since the inception of the Commission. There is disagreement whether this enforcement power should be through a Commission lawsuit in a U.S. district court, or by an administrative proceeding followed by a cease-and-desist order with review in the appropriate U.S. court of appeals.

The committee is unanimous in its view that some method of enforcement is required for title VII. An alternative measure providing for court enforcement for title VII, instead of the administrative cease-and desist procedure, was given full and careful consideration in the hearings and in the full committee. That measure, however, was rejected, and the bill with administrative cease-and desist procedure was adopted. Without exception, all spokesmen for the major civil

[9] See *Sanchez v. Standard Brands, Inc.*, 431 F. 2d 455 (C.A. 5, 1970); *Jenkins v. United Gas Corp.*, 400 F. 2d 28 (C.A. 5, 1968); *Pettway v. American Cast Iron Pipe*, 411 F. 2d 998 (C.A. 5, 1969).

groups strongly supported the cease-and-desist enforcement

er Theodore Hesburgh, Chairman of the U.S. Commission on ights, testified that cease-and-desist authority is the most effec- l expeditious enforcement mechanism available for use against ment discrimination and that experience has demonstrated e existence of cease-and-desist authority encourages settlement plaints before the enforcement state is reached.

Committee was not persuaded that the direct court enforcement ue would be faster and more effective than traditional adminis- enforcement. The present—and ever increasing overcrowded— ds of the Federal courts is a well-known fact, and, as repeatedly sized by the Judicial Conference of the United States, measures parately needed to expedite trials and relieve the dockets of urts.

stics appearing in the 1970 Annual Report of the Director of ministrative Office of the U.S. Courts indicate that there were trials completed in the U.S. district courts in 1970, up 11 over 1969 and about 60 percent more than in 1962. There was of 127,240 civil and criminal cases on the dockets in 1970, and dictions where the caseloads are the heaviest, it is not uncom- several years to elapse before a matter is reached for trial.

Judicial Conference Report mentions specifically that civil ases have accounted for a good part of the overall growth in ngs. Between 1961 and 1970 there was an increase of more than rcent in civil rights cases filed and in the year 1970 itself, there 985 civil rights cases filed compared to 2,453 in 1969, an increase rcent.

otential for court backlog created by requiring these cases to be at the initial level in the district courts is clear from these s. Moreover, Chief Justice Burger called attention to the prob- overburdening the courts with new cases in his address to the an Bar Association in July of 1970 when he stated:

> From time to time Congress adds more judges, but the total icial organization never quite keeps up with the caseload o recent statutes alone added thousands of cases relating to mitment of narcotic addicts and the mentally ill. These ditions came when civil rights cases, the voting cases and soner petitions were expanding by the thousands.

praising the question of enforcement by district court trials han through agency hearings followed by appellate court re- he committee was thus particularly concerned with the acute of overcrowding of our trial court system. It recognized that t this additional caseload on the district courts would not only already overburdened trial dockets of the courts, but might lay the administration of justice on a national scale unprece- in our history. It is truly said that "Justice delayed is justice " Such is not our objective.

her aspect that is involved in the enforcement of Title VII s the importance of administrative expertise relating to the on of problems of employment discrimination. Many of the II proceedings involve complex labor relations and business

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operations issues particularly in the fashioning of the remedies eliminating discrimination. The Equal Employment Opportu Commission would be expected to develop an important reservo expertise in these matters, expertise which would not readily be a able to a widespread court system. It is expected that through the ministrative process the Commission will continue to define and velop the approaches to handling serious problems of discrimina that are involved in the area of employment including testing labor relations (including seniority systems). It is incumbent u this administrative agency to develop the necessary expertise, ing ity, and sensitivity that will effectuate the purposes of Title VII, vide full relief to aggrieved persons, and still maintain an appropr understanding of the problems faced by the employment sector.

It should also be noted that the administrative cease-and-desist proach encourages early settlement of claims, thereby further al ating the courts and providing quick relief for aggrieved indivi For example, in the Summary of Operations by the General Co of the National Labor Relations Board (NLRB) for fiscal year and the first 6 months of 1971, figures show that in fiscal year the NLRB received a record 33,581 cases. Of these, however, percent were dissposed of without the need for a formal hearing the 2,217 cases which were heard by hearing examiners, only 4.2 to be filed for review or enforcement in the courts of appeals, only about half of these were ever set for oral argument. Experi with other Federal agencies and State fair employment agencies cates a similar trend toward relatively few incidents of ac adjudication.

Further considerations weighing in favor of administrative ce and-desist powers are:

(1) This is the type of authority given to many other Federal re latory agencies.[10-11]

(2) It is the type of enforcement authority preferred by 32 of States which have equal employment opportunity laws.[12]

(3) It will insure more quickly a unified approach to the probl of discrimination since decisions would be rendered by one age rather than several hundred district court judges.

(4) It will provide the needed expertise in recognizing and s ing the more subtle, institutional forms of discrimination.

Following is a comparison of the procedures which are follo when a charge is filed with the Commisson under title VII in present form and those that would be followed under the bill:

Under existing law.—After a charge is filed alleging that an un ful employment practice has been committed, the Commission inve gates and determines whether there is reason to believe that the

[10-11] In addition to the NLRB, other agencies having such powers include: A Energy Commission, National Transportation Board, Federal Communications C sion, Federal Power Commission, Securities and Exchange Commission, Subversive A ties Control Board, Department of Agriculture, Department of Health, Educatio Welfare, Department of Justice, Department of Transportation, Department of De Department of Interior, Interstate Commerce Commission, Treasury Department, an partment of Labor.

[12] States will cease and desist authority: Alaska, Arizona, California, Colorado, necticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, M chusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Mexico, New York, Oklahoma, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, ington, West Virginia, Wisconsin, and Wyoming It is interesting to note that two above, Delaware and New Mexico recently amended their existing enforcement la include cease-and-desist powers.

ns in the charge are true. If the Commisison finds no reasonable
t dismisses the charge, thus terminating the proceeding before
mmission. If the Commission decides that there is reasonable
o believe that the allegation of the charge is true, it attempts
inate the unlawful practice by means of informal methods of
nce, conciliation, and persuasion. If the Commission is unable
ve voluntary compliance, it notifies the person claiming to be
ed, who then has a right to bring a private civil action against
pondent in the district court. The Commission now has no
authority to act to resolve the dispute.

r the bill—1. Upon the filing of a charge, the Commission
nvestigate. If, after investigation, the Commission decides that
no reasonable cause to believe that the charge is true, it would
the charge and notify the person claiming to be aggrieved and
ondent (sec. 706(b)).

the Commission finds reasonable cause, it would seek to elimi-
unlawful practice by informal methods of conference, con-
, and persuasion (sec. 706(b)). An agreement for the elimina-
the alleged unlawful practice can be entered into by the
ssion (Sec. 706 (f) and (i)), any time between the filing of the
and until the record is filed in the Court of Appeals (sec.
. (See below regarding private right of action if the aggrieved
loes not enter into the conciliation agreement.)

the Commission determines that it is unable to secure an accept-
reement, it would issue and serve upon the respondent a com-
nd notice of hearing (sec. 706(f)). The administrative hear-
purpose of which is to take evidence as to whether an unlawful
has been committed and to adjucate the claims of the parties
n the charge, or permitted to be joined, or allowed to inter-
uld be conducted in accordance with the provisions of the Ad-
tive Procedure Act, 5 U.S.C. § 551, *et seq.*, before the Commis-
e of its members, or a hearing examiner appointed in
nce with Federal law (sec. 706 (g) and (j)). The rules of evi-
pplicable to the district courts would be followed so far as prac-

ter completion of the administrative hearing, the Commission
ssue a decision disposing of the case on the merits. The Com-
could find that the respondent has engaged in an unlawful
nent practice, in which case it would issue an order requiring
ondent to cease and desist from its unlawful conduct and to
h affirmative action as would effectuate the policies of the
c. 706(h)). In issuing its order, the Commission, in any situa-
olving back pay, would be limited to an award of two years
the date of the filing of the charge with the Commission.
Commission's order may be enforced through entry of an ap-
e decree of a United States court of appeals.

on the basis of a preliminary investigation, the Commission
nes that prompt judicial action is necessary to preserve its
o grant effective relief, it would be required, following the

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iversal Camera Corp. v. *NLRB*, 340 U.S. 474 (1951); *On Lee* v. *United States*, 47 (1952); *United States* v. *Costello*, 221 F. 2d 668 (C.A. 2, 1955), aff'd on nds 350 U.S. 359 (1956); *American Rubber Products Corp.* v. *NLRB*, 214 F. . 7, 1954).

issuance of a complaint, to seek preliminary or temporary relief Federal district court, pending the final disposition of the charge appeal to the court of appeals (sec. 706(p)).

The intent of section 706(p) is to incorporate existing law de oped in private actions and "pattern or practice" suits under title of the Civil Rights Act of 1964.[14-15] Courts have generally regar petitions for preliminary relief in such cases favorably, and h granted preliminary injunctions against the continuation of unla employment practices in situations which would normally cal such relief in proceedings under rule 65 of the Federal Rules of C Procedure.

The committee believes that in determining whether or not to i preliminary relief, the appropriate standard for the courts to ap was aptly stated by the Court of Appeals for the Fifth Circui *United States* v. *Hayes International Corp.*:

> Where, as here, the statutory rights of employees are involved and an injunction is authorized by statute and the statutory conditions are satisfied as in the facts presented here, the usual prerequisite of irreparable injury need not be established and the agency to whom the enforcement of the right has been entrusted is not required to show irreparable injury before obtaining an injunction. *Fleming* v. *Salem Box Co.* 38 F. Supp. 997, 998–99 (D. Ore., 1940); *Western Electric Co., Inc.* v. *Cinema Supplies, Inc.*, 80 F. 2d 106, cert. den. 297 U.S. 717. We take the position that in such a case, irreparable injury should be presumed from the very fact that the statute has been violated. Whenever a qualified Negro employee is discriminatorily denied a chance to fill a position for which he is qualified and has the seniority to obtain, he suffers irreparable injury and so does the labor force of the country as a whole.
>
> Moreover, we hold as did the court in *Vogler* v. *McCarty, Inc.*, 294 F. Supp. 368, 372 (E.D., La. 1967) affirmed 407 F. 2d 1047 (5th Cir., 1969) that where an employer has engaged in a pattern and practice of discrimination on account of race, et cetera, in order to insure the *full* enjoyment of the rights protected by title VII of the 1954 Civil Rights Act, affirmative and mandatory preliminary relief is required. 415 F. 2d at 1045.

The Commission may not bring an action for preliminary relief u it has issued a complaint. However, in those cases where the need preliminary relief is serious—including but in no way limited to si tions where aggrieved persons are transferred, fired, or other harassed for bringing other charges before the Commission—the C mission is expected to act swiftly in issuing a complaint so that person aggrieved will not be harmed by a delay between the time charge is filed and the issuance of the complaint by the Commissio

It is the committee's view that this authority be broadly constr with the view toward completely rooting out and eliminating emp

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[14-15] *Culpepper* v. *Reynolds Metals Corp.*, 421 F. 2d 888 (C.A. 5, 1970); *United S* v. *Hayes International Corp.*, 415 F. 2d 1038 (C.A. 1969); *Hicks* v. *Crown Zelle Corp.*, 49 FRD 184 (D.C. La. 1968). See also Note, "Developments in the Law—In tions", 78 Harv. L. Rev. 994 (1965).

iscrimination. The Commission is to take whatever affirmative
e needed to provide a full and complete remedy to the aggrieved
r class and to obtain full and immediate compliance with the
ights Act of 1964.
e Commission finds that no unlawful employment practice has
mmitted, it would issue an order dismissing the complaint
6(h)).

ENFORCEMENT AND REVIEW OF COMMISSION ORDERS

w of a Commission order may be obtained in an appropriate
f appeals upon the petition of an aggrieved party within 60
the Commission's order (706(k)). In accordance with the
ns of the Administrative Procedure Act, and established judi-
ctice, the courts of appeals would review the Commission's
s a whole and would make its determination on an examina-
he record to ascertain whether there is substantial evidence to
the agency's findings. In this regard, the committee notes that
ot a second hearing but a review under appellate procedure.
petition is filed within 60 days, the Commission's order is con-
and an enforcement decree may be obtained by the Commission
e clerk of the court of appeals. This automatic enforcement
n places the burden upon the respondent to seek review (as is
in regular civil litigation before district courts). The auto-
nforcement mechanism also answers the contention that ad-
tive proceedings necessarily involve long delays before a judi-
orcement order can be obtained. It is anticipated that in the
jority of cases no review will be sought by any party affected
rder, and that the Commission or other person will be able to
he enforcement decree of the court without the burden of
forward with an entire review proceeding.
wever, the Commission found it desirable in a particular case
nforcement before the expiration of the 60-day period pro-
r a review petition, it would be enabled to do so by section
This section would, among other things, permit the Commis-
pply for a preliminary injunction enforcing its order pending
of a final decree.
y, if the respondent has not appealed, and if the Commission
sought enforcement under section 706 (l) or (m), any person
to relief under the Commission's order could, after 90 days
vice of the Commission's order, also obtain an enforcement
rom the clerk of the court of appeals. (Sec. 706(n).)
ourt of appeals, on application of the Commission or any
rty to the proceeding, would be authorized to grant pre-
or temporary relief pending disposition of the appeal. This
ould exist both in the case of petitions for review by a party
3(k)) or petitions for enforcement by the Commission (sec.

ons of the court of appeals would be subject to review by the
Court of the United States in accordance with 28 U.S.C.
. 706 (k) and (l)).
ovided by section 706(t), as redesignated by this bill, the
ns of the Norris-LaGuardia Anti-Injunction Act (29 U.S.C.

101–115) would not apply to such proceedings for review or enfo ment or for preliminary or temporary relief.

The Committee is aware that in the cases of other administra agencies with quasi-judicial functions the need for obtaining a de of a U.S. Court of Appeals to enforce an agency order has someti resulted in a substantial delay in securing compliance with the or All too frequently, many months elapse between the date an or is issued by an agency and the date a decree of a U.S. Court of App is entered enforcing it.

We have had no experience with Administration cease and d orders issued by EEOC. Therefore the Committee does not rec mend, at this time, that civil penalties be imposed upon respond who refuse to obey Commission orders prior to the entry of a de of the Court of Appeals enforcing such orders. However, the C mittee does wish to emphasize the need for prompt action by Commission to secure enforcement of its orders. In that connect the Committee expects the Commission will take full advantag the availability of preliminary relief from the Courts of App of the summary procedures available in the Courts of Appeals the provisions of Rule 38 of the Federal Rules of Appellate Proced which authorize the imposition of damages and double costs in case of frivolous appeals.

PRIVATE ACTIONS

The bill contains a provision (sec. 706(q)) that if the Commis dismisses a charge, or, within 180 days of its filing has neither is a complaint nor entered into a conciliation or settlement agreem which is acceptable to the Commission and the aggrieved party, it s so notify the aggrieved party. Within 60 days after such notifica the person aggrieved, or, in the case of a charge filed by an offic employee of the Commission, the person or persons named in charge, shall have the right to commence a private civil action in appropriate U.S. district court.

The committee is aware that in recent years regulatory age have been submerged in increasing workloads which strain their sources to the breaking point. The EEOC is no exception to this pr lem. As it indicated in testimony, its caseload has increased at a which surpasses its own projections. The result has been increa backlogs in making determinations, and the possibility of occasi hasty decisions, made under the press of time, which have unfa prejudiced complaints. Accordingly, where the Commission is able to pursue a complaint with satisfactory speed, or enters into agreement which is not acceptable to the aggrieved party, the provides that the individual shall have an opportunity to seek his remedy, even though he may have originally submitted his charg the Commission. It is expected that recourse to this remedy will be exception and not the rule, particularly once the Commission's forcement procedures are fully operational. In the meantime, howe the committee believes that the aggrieved person should be given opportunity to escape the administrative process when he feels claim has not been given adequate attention.

committee is concerned, however, about the interplay between
wly created enforcement powers of the Commission and the
g right of private action. It concluded that duplication of pro-
gs should be avoided. The bill therefore contains a provision
off of the Commission's jurisdiction once the private action has
led—except for the power to intervene—as well as a cutoff of
ht of private action once the Commission issues a complaint or
nto a conciliation or settlement agreement which is satisfactory
Commission and the aggrieved party.
ne Commission is able to reach a conciliation or settlement
ent with the respondent, but such agreement is not acceptable
person aggrieved, the Commission need not proceed with the
e of a complaint. In such event, the private right of action
be preserved.
committee also concluded that the aggrieved person's right to
e a private action should be reactivated under certain circum-
if the Commission does not act promptly after issuing a com-
The bill contains a provision, in section 706(q), that permits
rieved person to bring a civil action against the respondent
Commission has not issued its order within 180 days after
the complaint. However, during the period from 180 days to
after issuance of the Commission's complaint, the aggrieved
who files a private action must notify the Commission of such
nd the Commission may petition the court to stay or dismiss
vate action if the Commission shows that it has been acting
e diligence, that it anticipates the issuance of its order within
nable period of time, that the proceeding is an exceptional one,
t extension of the Commission's jurisdiction is warranted.
committee believes that aggrieved persons are entitled to have
ses processed promptly and that the Commission should de-
s capacity to proceed rapidly with the hearing and decision
ges once the complaint has issued. Six months is a sufficient
f time for the normal case to be processed from complaint to
nd the Commission should be required to explain to the sat-
n of the court why it needs additional time. Accordingly, when
te action is filed after the 180 day period has elapsed from
ance of the Commission's complaint, the court ordered delay
provided for by this section should be the exception rather than
, and would not be justified simply because backlogs and inade-
sources have slowed the Commission's work. The primary con-
ould be to protect the aggrieved person's option to seek a
remedy.
uld be noted, however, that it is not the intention of the com-
o permit an aggrieved party to retry his case merely because
satisfied with the Commission's action. Once the Commission
ed an order, further proceedings must be in the courts of ap-
rsuant to subsections 706(k)–(n).
ommittee would also note that neither the above provisions re-
the individual's right to sue under title VII, nor any of the
ovisions of this bill, are meant to affect existing rights granted
her laws.

SPECIAL ENFORCEMENT PROCEDURE FOR CASES INVOLVING EMPLOYEES STATE AND LOCAL GOVERNMENTS

In those cases involving a respondent which is a "government, g ernmental agency, or political subdivision", and in which EEO(been unable to secure voluntary compliance as provided under sec 706(b) and (f), the bill provides that the Commission shall refer case to the Attorney General for filing of a civil action against respondent in the appropriate U.S. district court. A person aggrie is given the right to intervene in such civil actions.

The committee has no doubt of the need for strong enforcemen equal employment opportunity at all levels of government, and belie that governmental units should lead the way in providing equal opp tunity.

Accordingly, the committee bill provides for coverage of State a local government employees and for a concommitant means of enfo ment to make that coverage meaningful. By placing the full weigh the U.S. Attorney General and the authority of the U.S. dist courts behind equal employment opportunity at the State and lo government level, the committee believes that the machinery has b provided to insure State and local leadership in the area of e employment opportunity.

This enforcement scheme provides the necessary power to achi results without the needless friction that might be created by a Fede executive agency issuing orders to sovereign States and their loc ties. In short, the committee believes that the objective of equal e ployment opportunity can best be achieved by providing this parti lar means of enforcement where State or local governmental units f to comply with the law.

FAIRNESS AND DUE PROCESS

Recognizing the importance that the concept of due process pl in the American ideal of justice, the committee wishes to empha certain provisions which are included in the bill to insure that f ness and due process are part of the enforcement scheme.

(*a*) *Protection of rights of respondent.*—The bill contains a num of provisions designed to protect fully the rights of the person or p sons against whom the charge is filed:

1. The committee retained the requirement that charges be in w ing. The Commission must serve the respondent with a notice of charge, which would advise the respondent of the nature of the leged violation. As amended by the committee, the bill would req such notice to be served on the respondent within 10 days. (sec. (b)).

2. During the Commission's investigation of the charge, the a gations would not be made public by the Commission, and it wo undertake to resolve the matter by informal means before issuing complaint (sec. 706(b)).

3. If the Commission decides to issue a complaint, it would served upon the respondent (sec. 706(f)), who would then hav right to file an answer and to amend it with leave of the Commiss

ave is to be granted under normal circumstances. The respond-
ld be a party to the proceedings before the Commission, and
d have a right to appear at any stage of these proceedings,
without counsel. (Sec. 706 (g).)
arings of the Commission must be on the record and under
visions of the Administrative Procedure Act (5 U.S.C. 551,
(sec. 706(j)). Such proceedings provide the maximum pro-
f the rights of all parties to the proceedings.
e respondent would have the right to seek judicial review of
ission decision which ruled against him, and he could petition
reme Court for certiorari from an unfavorable decision of the
appeals. (Sec. 706(k).)
eparation of functions.—The provisions of the bill and title 5
nited States Code refered to above, would insure that the
rsons would not both prosecute and decide cases for the
sion. Section 554(d) of title 5 imposes the following require-
n the operations of administrative agencies, such as the
sion, whose decisions must be made after hearing and on the

person presiding at the reception of evidence (typically, the
examiner) may not be responsible to or subject to the supervi-
irection of any person engaged in the performance of investi-
prosecuting functions.
employee of the agency performing investigative or prosecu-
ctions in a particular case may not participate in or advise
ecision, recommended decision, or agency review in that or a
related case, except as a witness or as counsel in public
ngs.
ct effect of these provisions would be to prevent the inter-
of functions within the Commission.
rotection of rights of person aggrieved—In addition to the
s already discussed involving the individual right to sue, the
persons claiming to be aggrieved would be further protected
llowing provisions:
rges may be filed by or on behalf of an aggrieved person. The
sion is directed to make its findings on reasonable cause as
as possible, and so far as practicable, within 120 days of the
the charge. The committee, as noted above, considers prompt
charges and complaints to be a major responsibility of the
sion in all cases. The existing 90-day time limitation on filing
has been extended by 90 days (sec. 706(e)).
he Commission finds no reasonable cause to believe that the
true, or enters into a settlement which is not acceptable to
ieved person, the aggrieved person would still have a right of
ainst the respondent.
aggrieved person would have a right to be a party to all pro-
before the Commission and to be represented by counsel of his
if he desires. Particularly at the hearing stage, the guarantees
istrative due process as provided by the Administrative Pro-
ct should be scrupulously maintained. As one authority has
out:

he true principle is that a party who has a sufficient inter-
r right at stake in a determination of govenmental action

should be entitled to an opportunity to know and to meet with the weapons of rebuttal evidence, cross-examination and argument, unfavorable evidence of adjudicative facts . . ." 1 K. Davis, *Treatise on Administrative Law* 412.

The right of a person to participate at the hearing stage through own counsel is intended to supplement or complement, but in no w replace, the traditional advocate role of the representatives of the mission charged with carrying forward the complaint.

Provisions of present law requiring that the person aggrieve notified of his rights have been retained. Especially in light o further safeguards in this bill, the Commission is expected, a commencement and at other appropriate stages of the proceedin fully notify the aggrieved person in clear and understandable fa of the various procedural rights and steps open to him. Too of person files a charge but then blunders along lost in the bureau process. The committee believes that further steps should be t including perhaps followup notification, to ensure that an aggr person knows at apropriate times the status of the case and his r under the law.

(d) "*Commissioner's complaint*" *provision*—The provision per ting a member of the Commission to file a charge of unlawful em ment practice as contained in the present section 706 was amende the committee to provide for such charges to be made by an offi employee of the Commission upon the request of any person cla to be aggrieved. The original bill had continued the Commissio charge but would have barred the Commissioner filing the charge participating in a hearing except as a witness. The committee cluded that this provision might cause some appearance of confli interest if Commissioners were to hear charges placed by a colle moreover the Commission's caseload might not permit the routin qualification of Commissioners who had placed charges.

Placing the authority to make a charge at a lower level of the C mission, however, would accomplish the same purposes while avo these problems.

The purpose of this provision is to enable aggrieved perso have charges processed under circumstances where they are unw to come forward publicly for fear of economic or physical repris this connection the committee wishes to make clear that the f of a Commission charge may be used to maintain the confide identity of the persons aggrieved and that no disclosure need be m of the identity of the person aggrieved at any stage of the proce unless it is voluntary or in such circumstances where the perso grieved is required to be a witness.

This section is not intended in any way to restrict the filing of complaints. The committee agrees with the courts that title VII a are by their very nature class complains,[16] and that any restrictio such actions would greatly undermine the effectiveness of title VI

[16] *Oatis* v. *Crown Zellerbach Corp.*, 398 F. 2d 496 (C.A.5, 1968). Cf. *Jenkins* v *Blas Corp.*, 400 F. 2d 28 (C.A. 5, 1968); *Blue Bell Boots* v. *EEOC*, 418 F. 2d 355 1969); *Local 10, Sheet Metal Workers* v. *EEOC*, 303 F. Supp. 528 (N.D. Calif Similarly, labor organizations may also petition for relief on behalf of their m *Chemical Workers* v. *Planters Manufacturing Co.*, 259 F. Supp. 365 (N.D. Miss *Pulp Sulphate and Paper Mill Workers, Local 186* v. *Minnesota Mining & Manufa Co.*, 304 F. Supp. 1284 (N.D. Ind. 1969)

ransfer of "Pattern or Practice" Cases to EEOC.—The au-
to bring "pattern or practice" suits directly in the district
is provided by section 707 of the present law, is amended by
5 of the bill which transfers the present section 707 functions
e Attorney General to the Commission.

the broad-scale actions against any "pattern or practice" of
nation that have been brought by the Justice Department
ction 707 of the Civil Rights Act of 1964, have been an in-
nd important part of the overall Federal effort to combat dis-
ion, the committee believes that with the enactment of legis-
roviding the Commission with effective power to enforce title
further retention of section 707 power in the Department of
s not necessary. With the adoption of this bill, which includes
sfer to the Commission of the functions of the Office of Federal
Compliance (OFCC) and the functions of the Department
e, the Federal Government, through the procedures of the
sion, will be able to pursue a unified program of attack upon
nts of employment discrimination.

yees would benefit by having to look to only one agency to
lief; employers similarly would be free from the burden of
investigations examining their employment policies and per-
cords in response to similar or identical complaints filed with
agencies.[17]

rly, the duplication of effort that would inevitably result from
ursuits of identical complaints, with the appurtenant double
nd unnecessary waste of scarce legal talent, is something the
e wishes to avoid by effecting the transfer.

viding for the transfer of the authority under section 707, the
e has, however, retained jurisdiction in the Department of
or the first 2 years after enactment of the bill to bring "pat-
ractice" suits where necessary. The committee believes that
safeguard the important "pattern or practice" power, while
me time providing for a smooth and efficient transfer of that
y.

ommittee recognizes that with the institution of the new en-
t powers, the Commission will have to undertake extensive
reorganization, and will have to cope with its present back-
he press of incoming cases at the same time. In light of this,
mission may not be able to fully utilize the "pattern or prac-
nction immediately. It is expected, however, that the two
will exercise concurrent jurisdiction over "pattern or prac-
forcement during the first 2 years of operation under the
, since the committee intends that the Commission's adminis-
ease-and-desist enforcement authority will not be used exclu-
resolve individual complaints but will also include the elimi-
"patterns or practices" of discrimination wherever its inves-

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example of a situation where several Government agencies were all involved in the same complaint, see *Local 189, United Papermakers and Paperworkers, United States*, 416 F.2d 980 (C.A. 5 1969), *cert. denied* 397 U.S. 919 (1970), Supp. 39 (E.D. La. 1968) and 301 F. Supp. 906 (E. D. La. 1969). In this nse, conclusions as to the legality of a seniority system used by the respondent d by the EEOC, the OFCC, and the Department of Justice, with separate in- and litigation employed by each agency independent of the other.

tigation of a charge discloses the existence of such emplo
situations.

In this regard, the committee believes that it is incumbent up
Attorney General and the Commission to cooperate and consult
ever necessary to insure the maximum use of these legal tools
employment discrimination, as well as to avoid duplication of
and conflicting approaches to the implementation of the statut

The committee also believes that the future transfer of the "pa
or practice" authority should not be a burden upon the already
resources of the Commission. Accordingly, the committee has
vided that along with the transfer of the functions, there woul
be a transfer of the funds and personnel positions previously bud
for this work in the Department of Justice.

(b) *Transfer of Contract Compliance activities to EEOC.*—
tion 715 of the bill transfers the powers and duties of the Sec
of Labor under Executive Order 11246 (as amended by Exe
Order 11375) to the Equal Employment Opportunity Commi

Executive Order 11246 enunciates the policy of the Gover
of the United States ". . . to provide equal opportunity in Fe
employment for all qualified persons, to prohibit discriminat
employment because of race, color, religion, sex, or natural origi
to promote the full realization of equal employment opport
through a positive, continuing program in each executive depar
and agency . . ." (E.O. 11246 § 101 as amended). The Executive
program is presently administered within the Department of L
by the Office of Federal Contract Compliance, a division of the
ployment Standards Administration. Under the Executive O
government contractors and subcontractors are required to ag
the following contract provision:

> The contractor will not discriminate against any employe
> or applicant for employment because of race, color, religion
> sex or national origin. The contractor will take affirmativ
> action to ensure that applicants are employed, and that em
> ployees are treated during employment, without regard t
> their race, color, religion, sex, or national origin.

The Secretary of Labor has overall responsibility for admin
tion of the Executive Order, including ultimate authority ov
contracting agencies in the implementation of both the nondis
nation and the affirmative action provisions of the contract cl

The bill transfers all of the functions of the Secretary of L
under the Executive Order to EEOC without modifying in any
those functions or relieving, in any way, government contra
agencies or government contractors of their obligations thereun

This transfer was considered by the Committee last year duri
deliberation on S. 2453. In the report on S. 2453, the bases for
not transferring the program included a concern that the Comm
might be overburdened and that a complete consolidation of all
cies was not necessarily appropriate at that time. The report, how
made clear that the credibility of the executive order progra
very much suspect and so stated:

> However, the committee also believes that an adequate jo
> of providing equal employment opportunity has not, and

being provided through the Federal Procurement func-
There has been far too much non-public discussion and
tiation and far too few understandable results. In many
nces the Department's claim that something major hap-
d, when measured against the demonstration that some-
actually happened, is grossly lacking in the clarity that
ublic and minorities can understand.

nited States Commission on Civil Rights, in October 1970,
ded transferring of "the Contract Compliance responsi-
OFCC" to EEOC in order to achieve a consolidation of
ployment oportunity functions into a single, independent
his recommendation was reconfirmed by the Commission in
1, and again in testimony before the Committee on S. 2515,
r Theodore Hesburgh, Chairman of the Civil Rights
on.

testimony on this bill, the Department of Labor vigorously
he transfer citing legal standards, substantive results, and
nt considerations as support of its position.

mmittee was not persuaded that any of the three reasons
aintenance of the programs with the Secretary of Labor.
ion of whether differing legal standards apply to EEOC
C has been the subject of much discussion both before and
earings. Suffice it to say that the courts are developing the
se law rationalizing the relationship between Title VII and
tive Order program.[18]

mmittee intends that the standards applicable under Title
govern all proceedings under that Title. Furthermore, the
intends that EEOC shall exercise the same authority under
tive Order as has governed OFCC, being limited by the
applicable to Executive Order 11246. The Committee be-
both these functions, though somewhat different in nature,
filled effectively by EEOC. Of course, in neither case, can
er be required to violate Title VII.

ocurement considerations are minimal. The Secretary of
acted in essentially a directive or supervisory role *vis-a-vis*
ement agencies—no change is contemplated by this trans-
ommittee expects that the main burden of obtaining com-
th the executive order will still rest with the contracting

stion raised last year was whether the program has had sub-
sults. Unfortunately, the paucity of credible achievement
year is still the rule. The successes described in the testi-
r from an inability of the program managers to furnish re-
to support their claim. The program looks good on paper.
e many opportunities very minimal information was furn-
he Committee that would support the contention that sig-
sults have been achieved. To the contrary, in the history of
ct Compliance Program, until two days after introduction
l, no sanction had ever been imposed for violation of the

rs Ass'n. of Eastern Penna. v. Secretary of Labor, 442 F.2d 1959 (3d Cir.
lenied — U.S. — (1971). See also the cases cited at for. 17, *Supra*.

Executive Order. Since then, only one small contractor (10 empl has been subjected to sanctions.

In 1969, then Secretary of Labor Shultz, testifying befo Committee asked for time for the new administration to get its in order. The Department's testimony this year suggested that re cess is just around the corner.

The rights of minorities and women are too important to co this important function in an agency that has not really been a achieve the promised results. The contract compliance progra important and viable tool in the government's efforts to achieve employment opportunity. It should have a chance to operate in a atmosphere with an agency that has Equal Employment Oppo ties as its sole priority.

CHANGES IN RECORDKEEPING REQUIREMENTS

Section 709 is revised to provide a more effective system for re ing records to be kept, to permit the Commission to arrange for a priate operating agreements with State and local fair emplo practice agencies, to provide a scheme for avoiding duplication o ords, and for agreements to share information with Federal, and local agencies.

The committee believes strongly that adequate records are ess to the proper and effective administration of this Title. However also mindful of the increasing burdens that employers and union faced with under the proliferation of statutes and regulations affect them. Therefore, the committee urges the Commission to u take serious efforts to ease the paperwork requirements under th consistent with maximum efforts to secure complete compliance the law.

EXPANSION OF COMMISSION MEMBERSHIP

The bill contains two provisions (Secs. 705(a) and 713(d)) des to help the Commission deal promptly with the huge volume of expected to come before it for decision upon the enactment of thi These provisions authorize the President, at the request of the C man of the Commission, to appoint up to four additional membe the Commission by and with the advice and consent of the S and permit the Commission itself to sit in panels of three mem

As has already been noted in this report, the number of charges with the EEOC during the past several years has exceeded all e tations at the time the Civil Rights Act of 1964 was enacted. Fur more, the volume of charges continues to increase, with over charges expected to be filed during the current fiscal year.

While it is impossible to state with assurance at this time wh workload of the Commission will be, the Committee believes authorization for additional Commissioners and the use of member panels should provide sufficient flexibility for the Comm to manage its caseload expeditiously.

EFFECTIVE DATE

The provisions of this bill would be effective upon enactment. ever, under the terms of the bill's amendment to section 701

ghts Act of 1964, the expansion of title VII's coverage to s with eight or more employees, and to unions with eight or nbers, would not be operative until 1 year after enactment.

ESTIMATE OF COSTS

ordance with the requirements of section 252 of the Legislative zation Act of 1970, the Commission has prepared an estimate ojected costs for the new areas of enforcement activity for bill provides. It is the committee's view that the accompany- es represent a reasonable estimate of the minimum additional y requirements for administration of these new undertakings:

[In thousands]

	Fiscal year—				
	1972	1973	1974	1975	1976
operations under present jurisdictional limits	9,431	11,912	12,081	12,123	12,151
sdiction to State and local government em-	2,100	3,000	3,000	3,000	3,000
sdiction to 8 or more employees	(1)	1,234	2,115	4,034	4,243
	12,031	17,046	18,096	20,057	20,294

l also contains provisions for the transfer of two activities administered by different agencies of the Government. As fer of these activities also involves transfer of funds and positions allocated to those agencies, the cost estimates for vities are based upon cost projections by the agencies pres- inistering those operations:

[In thousands]

	Fiscal year—				
	1972	1973	1974	1975	1976
	2,594	2,600	2,600	2,600	2,600
e enforcement	1,800	1,800	1,800	1,800	1,800

ures provided in both the above tables are based on projec- nticipated case loads and estimates of the level of enforce- ity which will be needed. Because of the uncertain nature of ors it is impossible to attempt any realistic projection beyond

TABULATION OF VOTES IN COMMITTEE

nt to section 133(b) of the Legislative Reorganization Act s amended, the following tabulation of votes in committee is

tor Dominick's substitute amendment to strike from the bill fer to EEOC of authority to bring "pattern or practice" eated 14 to 1):

YEAS—1

nick

NAYS—14

Mr. Williams
Mr. Randolph
Mr. Pell
Mr. Nelson
Mr. Mondale
Mr. Eagleton
Mr. Cranston
Mr. Hughes
Mr. Stevenson
Mr. Javits
Mr. Schweiker
Mr. Packwood
Mr. Taft
Mr. Stafford

2. Senator Eagleton's amendment to delay the transfer of the "tern or practice" authority for two years, to provide for the co rent jurisdiction in the EEOC of such pattern or practice cases. to make sure transfer subject to the President's exercise of auth under the Reorganization Act (adopted 13 to 2) :

YEAS—13

Mr. Williams
Mr. Randolph
Mr. Pell
Mr. Nelson
Mr. Mondale
Mr. Eagleton
Mr. Cranston
Mr. Hughes
Mr. Stevenson
Mr. Javits
Mr. Schweiker
Mr. Packwood
Mr. Stafford

NAYS—2

Mr. Dominick
Mr. Taft

3. Senator Dominick's amendment to substitute court enforce for administrative cease-and-desist authority (defeated 15 to 2)

YEAS—2

Mr. Dominick
Mr. Beall

NAYS—15

Mr. Williams
Mr. Randolph
Mr. Pell
Mr. Kennedy
Mr. Nelson
Mr. Mondale
Mr. Eagleton
Mr. Cranston
Mr. Hughes
Mr. Stevenson
Mr. Javits
Mr. Schweiker
Mr. Packwood
Mr. Taft
Mr. Stafford

4. Senator Williams' motion that the committee favorably re S. 2515, as amended (adopted 17 to 0) :

YEAS—17

Williams	Mr. Javits
Randolph	Mr. Dominick
Pell	Mr. Schweiker
Kennedy	Mr. Packwood
Nelson	Mr. Taft
Mondale	Mr. Beall
Eagleton	Mr. Stafford
Cranston	
Hughes	
Stevenson	

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SECTION-BY-SECTION ANALYSIS

SECTION 2

This section amends certain definitions in section 701 of the Civil Rights Act of 1964.

Section 701(a).—This subsection defines "person" to include State and local governments, governmental agencies and political subdivisions.

Section 701(b).—This subsection would extend coverage of employers to those with 8 or more employees one year after enactment. The standard for determining the number of employees of an employer, that is, "employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year," would apply to employers of 25 or more employees during the first year as well as the final coverage of eight or more employees. This subsection would broaden the meaning of "employer" to include State and local governments and the District of Columbia departments or agencies (except those subject by statute to procedures of the Federal competitive service as defined in 5 U.S.C. 2102, who are covered by section 717, as are all Federal employees).

Section 701(c).—This subsection eliminates the exemption for agencies of the United States, States or political subdivisions of States from the definition of "employment agency" in order to conform with the expanded coverage of State and local governments in section 701(a) and (b). State employment services, previously covered by reference to the United States Employment Service, continue to be covered as part of the State or local government coverage. Employees of the United States Employment Service, as Federal employees, are covered by the new section 717 of the act.

Section 701(e).—This subsection is revised to include coverage of labor organizations with 8 or more members one year after enactment.

SECTION 3

Section 702 is amended to eliminate the exemption for employment of individuals engaged in educational activities of non-religious educational institutions. It continues the exemption for employment of aliens outside the United States and for a religious corporation, association, educational institution or society with respect to employment of individuals of a particular religion to perform work connected with religious activities.

SECTION 4(a)

This section amends sections 706 (a)–(e) of the Civil Rights Act of 1964 entitled "Prevention of Unlawful Employment Practices."

Section 706(a).—This subsection would empower the Commission to prevent persons from engaging in unlawful employment practices

er sections 703 and 704 of title VII of the Civil Rights Act of 1964.
ction 706(b).—This subsection prescribes the procedures to be
owed when a charge of an unlawful employment practice is filed
the Commission. The Commission must serve a notice of the
ge on the respondent within ten days, investigate the charge and
e its determination on whether there is reasonable cause to believe
the charge is true. It is not the intent of the committee that fail-
to give notice within ten days should prejudice the rights of an
ieved party. If it finds no reasonable cause, the Commission must
iss the charge; if it finds reasonable cause, it must attempt to
iliate the case. The subsection makes a number of changes in
ing law:

Under present law, a charge may be filed only by a person
ieved under oath or by a member of the Commission where he has
nable cause to believe a violation has occurred. This subsection is
ded to permit a charge to be filed by or on behalf of a person
ieved or by an officer or employee of the Commission upon the
st of a person claiming to be aggrieved.

The Commission would be required to make its determination
asonable cause as promptly as possible and, "so far as practicable,"
in 120 days from the filing of the charge or from the date upon
h the Commission is authorized to act on the charge under
n 706(c) or (d). The Commission is required in its determination
asonable cause to accord substantial weight to final findings and
s made by State or local authorities under State and local laws.
This subsection and section 8(c) of the bill add appropriate
isions to carry out the intent of the present statute to provide
coverage for joint labor-management committees controlling
nticeship or other training or retraining, including on-the-job
ing programs. While these joint labor-management committees
rohibited under section 703(d) of the present act from discrimi-
g, they were not expressly included in the prohibition against
iminatory advertising or retaliation against persons participating
mmission proceedings (sec. 704(a) and (b)) or in the procedures
ling charges in section 706(a).
tion 706(c).—This provision retains the present requirement
the Commission defer for a period of 60 days to State or local
ies functioning under appropriate anti-discrimination laws
20 days during the first year after the effective date of such law).
nly change in the present law is to delete the phrase "no charge
e filed" with the Commission by an aggrieved person in such State
ality. The present statute is somewhat ambiguous respecting Com-
on action on charges filed prior to resort to the State or local
y. The new language clarifies the present statute by permitting the
e to be filed but prohibiting the Commission from taking action
respect thereto until the prescribed period has elapsed.
tion 706(d).—This subsection requires deferral to State or
anti-discrimination agencies in the case of charges filed by an
or employee of the Commission.
tion 706(e).—This subsection prescribes the time limits for the
of a charge. Under the present statute, the charge must be
within 90 days after the alleged unlawful employment practice

occurred. In cases where the Commission defers to a State or local agency, the charge must presently be filed within 210 days of the occurrence of the alleged unlawful practice, or within 30 days after the person aggrieved receives notice that the State or local agency has terminated its proceedings, whichever is earlier. This subsection would permit charges to be filed within 180 days of the alleged unlawful practice—a limitation period similar to that contained in the Labor-Management Relations Act, as amended (29 U.S.C. 160(b)). Where the Commission defers to a State or local agency, the time limit is extended to 300 days after the occurrence of the alleged unlawful practice or 30 days after receipt of notice that the State or local agency has terminated its proceedings. This subsection also requires that notice of the charge be served on the respondent within ten days after its having been filed.

Sections 706(f) through 706(p).—These subsections, which are new, set forth the procedure to be followed where the Commission, after finding reasonable cause to believe that the allegations of the charge are true, is unable to conciliate the case. The hearing and review requirements are similar to those found in most statutes governing administrative agencies.

Section 706(f).—Under this subsection, if the Commission is unable to secure a conciliation agreement pursuant to section 706(b) that is acceptable to the Commission, it would promptly issue and serve upon the respondent a complaint and notice of hearing if the respondent is not a government, governmental agency or political subdivision. In the latter case, if conciliation fails, the Commission will take no further action and refer the case to the Attorney General for filing a civil action in the district courts. Such civil actions are to be governed by sections 706 (q) through (w), as applicable. The Commission's determination that it is unable to secure such an agreement would not be reviewable in court. Conciliation agreements entered into by the Commission would be enforceable in court in accordance with the provisions of section 706(l). If an officer or employee of the Commission files a charge, he shall not participate in a hearing in any complaint arising out of such charge, except as a witness.

Section 706(g).—This subsection prescribes certain statutory procedural requirements after a complaint is issued by the Commission. The respondent would be provided an opportunity to file an answer to the complaint, and to amend its answer upon a showing of reasonableness and fairness. The respondent and the aggrieved person are full parties and are permitted to appear at any stage of the proceeding. The Commission could also, in its discretion, grant to other persons the right to intervene, to file briefs, or to make oral argument, as it deems appropriate. Testimony at hearings must be under oath and reduced to writing and proceedings shall, so far as practicable, be conducted in accordance with the rules of evidence in the district courts of the United States. This last provision is similar to that contained in the Labor Management Relations Act (29 U.S.C. 160(b)). As specified in section 706(j), all hearings must be conducted in accordance with the Administrative Procedure Act. The only persons, in addition to members of the Commission, who may preside at hearings are hearing examiners appointed under section 3105 of title 5 of the United States Code.

ction 706(h).—The subsection provides that if the Commission, owing a hearing, finds that the respondent has engaged in an unlaw- employment practice, it shall state its findings of fact and issue order to be served on the parties, requiring that the respondent e and desist from its unlawful conduct and take such affirmative on, including reinstatement or hiring of employees, with or with- back pay as will effectuate the policies of the Act. Interim earnings mounts earnable with reasonable diligence by the aggrieved per- would operate to reduce the back pay otherwise allowable. If any t back pay liability is limited to two years prior to the filing of a ge with the Commission. The order could also require that the re- dent make reports from time to time to the Commission. If the mission finds no unlawful employment practice, it would state findings and issue an order dismissing the complaint. The pro- n is intended to give the Commission wide discretion in fashion- the most complete relief possible to eliminate all of the conse- ces of the unlawful employment practice caused by, or attribut- to, the respondent.

ction 706(i).—This subsection would make clear the authority e Commission, any time after a charge has been filed until the d is filed in court, to end proceedings by agreement with the ndent for the elimination of the alleged unlawful employment ice. Agreements entered into under this section or section 706(f) d be enforceable in the appropriate court of appeals under section (1) through (n). The Commission would also be able, upon rea- ble notice, to modify or set aside, in whole or in part, any finding der made or issued by it. The right of the aggrieved person to file il action is preserved in section 706(q)(2) in those cases where ggrieved person is not a party to the agreement.

ction 706(j).—This subsection requires that findings of fact and s made or issued under subsection (h) or (i) be on the record in dance with the Administrative Procedure Act.

ction 706(k).—This subsection would permit a party aggrieved final order of the Commission—the respondent or the person or ns on whose behalf the charge was filed—to seek review of such in a U.S. court of appeals within 60 days after the service of the mission's order. The subsection specifies the procedures to be wed after a petition for review is filed, including:

(1) The clerk of the court transmits a copy of the petition to he Commission and to any other party to the proceeding before he Commission;

(2) The Commission files in court the record in the proceedings ursuant to 28 U.S.C. 2112 at which time the court of appeals as exclusive jurisdiction;

(3) The Court of Appeals is authorized to grant such temporary elief, restraining order, or other orders as it deems just and proper nd may enter a decree enforcing, modifying and enforcing as so nodified, or setting aside in whole or in part the order of the Com- nission. The findings of fact by the Commission are conclusive if hey are supported by substantial evidence on the record con- idered as a whole:

(4) Any party to the proceedings before the Commission may ntervene in the court of appeals and a party may apply for leave

to adduce additional evidence before the Commission, which could then modify its original findings. Modified findings would also be conclusive if supported by substantial evidence on the record considered as a whole;

(5) Objections not urged before the Commission, its member or agent, will not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances;

(6) Commencement of proceedings under this subsection would not stay the Commission's order unless ordered by the court; and

(7) The courts of appeals are required to hear petitions expeditiously. This requirement is intended to emphasize to the courts of appeals the need for promptly acting on petitions in order to have speedy resolution of these cases.

Section 706(l).—This subsection would authorize the Commission to petition a U.S. court of appeals for enforcement of its order. The prescribed procedures in the case of petitions for enforcement under this subsection are similar to section 706(k) except that no time limit is specified for the enforcement petition other than that provided by section 706(m) regarding the self-enforcement procedure. The Commission would be authorized to seek an order from the court for temporary or preliminary enforcement of its order pending complete review by the court of appeals.

Section 706(m).—Under this subsection, if there is no petition for review filed within 60 days as provided in section 706(k), the Commission's findings of fact and order would become conclusive in connection with any petition for enforcement filed pursuant to section 706(l). If the Commission petitions for an enforcement order thereafter, the clerk of the court of appeals would enter a decree enforcing the order of the Commission and transmit copies to the Commission, the respondent, and any other parties to the proceeding before the Commission.

Section 706(n).—This subsection provides that any person entitled to relief under a Commission order could obtain enforcement of the order if within 90 days after service of the Commission's order there has been no petition for review filed under subsection (k) or no petition for enforcement filed by the Commission under subsections (l) or (m). The procedures and provisions of subsection (m) would apply to such petition for enforcement.

Section 706(o).—This subsection provides that the Attorney General would conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation, except that relating to governments, governmental agencies, and political subdivisions which is conducted by the Attorney General, including litigation arising under sections 706 (k), (l), (m), (n), (p), (q), or 707, litigation arising in connection with the Commission's record-keeping requirements under section 709, the enforcement of the Commission's authority to conduct investigations under section 710, and private litigation in which the Commission is involved as amicus curiae, as well as judicial proceedings in which the Commission intervenes, shall be conducted by attorneys appointed by the Commission.

ection 706(p).—Under this subsection, if, after a charge is filed
er section 706(b), the Commission concludes on the basis of a pre-
inary investigation that prompt judicial action is necessary to pre-
e its power to grant effective relief in the proceeding, it must bring
action for appropriate preliminary or temporary relief in the
ted States district court in the judicial district in which the unlaw-
employment practice is alleged to have been committed, where the
son would have been employed but for the alleged unlawful prac-
, or if the respondent is not to be found in any of these districts, in
judicial district where the respondent has its principal office.
subsection further provides that for purposes of 28 U.S.C. 1404
1406 (which permit the court to transfer an action to another ju-
al district where the action might have been brought) the district
hich the respondent has his principal office is to be considered a
cial district where the action might have been brought.
his subsection, in addition, would make rule 65 of the Federal
s of Civil Procedure, except paragraph (a)(2) thereof, applic-
to proceedings under section 706(p). Rule 65 prescribes proced-
requirements for the granting of temporary restraining orders
preliminary injunctions. Paragraph (a)(2) of rule 65 permits
court to advance the trial of the merits and to consolidate the trial
he merits with the hearing on the application for injunction. This
ision would be inapplicable to proceedings under section 706(p).
ny relief ordered by the court under this subsection would be per-
d to run until such time as a court of appeals has assumed juris-
on of a review or enforcement petition.
ction 706(q).—This subsection preserves the private right of
n by an aggrieved person. Under this subsection, the aggrieved
on may bring such an action within 60 days after being notified
he Commission that it has dismissed the charge, or when 180 days
elapsed from the filing of the charge without the Commission
ng issued a complaint under section 706(f) or the Attorney
eral having filed a civil action under section 706(f) or without
Commission having entered into an agreement under section 706
r (i) to which the person aggrieved is a party.
he subsection would also divest the Commission of jurisdiction
any pending proceedings upon the filing of a private action.
ersely, the right of an aggrieved party to bring a private action
d terminate once the Commission issued a complaint under sub-
on 706(f), or the Attorney General filed a civil action under sub-
on 706(f), or the Commission entered into a conciliation agree-
under subsection 706 (f) or (i) to which the person aggrieved is
ty. If the Commission does not issue an order within 180 days
it issues a complaint or within 60 days after receipt of notice in
ase of an agreement under subsection (i) to which the person ag-
ed is not a party, the aggrieved person may also institute a civil
n. If such action is instituted within one year of the issuance of
Commission's complaint, the Commission may request that it be
d or dismissed upon a showing that it has been acting with due
nce, that it anticipates issuance of an order within a reasonable
on the complaint, that the case or proceeding is exceptional and
extension of exclusive jurisdiction of the Commission is warranted.

SECTION 4 (b) AND (d)

These sections redesignate the paragraph numbers of subsection 706(e) through (k) of the Civil Rights Act of 1964 as subsection 706(q) through (w), and also redesignate other paragraph numbers to be consistent with the changes made in section 706.

Section 4(c).—This section adds a sentence to subsection 706(f) which clarifies the power of the district courts to grant temporary relief in civil actions brought under title VII.

SECTION 5

This section amends section 707, concerning the Attorney General's "pattern or practice" action, to provide for a transfer of this function to the Commission two years after the enactment of the bill. The bill further provides for concurrent "pattern or practice" jurisdiction for the Commission from the date of enactment until the transfer is complete. The transfer is subject to change in accordance with a Presidential reorganization plan if not vetoed by Congress. The section would provide that currently pending proceedings would continue without abatement, that all court orders and decrees remain in effect, and that upon the transfer the Commission would be substituted as a party for the United States of America or the Attorney General as appropriate. The Commission would have authority to investigate and act on pattern or practice charges except that any action would follow the procedures of section 706.

SECTION 6

This section amends section 709 of the Civil Rights Act of 1964 entitled "Investigations, Inspections, Records, State Agencies."

Section 709(a).—This subsection, which gives the Commission the right to examine and copy documents in connection with its investigation of a charge, would remain unchanged.

Section 709(b).—This subsection would authorize the Commission to cooperate with State and local fair employment practice agencies in order to carry out the purposes of the title, and to enter into agreements with such agencies, under which the Commission would refrain from processing certain types of charges or relieve persons from the recordkeeping requirements. This subsection would make two changes in the present statute. Under this subsection, the Commission could, within the limitations of funds appropriated for the purpose, also engage in and contribute to the cost of research and other projects undertaken by these State and local agencies and pay these agencies in advance for services rendered to the Commission. The subsection also deletes the reference to private civil actions under section 706(f) of the present statute.

Section 709(c).—This subsection, like the present statute, would require employers, employment agencies, labor organizations, and joint labor-management apprenticeship committees subject to the title to make and keep certain records and to make reports therefrom to the Commission. Under the present statute, a party required to keep records could seek an exemption from these requirements on the

d of undue hardship either by applying to the Commission or ng a civil action in the district court. This subsection would re- he party seeking the exemption first to make an application to mmission and only if the Commission denies the request could rty bring an action in the district court. This subsection would uthorize the Commission to apply for a court order compelling iance with the recordkeeping and reporting obligations set in the subsection.

ion 709(d).—This subsection would eliminate the present ex- on from recordkeeping requirements for those employers in and political subdivisions with fair employment practice laws or ployers subject to Federal executive order or agency recordkeep- quirements. Under this subsection, the Commission would con- ith interested State and other Federal agencies in order to co- te the Federal recordkeeping requirements under section 709(c) hose adopted by such agencies. The subsection further provides e Commission furnish to such agencies information pertaining e and local fair employment agencies, on condition that the in- ion would not be made public prior to the institution of State l proceedings.

ion 709(e).—Under this subsection, the Commission or the ey General would have the authority to direct the person hav- stody of any record or paper required by section 709(c) to be ved or maintained to make such record or paper available for ion or copying by the Commission or the Attorney General. strict court of the judicial district where the demand is made or pers are located would have jurisdiction by appropriate process pel the production of such record or paper. The subsection fur- rovides that the members of the Commission and its repre- ves or the Attorney General and his representatives, could not, ordered by the court, disclose any record or paper produced to Congress or a congressional committee, to other government es, or in the presentation of cases before a court or a grand jury.

SECTION 7

section would amend section 710 of the Civil Rights Act of o make section 11 of the National Labor Relations Act (29 161), except for one provision thereof, applicable to Commis- vestigations. This section would require the Commission or a r thereof, upon application of a party, to issue a subpoena re- the attendance and testimony of a witness or the production of idence in a proceeding. The person served with the subpoena petition the Commission to revoke the subpoena within 5 days. plication of the Commission, an appropriate district court could person to obey a subpoena and failure to comply with the court would be punishable in contempt proceedings.

er this section, the Commission would not be authorized to subpoena on the application of a private party before it issues plaint and notice of hearing. This provision, which is in accord he actual practice of the National Labor Relations Board,

would give the Commission exclusive authority to conduct the pr hearing investigation.

Section 11 of the National Labor Relations Act also contains pr visions relating to privileges of witnesses, immunity from prose tion, fees, process, service, and return, and information and assista from other agencies.

SECTION 8 (a) AND (b)

These subsections would amend sections 703(a)(2) and 703(c) of the present statute to make it clear that discrimination agai applicants for employment and applicants for membership in lab organizations is an unlawful employment practice. This subsecti would merely be declaratory of present law.

SECTIONS 8(C) (1) AND (2)

These subsections would amend section 704 (a) and (b) of the pr ent statute to make clear that joint labor-management apprenticesh committees are covered by those provisions which relate to discrim natory advertising and retaliation against individuals participating Commission proceedings.

SECTION 8(d)

This subsection would amend section 705(a) of the present statu to provide for the appointment of up to four new Commission me bers at any time after one year from the effective date of the act the request of the Chairman, and at the discretion of the Presid with the advice and consent of the Senate. Not more than the le number of members sufficient to constitute a majority may be of t same political party.

Further, this subsection would amend section 705(a) of the prese statute to permit a member of the Commission to serve until his su cessor is appointed but not for more than 60 days when Congress is session unless the successor has been nominated and the nominati submitted to the Senate, or after the adjournment sine die of the se sion of the Senate in which such nomination was submitted.

The rest of the subsection is substantially the same as present se tion 705(a) and would make the Chairman of the Commission, behalf of the Commission, responsible for the administrative oper tions of the Commission and for the appointment of officers, agen attorneys, hearing examiners and other employees of the Commiss in accordance with Federal law.

SECTION 8(e)

This subsection would amend section 705(g)(1) of the present s to permit the Commission to accept uncompensated services. It is i tended to permit the Commission to utilize these services for such pu poses as education, publicity, and the collection of data. It would n be expected to accept such services in connection with the prosecutio or decision of cases before it except in extraordinary situations.

SECTION 8(f)

s subsection would eliminate the provision in present section) authorizing the Commission to request the Attorney General rvene in private civil actions and instead permit the Commission to intervene in such civil actions as provided in section 706(q).

SECTION 8(g)

s subsection would, subject to certain exceptions, permit the ission to delegate any of its functions, duties and powers to such s as it may designate by regulation. A number of other agencies road authority to delegate functions; for example, the Securities xchange Commission (15 U.S.C. 78d–1), the Interstate Com- Commission (49 U.S.C. 17(5)), and the Federal Communica- ommission (47 U.S.C. 155(d)). The exceptions are as follows:

(1) The Commission could not delegate its powers to make cisions on the merits after administrative hearings under sec- n 706(h) or to modify or set aside its findings or make new dings under section 706(i), (k), and (l). However, like the ational Labor Relations Board (29 U.S.C. 153(b)), the Com- ssion would be authorized to delegate this power or any of its ner powers to groups of three or more members of the Commis- n;

(2) The Commission could not delegate its authority under tion 713(c) to make rules of general applicability. A similar itation is imposed on the Securities and Exchange Commission 5 U.S.C. 78d–1(a));

(3) The Commission could not delegate its authority under tion 709(b) to make agreements with States under which the mmission agrees to refrain from processing certain charges or relieve certain persons from the recordkeeping requirements; d

(4) The Commission could not provide for the conduct of ad- nistrative hearings except by members of the Commission or hearing officers appointed in accord with 5 U.S.C. 556.

SECTION 8(h)

subsection would afford additional protection to officers, agents, ployees of the Commission in the performance of their official by making 18 U.S.C. 1114 applicable to them.

SECTION 9(a), (b), AND (c)

e subsections would make certain modifications in the position Chairman of the Commission and the members of the Commis- the executive pay scale, so as to place them in a position of with officials in comparable positions in agencies having sub- lly equivalent powers such as the National Labor Relations the Federal Trade Commission and the Federal Power ssion.

SECTION 10

Section 715.—This section transfers all of the powers and duties of the Secretary of Labor under Executive Order 11246 (as amended by Executive order 11375) to the Equal Employment Opportunity Commission. Executive Order 11246 enunciates the policy of the Government of the United States "... to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. . ." (E.O. 11246 § 101 as amended). The Executive order program is presently administered within the Department of Labor by the Office of Federal Contract Compliance, a division of the Employment Standards Administration. The section contemplates the transfer of all of the OFCC program functions related to Executive Order 11246, as amended. This section does not relieve any of the Government procurement agencies of their responsibilities under the executive order.

The present section 715 relating to a special study by the Secretary of Labor is repealed by the substitution of the new provisions. The study has been completed and the section has no more effect.

SECTION 11

Section 717(a).—This subsection would make clear that personnel actions of the U.S. Government affecting employees or applicants for employment shall be made free from any discrimination based on race, color, religion, sex, or national origin. All employees subject to the executive branch and Civil Service Commission control or protection are covered by this section.

Section 717(b).—Under this subsection, the Civil Service Commission is given the authority to enforce the provisions of subsection (a) through appropriate remedies. These remedies may include back pay for applicants, as well as employees, denied promotion opportunities, reinstatement, hire, immediate promotion and any other remedy needed to fully recompense the employee for his loss, both financially and professionally. The Civil Service Commission is also given authority to issue rules and regulations necessary to carry out its responsibilities under this section. The Civil Service Commission also shall annually review national and regional equal employment opportunity plans and be responsible for review and evaluation of all agency equal employment opportunity programs. Finally, agency and executive department heads and officers of the District of Columbia shall comply with such rules and regulations, submit an annual equal employment opportunity plan and notify any employee or applicant of any final action taken on any complaint of discrimination filed by him.

Sections 717(c) and *(d).*—The provisions of sections 706(f) through (w) concerning private civil actions by aggrieved persons are made applicable to aggrieved Federal employees or applicants. They could file a civil action within 30 days of notice of final action

complaint made pursuant to section 717(b), or after 180 days
he filing of an initial charge, or an appeal with the Commission.
uthority given to the Commission or the limitations placed upon
ommission under sections 706(q) through (w) would apply to
vil Service Commission or the agencies, as appropriate, in con-
n with a civil action brought under section 717(c). So, for ex-
, if the Civil Service Commission or agency does not issue an
within 180 days after a complaint or appeal is filed, the aggrieved
may also institute a civil action. If such action is instituted
one year of the filing of the complaint or appeal, the Civil
e Commission or agency may request that the action be stayed
nissed upon a showing that it has been acting with due diligence,
anticipates issuance of an order within a reasonable time on the
int or appeal, that the case or proceeding is exceptional and
tension of exclusive jurisdiction of the Civil Service Commis-
agency is warranted.

ion 717(e).—This subsection provides that nothing in this act
s any Government agency or official of his existing nondiscrimi-
obligations under the Constitution, other statutes, or his or its
sibilities under Executive Order 11478 relating to equal employ-
pportunity in the Federal Government.

SECTION 12

on 716 is amended to provide for consultation of the Attorney
l, the Chairman of the Civil Service Commission, and the Chair-
the Equal Employment Opportunity Commission regarding
regulations and policy in the performance of their responsi-
under this act. It does not in any way limit each of the officials
pendently carrying out their respective obligations under this

SECTION 13

section provides that the amended provisions of section 706
ing the cease and desist enforcement powers would not apply
ges filed with the Commission prior to the effective date of
. In addition, those new or amended sections of title VII not
ally stated in this section to be inapplicable to current charges,
the amendments to sections 705, 707, 709, 710, 713, and 715
over existing charges.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Stand Rules of the Senate, changes in existing law made by the bill shown as follows (existing law proposed to be omitted is enclosed black brackets, new matter is printed in italic, existing law in wh no change is proposed is shown in roman) :

CIVIL RIGHTS ACT OF 1964

AN ACT To enforce the constitutional right to vote, to confer jurisdiction the district courts of the United States to provide injunctive relief ag discrimination in public accommodations, to authorize the Attorney Gen to institute suits to protect constitutional rights in public facilities and pu educaton, to extend the Commission on Civil Rights, to prevent discrimina in federally assisted programs, to establish a Commission on Equal Emp ment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of t United States of America in Congress assembled, That this Act m be cited as the "Civil Rights Act of 1964".

* * * * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *gover ments*, *governmental agencies*, *political subdivisions*, labor unio partnerships, associations, corporations, legal representatives, mut companies, joint-stock companies, trusts, unincorporated organi tions, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an indust affecting commerce who has [twenty-five] *eight* or more employe for each working day in each of twenty or more calendar weeks in t current or preceding calendar year, and any agent of such a person, b such term does not include (1) the United States, a corporation wh owned by the Government of the United States, an Indian tribe, [a State or political subdivision thereof.] *any department or agency the District of Columbia subject by statute to procedures of the co petitive service (as defined in section 2102 of title 5 of the United Sta Code), or* (2) a bona fide private membership club (other than a lab organization) which is exempt from taxation under section 501(c) the Internal Revenue Code of [1954: *Provided*, That] *1954, exce that* during the first year after the [effective date prescribed in su section (a) of section 716, persons having fewer than one hundr employees (and their agents) shall not be considered employers, a during the second year after such date, having fewer than seventy-f

yees (and their agents) shall not be considered employers, and, g the third year after such date] *date of enactment of the Equal oyment Opportunities Enforcement Act of 1971*, persons having than [fifty] *twenty-five* employees (and their agents) shall not sidered employers.

The term "employment agency" means any person regularly taking with or without compensation to procure employees for ployer or to procure for employees opportunities to work for ployer and includes an agent of such a person [; but shall not e an agency of the United States, or an agency of a State or al subdivision of a State, except that such term shall include nited States Employment Service and the system of State and mployment services receiving Federal assistance].

The term "labor organization" means a labor organization d in an industry affecting commerce, and any agent of such an zation, and includes any organization of any kind, any agency, loyee representation committee, group, association, or plan so d in which employees participate and which exists for the e, in whole or in part, of dealing with employers concerning nces, labor disputes, wages, rates of pay, hours, or other terms litions of employment, and any conference, general committee, r system board or joint council so engaged which is subordinate tional or international labor organization.

A labor organization shall be deemed to be engaged in an y affecting commerce if (1) it maintains or operates a hiring hiring office which procures employees for an employer or es for employees opportunities to work for an employer, or (2) mber of its members (or, where it is a labor organization com- of other labor organizations or their representatives, if the ate number of the members of such other labor organization) [one hundred] *twenty-five* or more during the first year after ffective date prescribed in subsection (a) of section 716, (B) y-five or more during the second year after such date or fifty e during the third year, or (C) twenty-five] *date of enactment Equal Employment Opportunities Enforcement Act of 1971, or ght* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the pro- sions of the National Labor Relations Act, as amended, or e Railway Labor Act, as amended;

(2) although not certified, is a national or international labor ganization or a local labor organization recognized or acting as representative of employees of an employer or employers gaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body ich is representing or actively seeking to represent employees employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or ively seeking to represent employees within the meaning of ragraph (1) or (2) as the local or subordinate body through ich such employees may enjoy membership or become affiliated h such labor organization; or

(5) is a conference, general committee, joint or system board, joint council subordinate to a national or international labor

organization, which includes a labor organization engaged in industry affecting commerce within the meaning of any of preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by employer.

(g) The term "commerce" means trade, traffic, commerce, tra portation, transmission, or communication among the several Sta or between a State and any place outside thereof; or within District of Columbia, or a possession of the United States; or betw points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activ business, or industry in commerce or in which a labor dispute wo hinder or obstruct commerce or the free flow of commerce and inclu any activity or industry "affecting commerce" within the meaning the Labor-Management Reporting and Disclosure Act of [19 *1959, and further includes any governmental industry, business activity.*

(i) The term "State" includes a State of the United States, District of Columbia, Puerto Rico, the Virgin Islands, Ameri Samoa, Guam, Wake Island, the Canal Zone, and Outer Contine Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect the employment of aliens outside any State, or to a religious corpo tion, association, *educational institution*, or society with respect to employment of individuals of a particular religion to perform wo connected with the carrying on by such corporation, associati *educational institution*, or society of its religious activities [or to educational institution with respect to the employment of individu to perform work connected with the educational activities of su institution].

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATION ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for employer—

(1) to fail or refuse to hire or to discharge any individ or otherwise to discriminate against any individual with resp to his compensation, terms, conditions, or privileges of emp ment, because of such individual's race, color, religion, sex national origin; or

(2) to limit segregate, or classify his employees *or applic for employment* in any way which would deprive or tend to prive any individual of employment opportunities or otherw adversely affect his status as an employee, because of such in vidual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an emp ment agency to fail or refuse to refer for employment, or otherw to discriminate against, any individual because of his race, co

, sex, or national origin, or to classify or refer for employ-
ny individual on the basis of his race, color, religion, sex, or
l origin.
It shall be an unlawful employment practice for a labor
zation—
(1) to exclude or to expel from its membership, or otherwise
discriminate against, any individual because of his race, color,
igion, sex, or national origin;
(2) to limit, segregate, or classify its membership, *or applicants*
membership or to classify or fail or refuse to refer for employ-
nt any individual, in any way which would deprive or tend to
prive any individual of employment opportunities, or would
it such employment opportunities or otherwise adversely affect
status as an employee or as an applicant for employment,
ause of such individual's race, color, religion, sex, or national
gin; or
(3) to cause or attempt to cause an employer to discriminate
inst an individual in violation of this section.
t shall be an unlawful employment practice for any employer,
ganization, or joint labor-management committee controlling
iceship or other training or retraining, including on-the-job
programs to discriminate against any individual because of
, color, religion, sex, or national origin in admission to, or
ment in, any program established to provide apprenticeship or
aining.
Notwithstanding any other provision of this title, (1) it shall
n unlawful employment practice for an employer to hire and
employees, for an employment agency to classify, or refer for
ment any individual, for a labor organization to classify its
ship or to classify or refer for employment any individual, or
employer, labor organization, or joint labor-management com-
controlling apprenticeship or other training or retraining pro-
o admit or employ an individual in any such program, on the
his religion, sex, or national origin in those certain instances
eligion, sex, or national origin is a bona fide occupational quali-
reasonably necessary to the normal operation of that particular
s or enterprise, and (2) it shall not be an unlawful employment
for a school, college, university, or other educational institu-
institution of learning to hire and employ employees of a par-
religion if such school, college, university, or other educational
ion or institution of learning is, in whole or in substantial part,
supported, controlled, or managed by a particular religion or
rticular religious corporation, association, or society, or if the
um of such school, college, university, or other educational
ion or institution of learning is directed toward the propaga-
a particular religion.
As used in this title, the phrase "unlawful employment prac-
all not be deemed to include any action or measure taken by
loyer, labor organization, joint labor-management committee,
oyment agency with respect to an individual who is a member
Communist Party of the United States or of any other orga-
n required to register as a Communist-action or Communist-

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front organization by final order of the Subversive Activities Con
Board pursuant to the Subversive Activities Control Act of 1950,

(g) Notwithstanding any other provision of this title, it shall
be an unlawful employment practice for an employer to fail or re
to hire and employ any individual for any position, for an emplo
to discharge any individual from any position, or for an employm
agency to fail or refuse to refer any individual for employment in
position, or for a labor organization to fail or refuse to refer
individual for employment in any position, if—

(1) the occupancy of such position, or access to the prem
in or upon which any part of the duties of such position is p
formed or is to be performed, is subject to any requirement
posed in the interest of the national security of the United Sta
under any security program in effect pursuant to or administe
under any statute of the United States or any Executive or
of the President; and

(2) such individual has not fulfilled or has ceased to fulfill t
requirement.

(h) Notwithstanding any other provision of this title, it shall
be an unlawful employment practice for an employer to apply diffe
standards of compensation, or different terms, conditions, or privile
of employment pursuant to a bona fide seniority or merit system
a system which measures earnings by quantity or quality of produc
or to employees who work in different locations, provided that s
differences are not the result of an intention to discriminate bec
of race, color, religion, sex, or national origin, nor shall it be an unla
ful employment practice for an employer to give and to act upon
results of any professionally developed ability test provided that s
test, its administration or action upon the results is not designed,
tended or used to discriminate because of race, color, religion, sex
national origin. It shall not be an unlawful employment practice und
this title for any employer to differentiate upon the basis of sex
determining the amount of the wages or compensation paid or to
paid to employees of such employer if such differentiation is auth
ized by the provisions of section 6(d) of the Fair Labor Standards A
of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business
enterprise on or near an Indian reservation with respect to any publi
announced employment practice of such business or enterprise und
which a preferential treatment is given to any individual because
is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to requ
any employer, employment agency, labor organization, or joint lab
management committee subject to this title to grant preferential tre
ment to any individual or to any group because of the race, color, re
gion, sex, or national origin of such individual or group on account
an imbalance which may exist with respect to the total number or p
centage of persons of any race, color, religion, sex, or national ori
employed by any employer, referred or classified for employment
any employment agency or labor organization, admitted to membe
ship or classified by any labor organization, or admitted to, or e
ployed in, any apprenticeship or other training program, in compa

h the total number or percentage of persons of such race, color, , sex, or national origin in any community, State, section, or rea, or in the available work force in any community, State, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

704. (a) It shall be an unlawful employment practice for an er to discriminate against any of his employees or applicants loyment, for an employment agency *or joint labor-management tee controlling apprenticeship or other training or retraining, ng on-the-job training programs*, to discriminate against any nal, or for a labor organization to discriminate against any thereof or applicant for membership, because he has opposed ctice made an unlawful employment practice by this title, or he has made a charge, testified, assisted, or participated in any in an investigation, proceeding, or hearing under this title.

t shall be an unlawful employment practice for an employer, rganization [or employment agency] *employment agency or or-management committee controlling apprenticeship or other or retraining including on-the-job training programs*, to print sh or cause to be printed or published any notice or advertise- lating to employment by such an employee or membership ny classification or referral for employment by such a labor ation, or relating to any classification or referral for employ- such an employment agency, *or relating to admission to, or ent in, any program established to provide apprenticeship or ining by such a joint labor-management committee* indicating ference, limitation, specification, or discrimination, based on or, religion, sex, or national origin, except that such a notice rtisement may indicate a preference, limitation, specification, rimination based on religion, sex, or national origin when , sex, or national origin, is a bona fide occupational qualifica- employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

705. (a) There is hereby created a Commission to be known as al Employment Opportunity Commission, which shall be com- f five members, *unless additional members are appointed as ter provided in this subsection*, [not more than three of *not more than the least number of members sufficient to con- majority of the members of the Commission* shall be members me political party, [who] *members of the Commission* shall inted by the President by and with the advice and consent of nate] *Senate. Any individual chosen to fill a vacancy shall be d only for the unexpired term of the member whom he shall and all members of the Commission shall continue to serve ir successors are appointed and qualified, except that no such s of the Commission shall continue to serve (1) for more than ys when the Congress is in session unless a nomination to fill ancy shall have been submitted to the Senate, or (2) after*

the adjournment sine die of the session of the Senate in which s[uch] nomination was submitted. [One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed.] The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the [civil service laws, such officers, agents, attorneys,] *provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners,* and employees as [it] *he* deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the [Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office] *provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code. At any time after one year from the effective date of this Act, the Chairman of the Commission, if he determines that the appointment of additional members of the Commission would help to effectuate the purposes of this Act, may request the President to appoint up to four additional members of the Commission. Upon receiving such a request, the President may appoint up to four additional members of the Commission by and with the advice and consent of the Senate. Such additional members shall be appointed for a term of five years. Upon the expiration of the term of appointment of any such additional member no further appointment to the same position shall be made, and the total number of members of the Commission shall be reduced accordingly unless the Chairman of the Commission determines that the appointment of one or more additional members of the Commission continues to be necessary to help effectuate the purposes of this Act and so advises the President.*

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken, the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) [The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2201–2209), is further amended—

[(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

["(32) Chairman, Equal Employment Opportunity Commis-
n": and
[(2) by adding to clause (45) of section 106(a) thereof (5
S.C. 2205(a)) the following: "Equal Employment Opportu-
y Commission (4)."]
*(1) Section 5314 of title 5 of the United States Code is amended
adding at the end thereof the following new clause.*
*'(58) Chairman, Equal Employment Opportunity Commis-
n."*
*(2) Clause (72) of section 5315 of such title is amended to read
follows.*
*'(72) Members, Equal Employment Opportunity Commission
)."*
(3) Clause (111) of section 5316 of such title is repealed.
The principal office of the Commission shall be in or near the
of Columbia, but it may meet or exercise any or all its powers
other place. The Commission may establish such regional or
ffices as it deems necessary to accomplish the purpose of this

The Commission shall have power—
(1) to cooperate with and, with their consent, utilize regional,
ate, local, and other agencies, both public and private, and
ndividuals;] *individuals, and to accept voluntary and uncom-
nsated services, notwithstanding the provisions of section
9(b) of the Revised Statutes (31 U.S.C. 665*(b)).
(2) to pay witnesses whose depositions are taken or who are
nmoned before the Commission or any of its agents the same
ness and mileage fees as are paid to witnesses in the courts
he United States;
(3) to furnish to persons subject to this title such technical
istance as they may request to further their compliance with
s title or an order issued thereunder;
(4) upon the request of (i) any employer, whose employees
some of them, or (ii) any labor organization, whose members
some of them, refuse or threaten to refuse to cooperate in
ctuating the provisions of this title, to assist in such effectua-
n by conciliation or such other remedial action as is provided
this title;
(5) to make such technical studies as are appropriate to
ctuate the purposes and policies of this title and to make the
ults of such studies available to the public;
[(6) to refer matters to the Attorney General with recommen-
ions for intervention in a civil action brought by an aggrieved
ty under section 706, or for the institution of a civil action
the Attorney General under section 707, and to advise, consult,
l assist the Attorney General on such matters.]
(6) *to intervene in a civil action brought by an aggrieved party
der section 706.*
Attorneys appointed under this section may, at the direction
Commission, appear for and represent the Commission in any
ourt.
he Commission shall, in any of its educational or promotional
s, cooperate with other departments and agencies in the per-
ce of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commis... shall be subject to the provisions of section 9 of the Act of Augu... 1939, as amended (the Hatch Act), notwithstanding any exemp... contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. [(a) Whenever it is charged in writing under oath b... person claiming to be aggrieved, or a written charge has been ... by a member of the Commission where he has reasonable caus... believe a violation of this title has occurred (and such charge s... forth the facts upon which it is based) that an employer, employm... agency, or labor organization has engaged in an unlawful employm... practice, the Commission shall furnish such employer, employm... agency, or labor organization (hereinafter referred to as the "respo... ent") with a copy of such charge and shall make an investigation ... such charge, provided that such charge shall not be made publi... the Commission. If the Commission shall determine, after such in... tigation, that there is reasonable cause to believe that the charg... true, the Commission shall endeavor to eliminate any such alle... unlawful employment practice by informal methods of confer... conciliation, and persuasion. Nothing said or done during and ... part of such endeavors may be made public by the Commission w... out the written consent of the parties, or used as evidence in a su... quent proceeding. Any officer or employee of the Commission, ... shall make public in any manner whatever any information in viola... of this subsection shall be deemed guilty of a misdemeanor and ... conviction thereof shall be fined not more than $1,000 or impris... not more than one year.]

SEC. 706. (*a*) *The Commission is empowered, as hereinafter p... vided, to prevent any person from engaging in any unlawful emp... ment practice as set forth in section 703 or 704 of this title.*

[(a)] (*b*) Whenever [it is charged in writing under oath by ... *a charge is filed by or on behalf of a* person claiming to be aggrie... or [a written charge has been filed] by [a member] *an offi... employee* of the Commission [where he has reasonable cause to be... a violation of this title has occurred (and such charge sets forth ... facts upon which it is based)] *upon the request of any person c... ing to be aggrieved, alleging* that an employer, employment age... [or] labor [organization] *organization, or joint labor-manage... committee controlling apprenticeship or other training or retra... including on-the job training programs,* has engaged in an unlaw... employment practice, the Commission shall [furnish] *serve a n... of the charge (including the date, place and circumstances of ... alleged unlawful employment practice) on* such employer, emp... ment agency, [or] labor [organization] *organization, or joint ... management committee* (hereinafter referred to as the "respondent... [with a copy of such charge and shall make an investigation of s... charge, provided that such charge] *within ten days and shall ... an investigation thereof. Charges shall be in writing and shall co... such information and be in such form as the Commission requ... Charges* shall not be made public by the Commission. If the C... mission [shall determine,] *determines* after such investigation [... that there is *not* reasonable cause to believe that the charge is ...

dismiss the charge and promptly notify the person claiming aggrieved and the respondent of its action. In determining r reasonable cause exists, the Commission shall accord substan- ight to final findings and orders made by State or local authori- proceedings commenced under State or local law pursuant to uirements of subsections (c) and (d). If the Commission deter- fter such investigation that there is reasonable cause to believe e charge is true, the Commission shall endeavor to eliminate h alleged unlawful employment practice by informal methods erence, conciliation, and persuasion. Nothing said or done dur- l as a part of such *informal* endeavors may be made public by ommission] *Commission, its officers or employees, or used as e in a subsequent proceeding* without the written consent of rties, or used as evidence in a subsequent proceeding] *persons ed.* Any [officer or employee of the Commission,] *person* who nake] *makes* public [in any manner whatever any] informa- violation of this subsection [shall be deemed guilty of a mis- or and upon conviction thereof] shall be fined not more than r imprisoned *for* not more than one [year.] *year, or both. The ssion shall make its determination on reasonable cause as ly as possible and, so far as practicable, not later than one d and twenty days from the filing of the charge or, where ble under subsection (c) or (d), from the date upon which the ssion is authorized to take action with respect to the charge.*] (*c*) In the case of [an alleged] *a charge filed by or on behalf son claiming to be aggrieved alleging an* unlawful employment occurring in a [State,] *State* or political subdivision of a] *State* which has a State or local law prohibiting the unlawful ment practice alleged and establishing or authorizing a State authority to grant or seek relief from such practice or to insti- minal proceedings with respect thereto upon receiving notice f, no charge may be filed under subsection (a) by the person ed] *thereof the Commission shall take no action with respect vestigation of such charge* before the expiration of sixty days roceedings have been commenced under the State or local law, such proceedings have been earlier [terminated, provided *erminated, except that* such sixty-day period shall be extended undred and twenty days during the first year after the effec- e of such State or local law. If any requirement for the com- ent of such proceedings is imposed by a State or local author- r than a requirement of the filing of a written and signed nt of the facts upon which the proceeding is based, the pro- shall be deemed to have been commenced for the purposes of bsection at the time such statement is sent by registered *or* mail to the appropriate State or local authority.

] (*d*) In the case of any charged filed by [a member] *an r employee* of the Commission alleging an unlawful employ- ractice occurring in a State or political subdivision of a] which has a State or local law prohibiting the practice al- nd establishing or authorizing a State or local authority to r seek relief from such practice or to institute criminal pro- s with respect thereto upon receiving notice thereof[,] the

Commission shall, before taking any action with respect to s charge, notify the appropriate State or local officials and, upon quest, afford them a reasonable time, but not less than sixty (provided that such sixty-day period shall be extended to one dred and twenty days during the first year after the effective [d *date* of such State or local [law).] *law*), unless a shorter perio requested, to act under such State or local law to remedy the prac alleged.

[(d)] (*e*) A charge under [subsection (a)] *this section* shall be f within [ninety] *one hundred and eighty* days after the alleged lawful employment practice [occurred.] *occurred and notice of charge (including the date, place and circumstances of the alle unlawful employment practice) shall be served upon the pe against whom such charge is made within ten days thereafter*, ex that in [the] *a* case of an unlawful employment practice with res to which the person aggrieved has [followed the procedure out in subsection (b).] *initially instituted proceedings with a St or local agency with authority to grant or seek relief from such pr tice or to institute criminal proceedings with respect thereto u receiving notice thereof*, such charge shall be filed by *or on behal* the person aggrieved within [two hundred and ten] *three hund* days after the alleged unlawful employment practice occurred, within thirty days after receiving notice that the State or local age has terminated the proceedings under the State or local law, wh ever is earlier, and a copy of such charge shall be filed by the Com sion with the State or local agency.

[(e) If within thirty days after a charge is filed with the Com sion or within thirty days after expiration of any period of refer under subsection (c) (except that in either case such period ma extended to not more than sixty days upon a determination by Commission that further efforts to secure voluntary compliance warranted), the Commission has been unable to obtain volun compliance with this title, the Commission shall so notify the p aggrieved and a civil action may, within thirty days thereafter, brought against the respondent named in the charge (1) by the pe claiming to be aggrieved, or (2) if such charge was filed by a mem of the Commission, by any person whom the charge alleges aggrieved by the alleged unlawful employment practice. U application by the complainant and in such circumstances as the may deem just, the court may appoint an attorney for such plainant and may authorize the commencement of the action wit the payment of fees, costs, or security. Upon timely application court may, in its discretion, permit the Attorney General to inter in such civil action if he certifies that the case is of general p importance. Upon request, the court may, in its discretion, stay ther proceedings for not more than sixty days pending the ter tion of State or local proceedings described in subsection (b) or efforts of the Commission to obtain voluntary compliance.]

(f) If the Commission determines after attempting to secure v tary compliance under subsection (b) that it is unable to secure the respondent a conciliation agreement acceptable to the Com which determination shall not be reviewable in any court, the C mission shall issue and cause to be served upon any respondent

ent, governmental agency, or political subdivision a com-
ting the facts upon which the allegation of the unlawful em-
practice is based, together with a notice of hearing before
mission, or a member or agent thereof, at a place therein fixed
han five days after the serving of such complaint. In the case
ondent which is a government, governmental agency, or po-
bdivision, the Commission shall take no further action and
r the case to the Attorney General who may bring a civil
ainst such respondent in the appropriate United States dis-
t. The person or persons aggrieved shall have the right to
in such civil action. The provisions of section 706(q)
(w), as applicable, shall govern civil actions brought here-
elated proceedings may be consolidated for hearing. Any
employee of the Commission who filed a charge in any case
participate in a hearing on any complaint arising out of such
cept as a witness.
respondent shall have the right to file an answer to the com-
ainst him and with the leave of the Commission, which shall
d whenever it is reasonable and fair to do so, may amend his
any time. Respondents and the person or persons aggrieved
arties and may appear at any stage of the proceedings, with
counsel. The Commission may grant other persons a right to
or to file briefs or make oral arguments as amicus curiae or
purposes, as it considers appropriate. All testimony shall be
er oath and shall be reduced to writing. Any such proceeding
far as practicable, be conducted in accordance with the rules
e applicable in the district courts of the United States under
s of Civil Procedure for the district courts of the United

the Commission finds that the respondent has engaged in an
employment practice, the Commission shall state its findings
nd shall issue and cause to be served on the respondent and
n or persons aggrieved by such unlawful practice an order
the respondent to cease and desist from such unlawful em-
practice and to take such affirmative action, including rein-
or hiring of employees, with or without back pay (payable
nployer, employment agency, or labor organizations, as the
be, responsible for the unlawful employment practice), as
uate the policies of this title, except that (1) back pay lia-
ll not exceed that which has accrued more than two years
he filing of a charge with the Commission, and (2) interim
or amounts earnable with reasonable diligence by the ag-
erson or persons shall operate to reduce the back pay other-
vable. Such order may further require such respondent to
orts from time to time showing the extent to which he has
with the order. If the Commission finds that the respondent
ngaged in any unlawful employment practice, the Commis-
state its findings of fact and shall issue and cause to be served
pondent and the person or persons alleged in the complaint
ieved an order dismissing the complaint.
er a charge has been filed and until the record has been filed in
ereinafter provided, the proceeding may at any time be ended
ment between the commission and the respondent for the elim-

ination of the alleged unlawful employment practice and the Co
sion may at any time, upon reasonable notice, modify or set as
whole or in part, any finding or order made or issued by it. An
ment approved by the Commission shall be enforceable under
tions (l) through (n) and the provisions of those subsections sh
applicable to the extent appropriate to a proceeding to enfor
agreement.

(j) Findings of fact and orders made or issued under subsec
(h) or (i) of this section shall be determined on the record. S
554, 555, 556, and 557 of title 5 of the United States Code shall
to such proceedings.

(k) Any party aggrieved by a final order of the Commission g
ing or denying in whole or in part the relief sought may obtain a
of such order in any United States court of appeals for the circ
which the unlawful employment practice in question is alleged to
occurred or in which such party resides or transacts business, or
Court of Appeals for the District of Columbia Circuit, by filing
court within sixty days after the service of such order, a writte
tion praying that the order of the Commission be modified or s
A copy of such petition shall be forthwith transmitted by the cl
the court to the Commission and to any other party to the proc
before the Commission, and thereupon the Commission shall fil
court the record in the proceeding as provided in section 2112 o
28, United States Code. Upon the filing of the petition the cour
have jurisdiction of the proceeding and of the question deter
therein, and shall have power to grant to the petitioner or any
party, including the Commission, such temporary relief or restr
order as it deems just and proper, and to make and enter upo
pleadings, testimony, and proceedings set forth in such record a
affirming, modifying, or setting aside, in whole or in part, the or
the Commission and enforcing the same to the extent that such
is affirmed or modified. Any party to the proceeding before the
mission shall be permitted to intervene in the court of appeals.
commencement of proceedings under this subsection shall not,
ordered by the court, operate as a stay of the order of the Commi
No objection that has not been urged before the Commission, its
ber, or agent shall be considered by the court, unless the fail
neglect to urge such objection shall be excused because of extraord
circumstances. The findings of the Commission with respect to
tions of fact, if supported by substantial evidence on the record
sidered as a whole, shall be conclusive. If any party shall apply
court for leave to adduce additional evidence and shall show
satisfaction of the court that such additional evidence is materi
that there were reasonable grounds for the failure to adduce su
dence in the hearing before the Commission, its member, or its
the court may order such additional evidence to be taken bef
Commission, its member, or its agent, and to be made a part o
record. The Commission may modify its findings as to the fac
make new findings, by reason of additional evidence so taken and
and it shall file such modified or new findings, which findings
respect to questions of fact, if supported by substantial evidence
record considered as a whole, shall be conclusive, and its recomm
tions, if any, for the modification or setting aside of its original

filing of the record with it, the jurisdiction of the court shall
ve and its judgment and decree shall be final, except that the
ll be subject to review by the Supreme Court of the United
provided in section 1254 of title 28, United States Code.
filed under this subsection shall be heard expeditiously.
Commission may petition any United States court of appeals
rcuit in which the unlawful employment practice in question
or in which the respondent resides or transacts business, for
cement of its order and for appropriate temporary relief or
g order, by filing in such court a written petition praying
rder be enforced and for appropriate temporary relief or
g order. The Commission shall file in court with its petition
l in the proceeding as provided in section 2112 of title 28,
tates Code. A copy of such petition shall be forthwith trans-
the clerk of the court to the parties to the proceeding before
ission. Upon the filing of such petition, the court shall have
n of the proceeding and of the question determined there-
all have power to grant to the Commission, or any other
h temporary relief, restraining order, or other order as it
t and proper, and to make and enter upon the pleadings,
, and proceedings set forth in such record a decree affirming,
, or setting aside in whole or in part, the order of the Com-
d enforcing the same to the extent that such order is affirmed
d. Any party to the proceeding before the Commission shall
ted to intervene in the court of appeals. No objection that
en urged before the Commission, its members, or agent shall
ered by the court, unless the failure or neglect to urge such
shall be excused because of extraordinary circumstances.
ngs of the Commission with respect to questions of fact, if
by substantial evidence on the record considered as a whole,
nclusive. If any party shall apply to the court for leave to
ditional evidence and shall show to the satisfaction of the
t such additional evidence is material and that there were
e grounds for the failure to adduce such evidence in the
efore the Commission, its member, or its agent, the court
such additional evidence to be taken before the Commission,
er, or its agent, and to be made a part of the record. The
on may modify its findings as to the facts, or make new
by reason of additional evidence so taken and filed, and it
uch modified or new findings which findings with respect to
of fact, if supported by substantial evidence on the record
l as a whole, shall be conclusive, and its recommendations,
the modification or setting aside of its original order. Upon
of the record with it the jurisdiction of the court shall be ex-
d its judgment and decree shall be final, except that the
l be subject to review by the Supreme Court of the United
provided in section 1254 of title 28, United States Code.
filed under this subsection shall be heard expenditiously.
no petition for review, as provided in subsection (k), is filed
ty days after service of the Commission's order the Commis-
ings of fact and order shall be conclusive in connection with
on for enforcement which is filed by the Commission under
(l) after the expiration of such sixty-day period. The clerk

of the court of appeals in which such petition for enforcement is
shall forthwith enter a decree enforcing the order of the Commi
and shall transmit a copy of such decree to the Commission, the
spondent named in the petition, and to any other parties to the pro
ing before the Commission.

(n) If within ninety days after service of the Commission's o
no petition for review has been filed as provided in subsection (k),
the Commission has not sought enforcement of its order as provid
subsection (l), any person entitled to relief under the Commiss
order may petition for a decree enforcing the order in the U
States court of appeals for the circuit in which the unlawful emp
ment practice in question occurred, or in which a respondent name
the order resides or transacts business. The provisions of subse
(m) shall apply to such petitions for enforcement.

(o) The Attorney General shall conduct all litigation to which
Commission is a party in the Supreme Court of the United States
suant to this title. All other litigation affecting the Commission,
which it is a party, shall be conducted by attorneys appointed by
Commission.

(p) Whenever a charge is filed with the Commission pursua
subsection (b) and the Commission concludes on the basis of a pr
nary investigation that prompt judicial action is necessary to pre
the power of the Commission to grant effective relief in the proc
the Commission shall, after it issues a complaint, bring an actio
appropriate temporary or preliminary relief pending its final dis
tion of such charge, or until the filing of a petition under subse
(k), (l), (m), or (n) of this section, as the case may be, in the U
States district court for any judicial district in the State in whi
unlawful employment practice concerned is alleged to have been
mitted, or the judicial district in which the aggrieved person
have been employed but for the alleged unlawful employment p
tice, but, if the respondent is not found within any such judicial dis
such an action may be brought in the judicial district in which th
spondent has his principal office. For purposes of sections 13
1406 of title 28, United States Code, the judicial district in whi
respondent has his principal office shall in all cases be considered
dicial district in which such an action might have been brought. U
the bringing of any such action, the district court shall have jur
tion to grant such injunctive relief or temporary restraining orde
deems just and proper, notwithstanding any other provision of
Rule 65 of the Federal Rules of Civil Procedure, except para
(a) (2) thereof, shall govern proceedings under his subsection.

(q) (1) If a charge filed with the Commission pursuant to subse
(b) is dismissed by the Commission, or if within one hundred
eighty days from the filing of such charge or the expiration of any
riod of reference under subsection (c) or (d), whichever is later,
Commission has not issued a complaint under subsection (f), the
torney General has not filed a civil action under subsection (f) or
Commission entered into an agreement under subsection (f) t
to which the person aggrieved is a party, the Commission shall
tify the person aggrieved and within sixty days after the giving
such notice a civil action may be brought against the respondent na

arge (1) by the person claiming to be aggrieved, or (2) if such as filed by an officer or employee of the Commission, by any whom the charge alleges was aggrieved by the alleged unlaw- loyment practice. Upon application by the Complainant and ircumstances as the court may deem just, the court may ap- attorney for such complainant and may authorize the com- nt of the action without the payment of fees, costs, or security. e commencement of such civil action, the Commission, or the General in a case involving a government, governmental r political subdivision, shall take no further action with re- reto, except that, upon timely application, the court in its dis- ay permit the Commission, or the Attorney General in a case a government, governmental agency or political subdivision, ene in such civil action if the Commission, or the Attorney in a case involving a government, governmental agency or subdivision, certifies that the case is of general public impor- pon request, the court may, in its discretion, stay further pro- for not more than sixty days pending termination of State or ceedings described in subsection (c) or (d) or the efforts of nission to obtain voluntary compliance.

he right of an aggrieved person to bring a civil action under h (1) of this subsection shall terminate once the Commission d a complaint under subsection (f) or the Attorney General a civil action under subsection (f) or the Commission has nto an agreement under subsection (f) or (i) to which the ggrieved is a party, except that (1) if after issuing a complaint nission enters into an agreement under subsection (i) without ment of the person aggrieved or has not issued an order under n (h) within a period of one hundred and eighty days of the of the complaint, the Commission shall so notify the person d and a civil action may be brought against the respondent the charge at any time prior to the Commission's issuance of under subsection (h) or, in the case of an agreement under n (i) to which the person aggrieved is not a party, within s after receiving notice thereof from the Commission, and (2) re there has been no agreement under subsection (i), if the ggrieved files a civil action against the respondent during the om one hundred and eighty days to one year after the issuance mplaint such person shall notify the Commission of such d the Commission may petition the court not to proceed with The court may dismiss or stay any such action upon a showing Commission has been acting with due diligence on the com- at the Commission anticipates the issuance of an order under n (h) within a reasonable period of time, that the case is ex- , and that extension of the Commission's jurisdiction is d.

(r) Each United States district court and each United States a place subject to the jurisdiction of the United States shall sdiction of actions brought under this title. Such an action brought in any judicial district in the State in which the employment practice is alleged to have been committed, in ial district in which the employment records relevant to such

practice are maintained and administered, or in the judicial dist which the plaintiff would have worked but for the alleged un employment practice, but if the respondent is not found with such district, such an action may be brought within the judicial d in which the respondent has his principal office. For purposes o tions 1404 and 1406 of title 28 of the United States Code, the ju district in which the respondent has his principal office shall cases be considered a district in which the action might have brought. *Upon the bringing of any such action, the district cour have jurisdiction to grant such temporary or preliminary relie deems just and proper.*

[(g)](*s*) If the court finds that the respondent has intentional gaged in or is intentionally engaging in an unlawful employment tice charged in the complaint, the court may enjoin the respondent engaging in such unlawful employment practice, and order such a ative action as may be appropriate, which may include reinstat or hiring of employees, with or without back pay (payable b employer, employment agency, or labor organization, as the cas be, responsible for the unlawful employment practice). Int earnings or amounts earnable with reasonable diligence by the son or persons discriminated against shall operate to reduce the pay otherwise allowable. No order of the court shall requ admission or reinstatement of an individual as a member of a or the hiring, reinstatement, or promotion of an individual employee, or the payment to him of any back pay, if such indiv was refused admission, suspended, or expelled or was refused em ment or advancement or was suspended or discharged for any son other than discrimination on account of race, color, religio or national origin or in violation of section 704(a).

[(h)] (*t*) The provisions of the Act entitled "An Act to amen Judicial Code and to define and limit the jurisdiction of courts s in equity, and for other purposes," approved March 23, 193 U.S.C. 101-115), shall not apply with respect to civil actions br under this section.

[(i)] (*u*) In any case in which an employer, employment ag or labor organization fails to comply with an order of a court i in a civil action brought under subsection [(e),] (*q*), the Comm may commence proceedings to compel compliance with such

[(j)] (*v*) Any civil action brought under subsection [(e)] any proceedings brought under subsection [(i)] (*u*) shall be s to appeal as provided in sections 1291 and 1292, title 28, United S Code.

[(k)] (*w*) In any action or proceeding under this title the co its discretion, may allow the prevailing party, other than the mission or the United States, a reasonable attorney's fee as p the costs, and the Commission and the United States shall be for costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonable to believe that any person or group of persons is engaged in a p or practice of resistance to the full enjoyment of any of the r secured by this title, and that the pattern or practice is of such a n and is intended to deny the full exercise of the rights herein des

orney General may bring a civil action in the appropriate court of the United States by filing with it a complaint ed by him (or in his absence the Acting Attorney General), ing forth facts pertaining to such pattern or practice, and esting such relief, including an application for a permanent orary injunction, restraining order or other order against the r persons responsible for such pattern or pactice, as he deems to insure the full enjoyment of the rights herein described. he district courts of the United States shall have and shall jurisdiction of proceedings instituted pursuant to this sec- in any such proceeding the Attorney General may file with of such court a request that a court of three judges be con- hear and determine the case. Such request by the Attorney shall be accompanied by a certificate that, in his opinion, the f general public importance. A copy of the certificate and or a three-judge court shall be immediately furnished by such he chief judge of the circuit (or in his absence, the presiding dge of the circuit) in which the case is pending. Upon receipt equest it shall be the duty of the chief judge of the circuit or ding circuit judge, as the case may be, to designate imme- ree judges in such circuit, of whom at least one shall be a dge and another of whom shall be a district judge of the court the proceeding was instituted, to hear and determine such it shall be the duty of the judges so designated to assign the earing at the earliest practicable date, to participate in the nd determination thereof, and to cause the case to be in every dited. An appeal from the final judgment of such court will Supreme Court.

event the Attorney General fails to file such a request in any eeding, it shall be the duty of the chief judge of the district absence, the acting chief judge) in which the case is pending ely to designate a judge in such district to hear and deter- case. In the event that no judge in the district is available nd determine the case, the chief judge of the district, or the ief judge, as the case may be, shall certify this fact to the ge of the circuit (or in his absence, the acting chief judge) l then designate a district or circuit judge of the circuit to determine the case.

l be the duty of the judge designated pursuant to this section the case for hearing at the earliest practicable date and to case to be in every way expedited.

ective two years after the date of enactment of the Equal Em- Opportunities Enforcement Act of 1971, the functions of the General under this section shall be transferred to the Com- together with such personnel, property, records, and unex- alances of appropriations, allocations, and other funds em- sed, held, available, or to be made available in connection with tions unless the President submits and neither House of Con- pes a reorganization plan submitted pursuant to chapter 9, United States Code, inconsistent with the provisions of this n. The Commission shall carry out such functions in accord- the provisions of subsections (d) and (e) of this section.

(d) Upon the transfer of functions provided for in subsecti of this section, in all suits commenced pursuant to this section p the date of such transfer, proceedings shall continue without ment, all court orders and decrees shall remain in effect, and the mission shall be substituted as a party for the United States of ica. The Attorney General or Acting Attorney General, as appro

(e) Subsequent to the date of enactment of the Equal Emplo Opportunities Enforcement Act of 1971, the Commission shal authority to investigate and act on a charge of a pattern or prac discrimination, whether filed by or on behalf of a person claim be aggrieved or by an officer or employee of the Commission. Al actions shall be conducted in accordance with the procedures set in section 706, including the provisions for enforcement and ap review contained in subsections (k), (l), (m), and (n) thereof.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or r any person from any liability, duty, penalty, or punishment pro by any present or future law of any State or political subdi of a State, other than any such law which purports to requ permit the doing of any act which would be an unlawful emplo practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charg under section 706, the Commission or its designated represen shall at all reasonable times have access to, for the purposes of i ination, and the right to copy any evidence of any person being in gated or proceeded against that relates to unlawful emplo practices covered by this title and is relevant to the charge investigation.

(b) The Commission may cooperate with State and local ag charged with the administration of State fair employment pra laws and, with the consent of such agencies, may for the purp carrying out its functions and duties under this title and with limitation of funds appropriated specifically for such purpose, e *in and contribute to the cost of research and other projects of i interest undertaken by such agencies, and* utilize the services of agencies and their employees and, notwithstanding any other l sion of law, [may] *pay by advance or* [reimburse] *reimburse* such agencies and their employees for services rendered to assist the Co sion in carrying out this title. In furtherance of such cooperative e the Commission may enter into written agreements with such St local agencies and such agreements may include provisions under the Commission shall refrain from processing a charge in any or class of cases specified in such agreement [and under whi person may bring a civil action under section 706 in any cases or of cases so specified, or under which the Commission shall re any person or class of] *or under which the Commission shall re any person or class of* persons in such State or locality from req ments imposed under this section. The Commission shall rescind

agreement whenever it determines that the agreement no longer
s the interest of effective enforcement of this title.

) [Except as provided in subsection (d), every] *Every* employer,
oyment agency, and labor organization subject to this title shall
nake and keep such records relevant to the determinations of
her unlawful employment practices have been or are being com-
d, (2) preserve such records for such periods, and (3) make such
ts therefrom, as the Commission shall prescribe by regulation
der, after public hearing, as reasonable, necessary, or appropriate
he enforcement of this title or the regulations or orders there-
r. The Commission shall, by regulation, require each employer,
organization, and joint labor-management committee subject to
itle which controls an apprenticeship or other training program
aintain such records as are reasonably necessary to carry out the
ose of this title, including, but not limited to, a list of applicants
wish to participate in such program, including the chronological
in which [such] applications were received, and [shall] *to* fur-
to the Commission, upon request, a detailed description of
manner in which persons are selected to participate in the
enticeship or other training program. Any employer, employ-
agency, labor organization, or joint labor-management
ittee which believes that the application to it of any regulation
ler issued under this section would result in undue hardship may
apply to the Commission for an exemption from the application
h regulation or order, [or (2)] *and, if such application for an*
ption is denied, bring a civil action in the United States district
for the district where such records are kept. If the Commission or
ourt, as the case may be, finds that the application of the regu-
or order to the employer, employment agency, or labor orga-
on in question would impose an undue hardship, the Commission
court, as the case may be, may grant appropriate relief. *If any*
n required to comply with the provisions of this subsection fails or
s to do so, the United States district court for the district in which
person is found, resides, or transacts business, shall, upon applica-
f the Commission, or the Attorney General in a case involving a
nment, governmental agency or political subdivision, have juris-
n to issue to such person an order requiring him to comply.

) The provisions of subsection (c) shall not appy to any em-
r, employment agency, labor organization, or joint labor-man-
nt committee with respect to matters occurring in any State or
al subdivision thereof which has a fair employment practice law
g any period in which such employer, employment agency, labor
ization, or joint labor-management committee is subject to such
except that the Commission may require such notations on rec-
which such employer, employment agency, labor organization, or
labor-management committee keeps or is required to keep as are
ary because of differences in coverage or methods of enforce-
between the State or local law and the provisions of this title.
e an employer is required by Executive Order 10925, issued
6, 1961, or by any other Executive order prescribing fair em-
ent practices for Government contractors and subcontractors.
rules or regulations issued thereunder, to file reports relating to
ployment practices with any Federal agency or committee, and

he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.]

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission or its representative, or by the Attorney General or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the members of the Commission or its representative, nor the Attorney General, or his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper.

[(e)] *(f)* It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

INVESTIGATORY POWERS

[SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

[(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for permission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with

rovisions of section 709 (c) or (d) fails or refuses to do so, or
y person fails or refuses to comply with a demand by the Com-
on to give testimony under oath, the United States district court
he district in which such person is found, resides, or transacts
ess, shall, upon application of the Commission, have jurisdiction
ue to such person an order requiring him to comply with the
sions of section 709 (c) or (d) or to comply with the demand
e Commission, but the attendance of a witness may not be
red outside the State where he is found, resides, or transacts
ess and the production of evidence may not be required outside
tate where such evidence is kept.

) Within twenty days after the service upon any person charged
section 706 of a demand by the Commission for the production
cumentary evidence or for permission to examine or to copy
ce in conformity with the provisions of section 709(a), such
may file in the district court of the United States for the
al district in which he resides, is found, or transacts business, and
upon the Commission a petition for an order of such court
ying or setting aside such demand. The time allowed for com-
e with the demand in whole or in part as deemed proper and
d by the court shall not run during the pendency of such petition
court, Such petition shall specify each ground upon which the
ner relies in seeking such relief, and may be based upon any
e of such demand to comply with the provisions of this title or
the limitations generally applicable to compulsory process or
any constitutional or other legal right or privilege of such
. No objection which is not raised by such a petition may be
in the defense to a proceeding initiated by the Commission under
tion (b) for enforcement of such a demand unless such proceed-
commenced by the Commission prior to the expiration of the
-day period, or unless the court determines that the defendant
not reasonably have been aware of the availability of such
d of objection.

) In any proceeding brought by the Commission under sub-
(b), except as provided in subsection (c) of this section, the
dant may petition the court for an order modifying or setting
he demand of the Commission.]

*710. For the purpose of all hearings and investigations con-
by the Commission or its duly authorized agents or agencies,
11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C.
hall apply. No subpoena shall be issued on the application of
rty to proceedings before the Commission until after the Com-
n has issued and caused to be served upon the respondent a com-
and notice of hearing under subsection (f) of section 706.*

NOTICES TO BE POSTED

711. (a) Every employer, employment agency, and labor orga-
on, as the case may be, shall post and keep posted in conspic-
places upon its premises where notices to employees, applicants
ployment, and members are customarily posted a notice to be
ed or approved by the Commission setting forth excerpts from

or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

(c) *Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, to make new findings, under subsections (i), (k), and (l) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter. Nothing in this subsection authorizes the Commission to provide for persons other than those referred to*

s (2) and (3) of subsection (b) of section 556 of title 5 of the d States Code to conduct any hearing to which that section es.

The Commission is authorized to delegate to any group of three re members of the Commission any or all of the powers which it tself exercise.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

. 714. The provisions of section 111, *and 1114* title 18, United Code, shall apply to officers, agents, and employees of the Com-n in the performance of their official duties.

SPECIAL STUDY BY SECRETARY OF LABOR

c. 715. The Secretary of Labor shall make a full and complete of the factors which might tend to result in discrimination in yment because of age and of the consequences of such discrimi- on the economy and individuals affected. The Secretary of shall make a report to the Congress not later than June 30, 1965, ning the results of such study and shall include in such report ecommendations for legislation to prevent arbitrary discrimina- employment because of age as he determines advisable.]

715. All authority, functions, and responsibilities vested in the ry of Labor pursuant to Executive Order 11246, as amended, g to nondiscrimination in employment by Government con- s and subcontractors and nondiscrimination in federally assisted ction contracts are transferred to the Equal Employment Op- ity Commission, together with such personnel, property, records, nexpended balances of appropriations, allocations, and other mployed, used, held, available or to be made available in con- with the functions transferred to the Commission hereby as necessary to enable the Commission to carry out its functions nt to this section, and the Commission shall hereafter carry out h authority, functions, and responsibilities pursuant to such

EFFECTIVE DATE

716.(a) This title shall become effective one year after the its enactment.

Notwithstanding subsection (a), sections of this title other ctions 703, 704, 706, and 707 shall become effective immediately. The President shall, as soon as feasible after the enactment of le, convene one or more conferences for the purpose of enabling ders of groups whose members will be affected by this title to familiar with the rights afforded and obligations imposed by visions, and for the purpose of making plans which will result fair and effective administration of this title when all of its ons become effective. The President shall invite the participa- such conference or conferences of (1) the members of the nt's Committee on Equal Employment Opportunity, (2) the rs of the Commission on Civil Rights, (3) representatives of and local agencies engaged in furthering equal employment

opportunity, (4) representatives of private agencies engaged in fu thering equal employment opportunity, and (5) representatives employers, labor organizations, and employment agencies who will subject to this title.

(d) *In the performance of their responsibilities under this A the Attorney General, the Chairman of the Civil Service Commissi and the Chairman of the Equal Employment Opportunity Commi sion shall consult regarding their rules, regulations and policies.*

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) *All personnel actions affecting employees or appl cants for employment (except with regard to aliens employed outsi the limits of the United States) in military departments as defined section 102 of Title 5 United States Code, in executive agencies (oth than the General Accounting Office) as defined in section 105 of Title United States Code (including employees and applicants for emplo ment who are paid from non-appropriated funds), in the Unit States Postal Service and the Postal Rate Commission, in those un of the Government of the District of Columbia having positions in t competitive service, and in the legislative and judicial branches of t Federal Government having positions in the competitive service, sh be made free from any discrimination based on race, color, religio sex, or national origin.*

(b) *The Civil Service Commission shall have authority to enfor the provisions of subsection (a) through appropriate remedies, inclu ing reinstatement of hiring of employees with or without back pay, will effectuate the policies of this section, and shall issue such rul regulations, orders and instructions as it deems necessary and appr priate to carry out its responsibilities under this section. The Civ Service Commission shall—*

(1) be responsible for the annual review and approval of national and regional equal employment opportunity plan whic each department and agency and each appropriate unit referr to in section 717(a) shall submit in order to maintain an affirmati program of equal employment opportunity for all such employe and applicants for employment;

(2) be responsible for the review and evaluation of the operati of all agency equal employment opportunity programs, period ically obtaining and publishing (on at least a semiannual basi progress reports from each such department, agency, or unit; an

(3) consult with and solicit the recommendations of interest individuals, groups, and organizations relating to equal emplo ment opportunity.

The head of each such department, agency or unit shall comply wit such rules, regulations, orders, and instructions which shall include provision that an employee or applicant for employment shall be not fied of any final action taken on any complaint of discrimination fil by him thereunder. The plan submitted by each department, agency o unit shall include, but not be limited to—

(1) provision for the establishment of training and educatio programs designed to provide a maximum opportunity for em ployees to advance so as to perform at their highest potential; an

(2) *a description of the qualifications in terms of training and experience relating to equal opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.*

Within thirty days of receipt of notice of final action taken by a tment, agency, or unit referred to in subsection 717(a), or by the Service Commission upon an appeal from a decision or order of department, agency, or unit, on a complaint of discrimination on race, color, religion, sex or national origin, brought pursuant section (a) of this section, Executive Order 11478 or any succeedxecutive orders, or after 180 days from the filing of the initial with the department, agency, or unit or with the Civil Service ission on appeal from a decision or order of such department, y, or unit until such time as final action may be taken by a departagency or unit, an employee or applicant for employment, if red by the final disposition of his complaint, or by the failure to nal action on his complaint, may file a civil action as provided in 706(q), in which civil action the head of the department, agency, t, as appropriate, shall be the defendant.

The provisions of section 706(q) through (w), as applicable, overn civil actions brought hereunder.

Nothing contained in this Act shall relieve any Government y or official of its or his primary responsibility to assure nondisnation in employment as required by the Constitution and statr of its or his responsibilities under Executive Order 11478 re to equal employment opportunity in the Federal Government.

13 of S. 2515 reads as follows: The amendments made by this section 706 of the Civil Rights Act of 1964 shall not be appli to charges filed with the Commission prior to the enactment of ct.)

APPENDIX A

Administrative Procedure Act of 1946, as Codified in Title 5 United States Code, Excerpts

§ 551. Definitions

For the purpose of this subchapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia; except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to disputes determined by them;

(F) courts-martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744, of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

7) "adjudication" means agency process for the formulation an order;
8) "license" includes the whole or a part of an agency permit, tificate, approval, registration, charter, membership, statutory mption or other form of permission;
9) "licensing" includes agency process respecting the grant, ewal, denial, revocation, suspension, annulment, withdrawal, itation, amendment, modification, or conditioning of a license;
10) "sanction" includes the whole or a part of an agency.—
(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;
(B) withholding of relief;
(C) imposition of penalty or fine;
(D) destruction, taking, seizure, or withholding or property;
(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
(F) requirement, revocation, or suspension of a license; or
(G) taking other compulsory or restrictive action;
11) "relief" includes the whole or a part of an agency—
(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;
(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or
(C) taking of other action on the application or petition of, and beneficial to, a person;
12) "agency proceeding" means an agency process as defined paragraphs (5), (7), and (9) of this section and
13) "agency action" includes the whole or a part of an agency , order, license, sanction, relief or the equivalent, or denial reof, or failure to act.

ule making

his section applies, according to the provisions thereof, exthe extent that there is involved—
1) a military or foreign affairs function of the United States; or
2) a matter relating to agency management or personnel or to lic property, loans, grants, benefits, or contracts.
eneral notice of proposed rule making shall be published in eral Register, unless persons subject thereto are named and ersonally served or otherwise have actual notice thereof in nce with law. The notice shall include—
1) a statement of the time, place, and nature of public rule king proceedings;
2) reference to the legal authority under which the rule is posed; and
3) either the terms or substance of the proposed rule or a cription of the subjects and issues involved.
when notice or hearing is required by statute this subsection apply—
A) to interpretative rules, general statements of policy, or s of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorp
the finding and a brief statement of reasons therefor in th
issued) that notice and public procedure thereon are im
cable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shal
interested persons an opportunity to participate in the rule m
through submission of written data, views, or arguments with or
out opportunity for oral presentation. After consideration
relevant matter presented, the agency shall incorporate in the
adopted a concise general statement of their basis and pu
When rules are required by statute to be made on the record
opportunity for an agency hearing, sections 556 and 557 o
title apply instead of this subsection.

(d) The required publication or service of a substantive rule
be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an e
tion or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause
and published with the rule.

(e) Each agency shall give an interested person the right to pe
for the issuance, amendment, or repeal of a rule.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in
case of adjudication required by statute to be determined o
record after opportunity for an agency hearing, except to the e
that there is involved—

(1) a matter subject to a subsequent trial of the law an
facts de novo in a court;

(2) the selection or tenure of an employee, except a he
examiner appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspect
tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a c
or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be ti
informed of—

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the he
is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to
proceeding shall give prompt notice of issues controverted in fa
law; and in other instances agencies may by rule require respo
pleading. In fixing the time and place for hearings, due regard
be had for the convenience and necessity of the parties or their r
sentatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, argume
offers of settlement, or proposals of adjustment when time
nature of the proceeding, and the public interest permit; an

2) to the extent that the parties are unable so to determine a
ıtroversy by consent, hearing and decision on notice and in
ordance with sections 556 and 557 of this title.
he employee who presides at the reception of evidence pursu-
ection 556 of this title shall make the recommended decision or
ecision required by section 557 of this title, unless he becomes
ıble to the agency. Except to the extent required for the dis-
of ex parte matters as authorized by law, such an employee
t—
1) consult a person or party on a fact in issue, unless on notice
l opportunity for all parties to participate; or
2) be responsible to or subject to the supervision or direction
ın employee or agent engaged in the performance of investiga-
or prosecuting functions for an agency.
loyee or agent engaged in the performance of investigative or
ing functions for an agency in a case may not, in that or a
related case, participate or advise in the decision, recom-
decision, or agency review pursuant to section 557 of this
cept as witness or counsel in public proceedings. This sub-
loes not apply—
A) in determining applications for initial licenses;
B) to proceedings involving the validity or application of
s, facilities, or practices of public utilities or carriers; or
C) to the agency or a member or members of the body com-
ing the agency.
ıe agency, with like effect as in the case of other orders, and
ınd discretion, may issue a declaratory order to terminate a
rsy or remove uncertainty.

ncillary matters

iis section applies, according to the provisions thereof, except
vise provided by this subchapter.
person compelled to appear in person before an agency or
tative thereof is entitled to be accompanied, represented, and
by counsel or, if permitted by the agency, by other qualified
tative. A party is entitled to appear in person or by or with
or other duly qualified representative in an agency proceed-
far as the orderly conduct of public business permits, an
d person may appear before an agency or its responsible
es for the presentation, adjustment, or determination of an
quest, or controversy in a proceeding, whether interlocutory,
, or otherwise, or in connection with an agency function.
e regard for the convenience and necessity of the parties
representatives and within a reasonable time, each agency
ceed to conclude a matter presented to it. This subsection
grant or deny a person who is not a lawyer the right to
or or represent others before an agency or in an agency
ıgs.
ocess, requirement of a report, inspection, or other investi-
t or demand may not be issued made, or enforced except as
d by law. A person compelled to submit data or evidence is
o retain or, on payment of lawfully prescribe costs, procure
r transcript thereof, except that in a nonpublic investigatory

proceeding the witness may for good cause be limited to inspecti the official transcript of his testimony.

(d) Agency subpenas authorized by law shall be issued to a p on request and, when required by rules of procedure, on a staten or showing of general relevance and reasonable scope of the evid sought. On contest, the court shall sustain the subpena or sim process or demand to the extent that it found to be in accorda with law. In a proceeding for enforcement, the court shall issue order requiring the appearance of the witness or the productio the evidence or data within a reasonable time under penalty punishment for contempt in case of contumacious failure to com

(e) Prompt notice shall be given of the denial in whole or in of a written application, petition, or other request of an intere person made in connection with any agency proceeding. Excep affirming a prior denial or when the denial is self-explanatory, notice shall be accompanied by a brief statement of the grounds denial.

§ 556. Hearings; presiding employees; powers and duties; burd of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, hearings required by section 553 or 554 of this title to be conduc in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises agency; or

(3) one or more hearing examiners appointed under sec 3105 of this title.

This subchapter does not supersede the conduct of specified classe proceedings, in whole or in part, by or before boards or other ployees specially provided for by or designated under statute. functions of presiding employees and of employees participatin decisions in accordance with section 557 of this title shall be ducted in an impartial manner. A presiding or participating ployee may at any time disqualify himself. On the filing in good f of a timely and sufficient affidavit of personal bias or other qualification of a presiding or participating employee, the agency determine the matter as a part of the record and decision in the

(c) Subject to published rules of the agency and within its pow employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplication of issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with sec 557 of this title; and

(9) take other action authorized by agency rule consistent this subchapter.

xcept as otherwise provided by statute, the proponent of a
order has the burden of proof. Any oral or documentary evi-
ay be received, but the agency as a matter of policy shall
for the exclusion of irrelevant, immaterial, or unduly repeti-
idence. A sanction may not be imposed or rule or order
xcept on consideration of the whole record or those parts
ited by a party and supported by and in accordance with the
probative, and substantial evidence. A party is entitled to
his case or defense by oral or documentary evidence, to
rebuttal evidence, and to conduct such cross-examination as
required for a full and true disclosure of the facts. In rule
or determining claims for money or benefits or applications
l licenses an agency may, when a party will not be prejudiced
adopt procedures for the submission of all or part of the
in written form.
ne transcript of testimony and exhibits, together with all
nd requests filed in the proceeding, constitutes the exclusive
r decision in accordance with section 557 of this title and, on
of lawfully prescribed costs, shall be made available to the
When an agency decision rests on official notice of a material
appearing in the evidence in the record, a party is entitled, on
equest, to an opportunity to show the contrary.

**itial decisions; conclusiveness; review by agency; submis-
sions by parties; contents of decisions; record**

is section applies, according to the provisions thereof, when
is required to be conducted in accordance with section 556
tle.
hen the agency did not preside at the reception of the evi-
ne presiding employee or, in cases not subject to section 554
is title, an employee qualified to preside at hearings pursuant
n 556 of this title, shall initially decide the case unless the
equires, either in specific cases or by general rule, the entire
be certified to it for decision. When the presiding employee
n initial decision, that decision then becomes the decision of
cy without further proceedings unless there is an appeal to,
on motion of, the agency within time provided by rule.
al from or review of the initial decision, the agency has all
rs which it would have in making the initial decision except
y limit the issues on notice or by rule. When the agency
ne decision without having presided at the reception of the
the presiding employee or an employee qualified to preside
gs pursuant to section 556 of this title shall first recommend
n, except that in rule making or determining applications for
enses—
) instead thereof the agency may issue a tentative decision
ne of its responsible employees may recommend a decision;

) this procedure may be omitted in a case in which the
cy finds on the record that due and timely execution of its
tions imperatively and unavoidably so requires.
fore a recommended, initial, or tentative decision, or a deci-
gency review of the decision of subordinate employees, the
e entitled to a reasonable opportunity to submit for the con-
n of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisi subordinate employees or to tentative agency decisions; a

(3) supporting reasons for the exceptions or proposed fin or conclusions.

The record shall show the ruling on each finding, conclusio exception presented. All decisions, including initial, recomme and tentative decisions, are a part of the record and shall incl statement of—

(A) findings and conclusions, and the reasons or basis t for, on all the material issues of fact, law, or discretion pres on the record; and

(B) the appropriate rule, order, sanction, relief, or d thereof.

§ 558. Imposition of sanctions; determination of applicat for licenses; suspension, revocation, and expiration licenses

(a) This section applies, according to the provisions thereof, t exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or issued except within jurisdiction delegated to the agency an authorized by law.

(c) When application is made for a license required by law agency, with due regard for the rights and privileges of all the i ested parties or adversely affected persons and within a reaso time, shall set and complete proceedings required to be conduct accordance with sections 556 and 557 of this title or other proce required by law and shall make its decision. Except in cases of wi ness or those in which public health, interest, or safety requires o wise, the withdrawal, suspension, revocation, or annulment of a l is lawful only if, before the institution of agency proceedings the the licensee has been given—

(1) notice by the agency in writing of the facts or co which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance wi lawful requirements.

When the licensee has made timely and sufficient application renewal or a new license in accordance with agency rules, a l with reference to an activity of a continuing nature does not e until the application has been finally determined by the agency.

§ 559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 43 (E), 5362, and 7521, and the provisions of section 5335(a)(B) o title that relate to hearing examiners, do not limit or repeal addi requirements imposed by statute or otherwise recognized by Except as otherwise required by law, requirements or privileges ing to evidence or procedure apply equally to agencies and per Each agency is granted the authority necessary to comply wit requirements of this subchapter through the issuance of rules or o wise. Subsequent statute may not be held to supersede or modify subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 53 7521, or the provisions of section 5335(a)(B) of this title that rel hearing examiners, except to the extent that it does so expressly

APPENDIX B

AL LABOR RELATIONS ACT OF 1935, AS AMENDED, SECTION 11, 29 U.S.C. 161

Investigatory powers of Board

ne purpose of all hearings and investigations, which, in the of the Board, are necessary and proper for the exercise of the rested in it by sections 9 and 10 of this title—

MENTARY EVIDENCE; SUMMONING WITNESSES AND TAKING TESTIMONY

he Board, or its duly authorized agents or agencies, shall at nable times have access to, for the purpose of examination, ight to copy any evidence of any person being investigated or d against that relates to any matter under investigation or in The Board, or any member thereof, shall upon application party to such proceedings, forthwith issue to such party requiring the attendance and testimony of witnesses or the on of any evidence in such proceeding or investigation re- n such application. Within five days after the service of a on any person requiring the production of any evidence in his n or under his control, such person may petition the Board to nd the Board shall revoke, such subpena if in its opinion the whose production is required does not relate to any matter restigation, or any matter in question in such proceedings, or pinion such subpena does not describe with sufficient particu- evidence whose production is required. Any member of the any agent or agency designated by the Board for such pur- ay administer oaths and affirmations, examine witnesses, and vidence. Such attendance of witnesses and the production vidence may be required from any place in the United States Territory or possession thereof, at any designated place of

OURT AID IN COMPELLING PRODUCTION OF EVIDENCE AND ATTENDANCE OF WITNESSES

case of contumacy or refusal to obey a subpena issued to any ny district court of the United States or the United States any Territory or possession, within the jurisdiction of which ry is carried on or within the jurisdiction of which said person contumacy or refusal to obey is found or resides or transacts upon application by the Board shall have jurisdiction to uch person an order requiring such person to appear before d, its member, agent, or agency, there to produce evidence ered, or there to give testimony touching the matter under tion or in question; and any failure to obey such order of the y be punished by said court as a contempt thereof.

PRIVILEGE OF WITNESSES; IMMUNITY FROM PROSECUTION

(3) No person shall be excused from attending and testifyi from producing books, records, correspondence, documents, or evidence in obedience to the subpena of the Board, on the ground the testimony or evidence required of him may tend to incrimina or subject him to a penalty or forfeiture; but no individual sha prosecuted or subjected to any penalty or forfeiture for or on ac of any transaction, matter, or thing concerning which he is compe after having claimed his privilege against self-incrimination, to t or produce evidence, except that such individual so testifying not be exempt from prosecution and punishment for perjury comm in so testifying.

PROCESS, SERVICE AND RETURN; FEES OF WITNESSES

(4) Complaints, orders, and other process and papers of the B its member, agent, or agency, may be served either personally registered mail or by telegraph or by leaving a copy thereof a principal office or place of business of the person required served. The verified return by the individual so serving the setting forth the manner of such service shall be proof of the and the return post office receipt or telegraph receipt therefor registered and mailed or telegraphed as aforesaid shall be pro service of the same. Witnesses summoned before the Board, its ber, agent, or agency, shall be paid the same fees and mileage are paid witnesses in the courts of the United States, and wit whose depositions are taken and the persons taking the same severally be entitled to the same fees as are paid for like servic the courts of the United States.

PROCESS, WHERE SERVED

(5) All process of any court to which application may be under this subchapter may be served in the judicial district wh the defendant or other person required to be served resides or be found.

INFORMATION AND ASSISTANCE FROM DEPARTMENTS

(6) The several departments and agencies of the Governm when directed by the President, shall furnish the Board, upo request, all records, papers, and information in their possessio lating to any matter before the Board. July 5, 1935, c. 372, § Stat. 455; June 25, 1936, c. 804, 49 Stat. 1921; June 23, 1947, c. Title I, § 101, 61 Stat. 150.

APPENDIX C

Federal Rules of Civil Procedure

65. Injunctions

'RELIMINARY INJUNCTION.

Notice.—No preliminary injunction shall be issued without to the adverse party.

Consolidation of Hearing With Trial on Merits.—Before or after mmencement of the hearing of an application for a preliminary ion, the court may order the trial of the action on the merits dvanced and consolidated with the hearing of the application. vhen this consolidation is not ordered, any evidence received n application for a preliminary injunction which would be ble upon the trial on the merits becomes part of the record on l and need not be repeated upon the trial. This subdivision hall be so construed and applied as to save to the parties any hey may have to trial by jury.

'EMPORARY RESTRAINING ORDER; NOTICE; HEARING; DURA- A temporary restraining order may be granted without written notice to the adverse party or his attorney only if (1) it clearly from specific facts shown by affidavit or by the verified com- hat immediate and irreparable injury, loss, or damage will o the applicant before the adverse party or his attorney can d in opposition, and (2) the applicant's attorney certifies to the writing the efforts, if any, which have been made to give the nd the reasons supporting his claim that notice should not uired. Every temporary restraining order granted without hall be indorsed with the date and hour of issuance; shall be thwith in the clerk's office and entered of record; shall define ıry and state why it is irreparable and why the order was without notice; and shall expire by its terms within such time try, not to exceed 10 days as the court fixes, unless within the fixed the order, for good cause shown, is extended for a like r unless the party against whom the order is directed consents nay be extended for a longer period. The reasons for the exten- ll be entered of record. In case a temporary restraining order is without notice, the motion for a preliminary injunction shall own for hearing at the earliest possible time and takes prece- f all matters except older matters of the same character; and ıe motion comes on for hearing the party who obtained the ıry restraining order shall proceed with the application for a ıary injunction and, if he does not do so, the court shall dis- e temporary restraining order. On 2 days' notice to the party tained the temporary restraining order without notice or on ɔrter notice to that party as the court may prescribe, the ad- ırty may appear and move its dissolution or modification and

in that event the court shall proceed to hear and determine s
motion as expeditously as the ends of justice require.

(c) SECURITY. No restraining order or preliminary injunction sh
issue except upon the giving of security by the applicant, in such s
as the court deems proper, for the payment of such costs and dam
as may be incurred or suffered by any party who is found to have b
wrongfully enjoined or restrained. No such security shall be requi
of the United States or of an officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or und
taking under this rule. As amended Feb. 28, 1966, effective July
1966.

INDIVIDUAL VIEWS OF MR. DOMINICK

e enactment as part of the Civil Rights Act of 1964, Title VII od as a national commitment to the elimination of all forms of ment discrimination. Unfortunately, such a commitment has ed only a statement which, because of the lack of enforcement ery, has not been translated into concrete realities for those in ion's workforce who have been denied employment benefits e of their race, color, religion, sex or national origin. The issue nger whether we need enforcement powers for Title VII, but what form and scope of enforcement is needed to best protect hts of all parties involved. To accomplish this end the Senate two types of enforcement machinery to choose from—vesting with cease and desist powers or giving EEOC the authority irectly in Federal Courts.

Elemental Arguments Misleading

verly simplistic to argue as many have, that protection of em- rights can best be achieved by vesting the present pro-employee ssion with as much enforcement power as possible. The vicissi- Presidentially appointed Boards is legend. The administrative possessing enforcement powers most similar to the cease and owers advocated by the majority, the National Labor Relations provides the best example of this. Critics charge that the in reacting to political winds rather than stare decisis, have ed from pro-management decisions during the Eisenhower istration to pro-labor positions during the Johnson and Ken- dministration. Determination of employment civil rights de- and requires non-partisan judgment. This judgment is best d by Federal court judges who, shielded from political influ- life tenure, are more likely to withstand political pressures der their decisions in a climate tempered by judicial reflection pported by historical judicial independence.

wise simplistic reasoning has classified proponents of court en- nt as being pro-respondent or anti-employees' rights. Nothing e less correct. Both procedures seek to achieve the same end— redress of employees' grievances. Although I opposed the cease sist provisions, I voted to report S. 2515, as amended, out of tee favorably as I was most encouraged by the potential relief promise amendments offered federal employees. As the report es, these employees are the most frustrated in achieving equal ment opportunity. I authored an amendment with Senator n which was adopted that provided the approximately 2.6 mil- il service and postal workers with court redress of their employ- iscrimination grievances. The amendment creates machinery ed by Clarence Mitchell, Director, Washington Bureau,

NAACP, whereby an aggrieved civil service or postal employee h
the option after exhausting his agency remedies, of either institut
a civil suit in Federal district court or continuing through the C
Service Board of Appeals and Reviews to district court, if necessa

Curiously enough, the majority seems pleased with court enfor
ment procedures for 2.6 million federal employees, but continues
urge cease and desist procedures for private employees.

Objective Consideration of the Merits is Necessary

Once the simplistic classifications and emotional rhetoric has b
cleared away, one can objectively examine the potentials of the ce
tending procedures. To determine whether court enforcement or ce
and desist machinery best protects the rights of all parties involved
the proceedings the following issues should be carefully consider

S. 2515 Impairs the Respondent's Due Process Rights

Whereas the court approach preserves the traditional separation
powers which we as a nation so highly cherish, the cease and des
procedure seriously threatens the respondent's due process rights
joining the prosecutorial function with the adjudicatory functi
Under a cease and desist proceeding the EEOC would investigate t
charge, issue the complaint, prosecute the complaint, adjudicate t
merits of the case, and seek enforcement of its decisions in the Uni
States Circuit Courts of Appeals. Elemental concepts of fairness a
due process require an impartiality in the adjudicatory function wh
could not be attained under S. 2515.

What is necessary is aggressive and active advocacy of equal e
ployment opportunity at the investigatory and prosecutory lev
Court enforcement would utilize this advocacy up through conci
tion. If conciliation proves unsuccessful the EEOC would petit
the Federal District Courts for redress of the employees' grievanc
Thus, the final adjudication would be an impartial judicial decis
free from accusation of institutional bias.

Court Enforcement Utilizes the Assets of Both the EEOC and the Judiciary

The court approach combines the expertise of the EEOC in inv
tigating, prosecessing, and conciliating unfair employment cases w
the expertise and independence of the Federal courts. The Fede
courts have developed considerable expertise and a reputation of fa
ness in enforcing equal opportunity laws in all other areas of c
rights, including public accommodations, voting, education, and ho
ing. They have developed specific expertise through vigorous pro
tion of Title VII rights. In fiscal 1970 alone, the EEOC filed ami
briefs in 167 of the more important Title VII enforcement cases
the federal courts. The EEOC recognized the important role the co
have played when it concluded in its most recent (5th) Annual Rep
that:

> The Commission feels that the course of litigation over the
> past year (fiscal year 1970) has been encouraged and that the

w has developed in a liberal fashion appropriate to a hu-
anitarian and remedial statute. The implementation of Title
II gives hope for the future of all Americans.

Enforcement Provides an Expeditious and Final Remedy

ctive protection of the rights of both the employer and the
yee demands a speedy resolution of the dispute. Facts indicate
ne court enforcement procedure is more expeditious as it in-
a one step enforcement procedure whereas the cease and desist
requires two steps. A district court order is immediately self-
ng as it is backed by court contempt proceedings. A commis-
ase and desist order must be brought to the Court of Appeals
it achieves similar sanction power. Additionally, there is a defi-
vantage in having the judge who enters the original order be
son who will hear any subsequent enforcement proceedings. A
who is enforcing his own orders rather than those of some com-
will be determined that such orders are properly enforced.
large extent, speedy resolution of an unfair employment prac-
l be determined by the respective caseloads of the EEOC and
rict courts. Chairman Brown of the EEOC testified that as of
), 1971, the Commission had a backlog of 32,000 cases with an
ated fiscal year 1971 caseload of 32,000 additional cases. Also
would expand coverage from the present employers with 25 or
mployees to those with 8 or more employees, thereby adding
imately 6.5 million potential aggrieved. Additionally, the
will be responsible for conciliating disputes of an additional
llion State and local government employees pursuant to the
Eagleton-Taft amendment. While the present EEOC com-
lisposition requires from 18 to 24 months, the median time inter-
m issue to trial for non jury trials in U.S. district courts in
as ten months according to the Annual Report of the Director
Administrative Office of the U.S. Courts. Congressman Erlen-
stified before the Labor Subcommittee that of the 29 District
which would receive the brunt of the unfair employment prac-
es from the top ten states in terms of EEOC recommended
gation, 21 courts had a medium time of 12 months or less for
y trials and 8 courts had a medium time of 6 months or less
n jury trial.

ldition, a further impediment to timely action under the admin-
e approach is that only the Commission in Washington and not
the field attorneys could issue cease and desist orders. The
approach offers potential remedies through 398 judges on the
n 93 existing federal district courts.

efully, the above discussion will serve to better clarify an issue
n the recent past has been the subject of much rhetoric and little
rity.

Transfer of "Pattern and Practice" Unjustified

ldition to the previously discussed major issue, I am concerned
provision of S. 2515 which transfers "pattern and practice"
om the jurisdiction of the Justice Department to the EEOC.

The majority has presented no compelling reason for the transfer of
than for unification sake—a suspect phobia if not supported by a
tional factors. Both the Justice Department and Chairman Br
are satisfied with the present administration of "pattern and prac
suits. Vesting EEOC with cease and desist powers over what has b
a successful litigation process simply compounds the confusion.

PETER B. DOMINICK

SUPPLEMENTAL VIEWS OF MR. TAFT

eneral I support S. 2515 and believe it can do much to improve ss on opening job opportunities. I do intend to introduce an ment on the Senate floor to provide autonomy for the Office of l Counsel from the Equal Employment Opportunity Commis- believe this approach will insure procedural fairness in the strative operation of the Commission and eliminate some seri- ections to broadened Commission authority. This amendment scussed in Committee favorably, but was not pressed at the cause of a desire to perfect it in form.

ROBERT TAFT, JR.

Calendar No. 413

92D CONGRESS
1ST SESSION

H. R. 1746

[Report No. 92–416]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 1971

Read twice and referred to the Committee on Labor and Public Welfare

OCTOBER 28, 1971

Reported by Mr. WILLIAMS, without recommendation

AN ACT

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(f)(6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General

under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an em-

ployer, employment agency or labor organization has e
gaged in an unlawful employment practice, the Commissio
within five days thereafter, shall furnish such employe
employment agency, or labor organization (hereinafter re
ferred to as the 'respondent') with a copy of such charg
and shall make an investigation of such charge, provided tha
such charge shall not be made public by the Commission. I
the Commission shall determine after such investigation, tha
there is reasonable cause to believe that the charge is tru
the Commission shall endeavor to eliminate any such al
leged unlawful employment practice by informal method
of conference, conciliation, and persuasion. Nothing sai
or done during and as a part of such endeavors may be mad
public by the Commission without the written consent of the
parties, or used as evidence in a subsequent proceeding. Any
officer or employee of the Commission who shall make publi
in any manner whatever any information in violation of this
subsection shall be deemed guilty of a misdemeanor and
upon conviction thereof shall be fined not more than $1,00
or imprisoned not more than one year."

(b) Subsection (d) of section 706 of the Civil Right
Act of 1964 (42 U.S.C. 2000e–5) is amended to read a
follows:

"(d) A charge under subsection (a) shall be file
within one hundred and eighty days after the alleged unlaw

ful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided,* That if the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent

named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) are redesignated as subsections (g) through (l), respectively, and, in newly designated subsection (k) the reference to subsection (i) is changed to subsection (j), and the following new section is added after section 706(e) thereof:

"(f) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay

(payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

Passed the House of Representatives September 1[illegible] 1971.

Attest: W. PAT JENNINGS,
Clerk.

Calendar No. 413

NGRESS } SENATE { REPORT
ssion } { No. 92-416

AL EMPLOYMENT OPPORTUNITY ACT OF 1971

OCTOBER 28, 1971.—Ordered to be printed

LIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany H.R. 1746]

ommittee on Labor and Public Welfare, to which was referred (H.R. 1746) to further promote equal employment opportunity for American workers, having considered the same, reports without recommendation.

O

Calendar No. 412

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 1971

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. GAMBRELL (for himself, Mr. TALMADGE, Mr. BROCK, and Mr. CHILES) to S. 2515, a bill to further promote equal opportunities for American workers, viz: At the end of the bill, add the following new section:

SEC. 13. Because of legal and constitutional uncertainties relating to the question of public school student placement as it relates to the desegregation of public schools, and because of the disruption of normal educational operations, the expense, the disorder and divisiveness, and the possibility that certain student placement practices may be declared to be legally unnecessary or unconstitutional, it is the purpose of this section to prohibit and suspend certain student placement practices which have heretofore been implemented by

Amdt. No. 551

courts, and by departments of the United States Government until the legality and constitutionality of such practices can be more clearly determined. It is also the purpose of this section to require the Department of Health, Education, and Welfare, in the distribution of Federal educational assistance, to accept court ordered plans of desegregation as being complete and sufficient to qualify for such assistance without the imposition of further conditions.

(a) Neither the Department of Justice nor the Department of Health, Education, and Welfare shall be authorized to support the assignment or requirement of any public school student to attend a particular school because of his or her race, creed, or color, notwithstanding any other law or laws.

(b) No funds heretofore or hereafter authorized or appropriated by any law to or for the Department of Justice or the Department of Health, Education, and Welfare, or otherwise, to be expended, shall be expended to support the assignment or requirement of any public school student to attend a particular school because of his race, creed, or color.

(c) Notwithstanding subsections (a) and (b), and any other law or laws, any plan for desegregation, including plans calling for the transportation of students, required or permitted by any court of the United States to be conducted by any local educational agency within the United States, shall, upon request by such agency, be accepted and approved

by the Department of Justice and the Department of Health, Education, and Welfare as a complete and sufficient plan for desegregation for the purpose of qualifying for and receiving any assistance under any law of the United States authorizing or requiring the furnishing of Federal assistance, and neither the Department of Justice nor the Department of Health, Education, and Welfare shall deny such assistance to any public educational agency within the United States because of failure of such agency to meet any condition except willful failure to comply with such plan of desegregation.

(d) Notwithstanding any other law or laws, no court of the United States shall have jurisdiction or authority to enforce any order or judgment to the extent that it provides for the assignment or requirement of any public school student to attend a particular school because of his or her race, creed, or color, until appeals in connection with such order or judgment have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired.

(e) DEFINITIONS.—

(1) "Local educational agency" means a public board of education or other public authority legally constituted within a State either for administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district,

or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(2) "Support" shall include, but not be limited to—

(a) advocacy both in and out of court;

(b) the preparation of plans for desegregation both in and out of court;

(c) the withholding of funds appropriated for educational purposes because of or contingent upon compliance with a plan for desegregation; and

(d) any other form of action, withholding of action, or other conduct;

having as its purpose or effect the inducement of any person or persons, any educational agency or any court, to adopt any plan for desegregation providing for the assignment or requirement of any public school student to attend a particular school because of his race, color, or creed.

(3) The terms "assignment" and "requirement" shall be deemed to include, but not be limited to, individual selection, selection as part of a group, provision for transfer or

transportation, or any other form of selection or assignmen
for school attendance purposes.

(4) The term "public school pupil" shall be deeme
to include any pupil, regardless of race, creed, or color wh
is eligible to or required to attend any form or type o
school conducted by any local educational agency within th
United States, or any territory thereof.

(5) "Because of" shall mean "solely because of" a
well as "partially because of."

(6) "Assistance" shall be deemed to mean any form
of assistance, including, but not limited to, money an
services.

(7) "Any law of the United States authorizing o
requiring the furnishing of Federal assistance" shall include,
but not be limited to—

(a) the Education Professions Development Act
part D (20 U.S.C. 1119–1119a);

(b) the Cooperative Research Act (20 U.S.C. 331-
332b);

(c) the Civil Rights Act of 1964, title IV (42
U.S.C. 2000c—2000c-9);

(d) the Elementary and Secondary Education Ac
of 1965, section 807 (20 U.S.C. 887);

(e) the Elementary and Secondary Educatio

Amendments of 1967, section 402 (20 U.SC. 1222);

(f) the Economic Opportunity Act of 1964, title II (42 U.S.C. 2781–2837) (under authority delegated to the Secretary of Health, Education, and Welfare); and

(g) appropriations Acts heretofore and hereafter relating to such laws.

(f) If any provision of this section or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the section and the application of such provision to other persons and circumstances shall not be affected thereby.

(g) All laws or parts of laws in conflict herewith be and the same are hereby repealed.

(h) This section shall take effect upon the date of its enactment, and shall expire at midnight on June 30, 1973.

(i) Subsections (a) and (b) of this section shall not apply to support furnished to any local educational agency pursuant to the written request of such agency, but this subsection (i) shall permit such support only for the purposes requested by such agency and only until such request shall have been withdrawn.

[From the Congressional Record—Senate, Nov. 1, 1971]

L EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

Acting President pro tempore. Under the previous order, the from Alabama (Mr. Allen) is recognized for 15 minutes.

Allen. Mr. President, on last Friday evening, following the the foreign aid bill to which the Senator from Pennsylvania, inguished minority leader, has referred, the junior Senator abama objected to unanimous consent that S. 2515 be given a setting and that a time limitation be placed on that bill. He at objection, because he felt that there was, and there is, much egislation which should be considered ahead of the EEOC bill,

hip notice of October 30, 1971, lists a few of those important : The President's economic tax package, phase I and phase II ls, and so forth; two Supreme Court nominations; the Oki- reaty; voter registration; narcotics; fish inspection proposals; nent of Defense, District of Columbia, and supplemental ap- tions bills.

dy this week there have been set for consideration the Alaska claims bill, the water quality bill, the consumer product y bill, and the military construction appropriation bill; and mewhere between this time and the recess of the Senate over xt year, we will be faced several times, I dare say, with the of the foreign aid bill.

resident, the junior Senator from Alabama not only feels that should not have special consideration, but feels that it should lowest possible priority. In fact, he hopes that it does not for consideration in the U.S. Senate at all.

bill is, in truth one of the most dangerous and most inde- legislative proposals presented in this Chamber in the short ave been in the Senate. We are being asked to endorse a blank ve check to vest in an agency of the Federal Government, ual Employment Opportunity Commission, totalitarian au- over employment practices of free enterprise, labor unions, te and local governments. This bill is deliberately designed to sic rights of the American people and to grant special privi- a few. If enacted, the measure would in fact, cripple, and in stances, destroy the very institutions which brought this Na- o being and helped to make it great.

to discuss briefly a few of the ways in which this bill would nce to our American way of life.

the bill brings within its scope all State and local government es. This is not only an arrogant attempt further to dilute the f the States, their institutions and their sovereignty, but the

conclusion is inescapable that the measure is aimed at destroying dual form of government.

If enacted, this bill would permit an agency of the Federal Gov ment and the Federal courts to enter the political field in the appo ment of State and local government employees. It is true that s State and local job requirements are in part unrelated to the But it is wholly in keeping with our political traditions to give State and local leaders, and our national leaders for that matter, discretion to give reasonable weight to factors other than job fit in filling jobs.

Frankly, it is difficult to imagine a more intolerable interferenc the Federal Government with the rights of the States than to dic their employment practices. The States' power over employment p tices is basic and essential to the very existence of State sovereig and, consequently, to our Federal system which was devised by forefathers and which they intended to be held forever sacrosanc the Bill of Rights. If we deprive the States of their basic function is pointless to maintain that we have a dual form of government.

The bill contains a self-starter provision vesting the Commis with the authority to initiate investigations and inquiries, either o own motion or whenever an anonymous person or organization ma requests the filing of a charge that an unlawful employment pra has occurred.

There is no requirement of "reasonable cause" as a condition p cedent to the filing of a charge; therefore, the Commission is g carte blanche authority to conduct roving inquiries into the pri books and records of a company or labor union regardless of whe there is any preexisting cause for believing there has been a viola of the law.

Under the bill, employers, labor unions and State and local gov ments would be subject to the issuance of cease-and-desist orders by Commission. The broad powers sought under the measure repres radical departure from the concept of American jurisprudence and cherished legal system of checks and balances. The legislation seek make the Commissioner accuser, prosecutor, judge, and jury all in

But this is not all. The bill could also punish first and prove offense subsequently. It would permit a Federal judge—a si judge acting without a hearing and without any showing by the G ernment of irreparable injury—to issue a temporary restraining or against the respondent for an alleged unlawful employment prac We thus see a reversal of the age-old maxim that a man is presume be innocent until he is proven guilty.

Under these provisions of the bill, it would be possible, Mr. Pr dent, for an American to be imprisoned if he disagreed with the or of a Federal judge, without the benefit of trial by jury.

The rights which the provisions of S. 2515 seek to deny cannot dismissed as mere legal technicalities. They are rights indispensab freedom. They are rights which distinguish a free society fr tyranny.

Mr. President, S. 2515 does not create one new job. Other than additional army of bureaucrats that would be set up, it does not cr

ob in private employment. Yet, it is presented to us when un-
nt is consistently ranging in the area of 6 percent. At a time
are desperately trying to fight inflation and keep our economy
is bill would create fear and uncertainty, friction and divi-
e business houses, plants, and factories of America.
rganizations would be subject to interference and supervision
nternal affairs. Their cherished programs of seniority and
eship would be destroyed. And the law which tells the em-
o his workers shall be today can be reversed and the worker
his employer shall be tomorrow—and where and at what

esident, there are other sections and purposes of S. 2515
noxious as those I have just discussed. For example, the
relating to the appointment of attorneys, attorneys' fees,
nplaint expenses of the aggrieved person are shocking.
gislation would also create a vast new bureaucrcy, inas-
ne Commission does not now have the manpower, so it says,
ut the programs called for under the legislation. I would
e some figures presented to the Senate as to how many law-
ing examiners, investigators, and supporting staff would
o the Commission to enable it to develop and exercise the
ial functions under the bill and how much it would cost
ers of this country.

sident, this is a force bill, pure, and simple. Its sole purpose
legislative sanction to the establishment of percentages or
mployment on the basis of race. Some people may think that
uirement would never be imposed on business and labor,
the patent absurdity involved. Less than a decade ago, how-
ea of a racial balance in a public school would have seemed
lous to consider. Yet, today we see schoolchildren in the
other parts of the country being lugged all over cities and
chieve what is considered to be a mathematically satisfac-
mixture in public schools. The so-called Philadelphia plan,
Nixon administration put into effect last year, is a flagrant
e provisions of the Civil Rights Act of 1964. This represents
ve toward racial balance in industry and labor.

President, this bill should not be passed by the U.S. Senate.
that would further break down our federal system. It is a
would seek to destroy the concept of States' rights. It is
ch goes contrary to our Anglo-Saxon principle of justice
is presumed to be innocent until he is proved guilty. It
ederal bureaucracy an entirely new field—that is, to control
ment practices of State and local governments.
rogant can the Federal Government become, to seek to
the employment practices of State and local governments
arge the field of operations that it already has in private
t, to give itself the power to regulate the employment
f employers of as few as eight people and their employees?
not hit just the large companies, the large corporations
t the land. It hits small business—small businesses that are
survive in these critical times.

Mr. President, this legislation is not needed. It is legislatio
should not pass. In this time of economic crisis, should we not
make things just a little bit easier for employers and employees
at a time when unemployment has risen to 6 percent or above? S
we impose this additional burden on employers and employees,
labor unions? Because this measure would result in taking ov
hiring practices of companies, and the seniority rights that exist
labor unions.

Mr. President, the junior Senator from Alabama did obje
special setting for this bill. He will object to a special setting. H
object to any time limitation on the bill, because he expects to be
from on a number of occasions if this bill is called up for cons
tion in the Senate.

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NGRESS
SESSION

S. 2515

N THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1971
Ordered to lie on the table and to be printed

AMENDMENT

d to be proposed by Mr. ERVIN (for himself, and Mr. LEN, Mr. ELLENDER, Mr. GAMBRELL, and Mr. RNEY) to S. 2515, a bill to further promote equal ployment opportunities for American workers, viz: At end of the bill insert the following:

ITLE —FREEDOM OF CHOICE IN STUDENT ASSIGNMENTS TO PUBLIC SCHOOLS

SEC. 14. The Civil Rights Act of 1964 (42 U.S.C. 1, 1975a—1975d, 2000a—2000a—2000h—6) is amend- by adding at the end thereof the following new title:

"TITLE XII—PUBLIC SCHOOL—FREEDOM OF CHOICE

"SEC. 1201. As used in this title—

"(a) 'State' means any State, district, Commonwealth, itory, or possession of the United States.

Amdt. No. 576

"(b) 'Public school' means any elementary or secondar
educational institution, which is operated by a State, a su
division of a State, or governmental agency within a State,
any elementary or secondary educational institution which
operated, in whole or in part, from or through the use
governmental funds or property, or funds or property derive
from a governmental source.

"(c) 'School board' means any agency or agenci
which administer a system of one or more public schools an
any other agency which is responsible for the assignment
studies to or within such system.

"(d) 'Student' means any person required or permitte
by State law to attend a public school for the purpose
receiving instruction.

"(e) 'Parent' means any parent, adoptive parent, guar
ian, or legal or actual custodian of a student.

"(f) 'Faculty' means the administrative and teachin
force of a public school system or a public school.

"(g) 'Freedom of choice system' means a system fo
the assignment of students to public schools and within publ
schools maintained by a school board operating a system
public schools in which the public schools and the classes
operates are open to students of all races and in which th
students are granted the freedom to attend public schools
and classes chosen by their respective parents from amon

he public schools and classes available for the instruction of tudents of their ages and educational standings.

"SEC. 1202. No department, agency, officer, or employee f the United States empowered to extend Federal financial ssistance to any program or activity at any public school y way of grant, loan, or otherwise shall withhold, or hreaten to withhold, such financial assistance from any such rogram or activity on account of the racial composition of he student body at any public school or in any class at any ublic school in any case whatever where the school board perating such public school or class maintains in respect to ch public school and class a freedom of choice system as efined in section 1201 (g).

"SEC. 1203. No department, agency, officer, or employee the United States empowered to extend Federal financial sistance to any program or activity at any public school by ay of grant, loan, or otherwise shall withhold, or threaten withhold, any such Federal financial assistance from any ch program or activity at such public school to coerce or duce the school board operating such public school to trans- rt students from such public school to any other public hool for the purpose of altering in any way the racial mposition of the student body at such public school or any her public school.

"SEC. 1204. No department, agency, officer, or employee

of the United States empowered to extend Federal finan
assistance to any program or activity of any public sch
in any public school system by way of grant, loan, or oth
wise shall withhold or threaten to withhold any such Fede
financial assistance from any such program or activity at s
public school to coerce or induce any school board operat
such public school system to close any public school, a
transfer the students from it to another public school for
purpose of altering in any way the racial composition of
student body at any public school.

"SEC. 1205. No department, agency, officer, or e
ployee of the United States empowered to extend Fede
financial assistance to any program or activity at any pu
school in any public school system by way of grant, loan,
otherwise shall withhold or threaten to withhold any s
Federal financial assistance from any such program or act
ity at such public school to coerce or induce the school boa
operating such public school system to transfer any memb
of any public school faculty from the public school in wh
the member of the faculty contracts to serve to some oth
public school for the purpose of altering the racial compo
tion of the faculty at any public school.

"SEC. 1206. Whenever any department, agency, offic
or employee of the United States violates or threatens
violate section 1202, section 1203, section 1204, or secti

1205 of this Act, the school board aggrieved by the violation
or threatened violation, or the parent of any student affected
or to be affected by the violation or threatened violation, or
any student affected or to be affected by the violation or
threatened violation, or any member of any faculty affected
or to be affected by the violation or threatened violation may
bring a civil action against the United States in the district
court of the United States complaining of the violation or
threatened violation, and the district court of the United
States shall have jurisdiction to try and determine the civil
action irrespective of the value or the amount involved in it
and enter such judgment or issue such order as may be nec-
essary or appropriate to redress the violation or prevent the
threatened violation. Any civil action against the United
States under this section may be prosecuted in the judicial
district in which the school board aggrieved by the violation
or threatened violation has its principal office, or in the judi-
cial district in which any school affected or to be affected by
the violation or threatened violation is located, or in the judi-
cial district in which a parent of a student affected or to be
affected by the violation or threatened violation resides, or in
the judicial district in which a student affected or to be
affected by the violation or threatened violation resides, or in
the judicial district in which a member of a faculty affected
or to be affected by the violation or threatened violation

resides, or in the judicial district encompassing the Dis
of Columbia. The United States hereby expressly consen
be sued in any civil action authorized by this section, a
hereby expressly agrees that any judgment entered or o
issued in any such civil action shall be binding on the Un
States and its offending department, agency, officer, or e
ployee, subject to the right of the United States to see
an appellate review of the judgment or order by appeal
certiorari as is provided by law with respect to judgme
or orders entered against the United States in other c
actions in which the United States is a defendant.

"SEC. 1207. No court of the United States shall ha
jurisdiction to make any decision, enter any judgment,
issue any order requiring any school board to make a
change in the racial composition of the student body at a
public school or in any class at any public school to wh
students are assigned in conformity with a freedom of ch
system as defined in section 1201 (g) of this Act, or requ
ing any school board to transport any students from o
public school to another public school or from one pl
to another place or from one school district to another sch
district in order to effect a change in the racial composit
of the student body at any school or place or in any sch
district, or denying to any student the right or privilege
attending any public school or class at any public sch

chosen by the parent of such student in conformity with a freedom of choice system as defined in section 1201 (g) of this Act, or requiring any school board to close any school and transfer the students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school, or precluding any school board from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract."

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92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1971

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself, Mr. ALLEN, Mr. ELLENDER, Mr. GAMBRELL, and Mr. GURNEY) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: At the end of the bill insert the following:

LIMITATION

SEC. 14. No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to require any State or local public school board to assign any member of a public school faculty to any public school other than the school in which such member contracts to serve.

Amdt. No. 577

Calendar No. 412

CONGRESS
T SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1971
Ordered to lie on the table and to be printed.

AMENDMENT

ded to be proposed by Mr. ERVIN (for himself, Mr. ALLEN, Mr. ELLENDER, Mr. GAMBRELL, and Mr. GURNEY) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: At the end f the bill insert the following:

TITLE —BUSING LIMITATION

SEC. 14. No department, agency, officer, or employee f the United States empowered to extend Federal financial ssistance to any program or activity at any public school by ay of grant, loan, or otherwise shall withhold, or threaten o withhold, any Federal financial assistance from any such rogram or activity at such public school to coerce or induce ne school board operating such public school to transport tudents from such public school to any other public school

Amdt. No. 578

for the purpose of altering in any way the racial composit
of the student body at such public school or any other pub
school.

SEC. 15. No court of the United States shall have jur
diction to make any decision, enter any judgment, or iss
any order requiring any school board to transport any st
dents from one public school to another public school or fro
one place to another place or from one school district t
another school district in order to effect a change in the raci
composition of the student body at any school or place or i
any school district.

Calendar No. 412

CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1971
Ordered to lie on the table and to be printed

AMENDMENT

nded to be proposed by Mr. ERVIN (for himself, Mr. ALLEN, Mr. ELLENDER, Mr. GAMBRELL, and Mr. GURNEY) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: At the end of the bill insert the following:

LIMITATION

SEC. 14. No court, department, agency, officer, or employee of the United States shall have jurisdicton or power to require any State or local public school board or any other State or local agency empowered to assign children to public schools to transport any child from one place to another place, or from one school to another school, or from one school district to another school district to alter the racial composition of the student body at any public school.

Amdt. No. 579

Calendar No. 4

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1971
Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself, Mr. ALL
Mr. ELLENDER, Mr. GAMBRELL, and Mr. GURNEY) to
2515, a bill to further promote equal employment oppor
nities for American workers, viz: At the end of the
insert the following:

LIMITATION

SEC. 14. No court, department, agency, officer, or e
ployee of the United States shall have jurisdiction or pow
to deny to any child the right to attend the public scho
nearest his home which is operated for the education
children of his age and ability.

Amdt. No. 580

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CONGRESS
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S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 1971
Ordered to lie on the table and to be printed

AMENDMENT

ıded to be proposed by Mr. ERVIN (for himself, Mr. ALLEN, Mr. ELLENDER, Mr. GAMBRELL, and Mr. GURNEY), to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: At the end of the bill insert he following:

DISCRIMINATION ON ACCOUNT OF RACE, CREED, COLOR, OR NATIONAL ORIGIN PROHIBITED

SEC. 14. (a) No person shall be refused admission nto or be excluded from any public school in any State n account of race, creed, color, or national origin.

(b) Except with the express approval of a board of education legally constituted in any State or the District of Columbia and having jurisdiction, no student shall be assigned or compelled to attend any school on account of

Amdt. No. 581

race, creed, color, or national origin, or for the purpose
achieving equality in attendance or increased attenda
or reduced attendance, at any school, of persons of one
more particular races, creeds, colors, or national origi
and no school district, school zone, or attendance unit,
whatever name known, shall be established, reorganized,
maintained for any such purpose: *Provided*, That nothi
contained in this Act or any other provision of Federal l
shall prevent the assignment of a pupil in the manner r
quested or authorized by his parents or guardian.

Calendar No. 412

CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENT

nded to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) the Congress hereby declares that in order to restore an appropriate division of governmental authority between the three coordinate branches of the Federal Government in the area of equal employment opportunities and to preclude encroachment upon the legislative powers and functions of the Congress through the issuance of Executive orders in this area, it is necessary to provide that the remedies enacted by Congress to secure equal employment opportunities shall be the exclusive Federal remedies available in this area.

Amdt. No. 590

(b) The actions, endeavors, investigatory proceedi
and other remedies provided by title VII of the Civil Ri
Act of 1964 shall be the exclusive means under Fed
law of enforcing the equal employment opportunities sec
by such Act.

(c) Executive Order Numbered 11246, as amen
title VI of the Civil Rights Act of 1964, and any o
law or Executive order of the United States securing e
opportunities, and all rules or regulations issued thereun
are hereby superseded to the extent that they provide
actions, endeavors, investigatory proceedings, or other re
dies with respect to any act or practice prohibited the
which would also constitute an act or practice made an
lawful employment practice under title VII of the C
Rights Act of 1964. Nothing in this Act shall relieve a
person of any obligation assumed or imposed under or p
suant to any such law or Executive order prior to the en
ment of this Act.

(d) Nothing in this section shall apply with respec
any law of any State or political subdivision of a State.

Calendar No. 412

D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENTS

ended to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 34, line 24, strike the period and insert "or any other person.".

On page 35, line 14, after "employee," insert "or any other person.".

Amdt. No. 591

Calendar No. 4

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to f
ther promote equal employment opportunities for Ameri
workers, viz:

On page 34, line 8, strike "or on behalf of"; on line
through 11, strike "or by an officer or employee of the C
mission upon the request of any person claiming to
aggrieved,".

On page 35, line 25, strike "or on behalf of".

On page 36, beginning with line 22, strike all throu
line 12 on page 37; and renumber the following subsecti
as appropriate.

Amdt. No. 592

Calendar No. 412

CONGRESS
T SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971
Ordered to lie on the table and to be printed

AMENDMENTS

ded to be proposed by Mr. ERVIN to S. 2515, a bill to
rther promote equal employment opportunities for Ameri-
n workers, viz:

On page 45, strike subsection (m), lines 15 through 25,
nd renumber the following subsections as appropriate.

On page 46, lines 10 and 11, strike the last sentence of
bsection (n).

Amdt. No. 593

Calendar No. 41

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: On page 46, strike lines 12 through and insert the following new subsection:

(o) The Attorney General shall conduct all litigation to which the Commission has an interest.

Amdt. No. 594

Calendar No. 412

'ONGRESS
T SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENT

ıded to be proposed by Mr. ERVIN to S. 2515, a bill to urther promote equal employment opportunities for American workers, viz:

On page 47, strike subsection (q) beginning on line 19 hrough page 50, line 7, and renumber the succeeding sub-ections as appropriate.

Amdt. No. 595

Calendar No. 4

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to f
ther promote equal employment opportunities for Ameri
workers, viz:

Subsection (q) on page 47 is amended to read as f
lows: "If a charge filed with the Commission pursuant
subsection (b) is dismissed by the Commission, or if wit
sixty days from the filing of such charge or the expiration
any period of reference under subsection (c) or (d), whi
ever is later, the Commission has neither issued a compla
under subsection (f) nor entered into an agreement und
subsection (f) or (i) which is acceptable to the Commissi
and to which the person aggrieved is a party, the Commi
sion shall so notify the person aggrieved and such pers
may, within thirty days thereafter petition the court for

Amdt. No. 596

appropriate order. If the court finds that there is reasonable cause to believe that the facts alleged are true, and that the Commission has abused its power in dismissing the charge or has not been acting with due diligence on the charge, the court shall issue an order directing the Commission to issue a complaint. If, in the case of an agreement pursuant to subsection (i) to which the person aggrieved was not a party, the court finds that the acceptance of such an agreement was an abuse of discretion by the Commission or that the interest of justice are not served by the agreement, it shall issue an order dissolving the agreement and directing the Commission to proceed forthwith with further consideration of the charge or to issue a complaint."

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92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to further promote the equal employment opportunities for American workers, viz: At the end of the bill add the following new section:

SEC. 14. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or superseded, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government, without first according such employer full recourse and exhaustion of any and all administrative and judicial remedies: *Provided, however*, That if such employer shall deviate substantially from such previously agreed to affirmative action plan, this section shall not apply.

Amdt. No. 597

Calendar No. 412

CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENT

nded to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: At the end of the bill add the following new section:

SEC. 14. Section 8(b)(1)(A) of the National Labor Relations Act (29 U.S.C. 158(b)(1)(A)) is amended by striking out the semicolon at the end of the proviso and inserting in lieu thereof a colon and the following: "*Provided further*, That it shall be an unfair labor practice under this section for a labor organization to impose any fine or other economic sanction against any person for exercising any rights under section 7 of this Act or for invoking any process of the Board;".

Amdt. No. 598

Calendar No. 412

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 39, line 20, following "finds" insert "by preponderance of the evidence taken by the Commission".

On page 41, line 8, strike "on the record." and insert "by a preponderance of the evidence of the record as a whole.".

Amdt. No. 599

Calendar No. 413

) CONGRESS
1ST SESSION

H. R. 1746

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971
Ordered to lie on the table and to be printed

AMENDMENT

ended to be proposed by Mr. GAMBRELL to H.R. 1746, a bill to further promote equal employment opportunities for American workers, viz: At the end of the bill, add the following new section:

SEC. 4. Because of legal and constitutional uncertainties relating to the question of public school student placement as it relates to the desegregation of public schools, and because of the disruption of normal educational operations, the expense, the disorder, and divisiveness, and the possibility that certain student placement practices may be declared to be legally unnecessary or unconstitutional, it is the purpose of this section to prohibit and suspend certain student placement practices which have heretofore been implemented by courts, and by departments of the United States Govern-

Amdt. No. 600

ment until the legality and constitutionality of such practices can be more clearly determined. It is also the purpose of this section to require the Department of Health, Education, and Welfare, in the distribution of Federal educational assistance, to accept court-ordered plans of desegregation as being complete and sufficient to qualify for such assistance without the imposition of further conditions.

(a) Neither the Department of Justice nor the Department of Health, Education, and Welfare shall be authorized to support the assignment or requirement of any public school student to attend a particular school because of his or her race, creed, or color, notwithstanding any other law or laws.

(b) No funds heretofore or hereafter authorized or appropriated by any law to or for the Department of Justice or the Department of Health, Education, and Welfare, or otherwise, to be expended, shall be expended to support the assignment or requirement of any public school student to attend a particular school because of his race, creed, or color.

(c) Notwithstanding subsections (a) and (b), and any other law or laws, any plan for desegregation, including plans calling for the transportation of students, required or permitted by any court of the United States to be conducted by any local educational agency within the United States, shall, upon request by such agency, be accepted and approved

by the Department of Justice and the Department of Health, Education, and Welfare as a complete and sufficient plan for desegregation for the purpose of qualifying for and receiving any assistance under any law of the United States authorizing or requiring the furnishing of Federal assistance, and neither the Department of Justice nor the Department of Health, Education, and Welfare shall deny such assistance to any public educational agency within the United States because of failure of such agency to meet any condition except willful failure to comply with such plan of desegregation.

(d) Notwithstanding any other law or laws, no court of the United States shall have jurisdiction or authority to enforce any order or judgment to the extent that it provides for the assignment or requirement of any public school student to attend a particular school because of his or her race, creed, or color, until appeals in connection with such order or judgment have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired.

(e) DEFINITIONS.—

(1) "Local educational agency" means a public board of education or other public authority legally constituted within a State either for administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district,

or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(2) "Support" shall include, but not be limited to—

(a) advocacy both in and out of court;

(b) the preparation of plans for desegregation both in and out of court;

(c) the withholding of funds appropriated for educational purposes because of or contingent upon compliance with a plan for desegregation; and

(d) any other form of action, withholding of action or other conduct;

having as its purpose or effect the inducement of any person or persons, any educational agency or any court, to adopt any plan for desegregation providing for the assignment or requirement of any public school student to attend a particular school because of his race, color, or creed.

(3) The terms "assignment" and "requirement" shall be deemed to include, but not be limited to, individual selection, selection as part of a group, provision for transfer or

transportation, or any other form of selection or assignment for school attendance purposes.

(4) The term "public school pupil" shall be deemed to include any pupil, regardless of race, creed, or color who is eligible to or required to attend any form or type of school conducted by any local educational agency within the United States, or any territory thereof.

(5) "Because of" shall mean "solely because of" as well as "partially because of."

(6) "Assistance" shall be deemed to mean any form of assistance, including, but not limited to, money and services.

(7) "Any law of the United States authorizing or requiring the furnishing of Federal assistance" shall include, but not be limited to—

(a) the Education Professions Development Act, part D (20 U.S.C. 1119–1119a);

(b) the Cooperative Research Act (20 U.S.C. 331–332b);

(c) the Civil Rights Act of 1964, title IV (42 U.S.C. 2000c–2000c–9);

(d) the Elementary and Secondary Education Act of 1965, section 807 (20 U.S.C. 887);

(e) the Elementary and Secondary Education Amendments of 1967, section 402 (20 U.S.C. 1222);

(f) the Economic Opportunity Act of 1964, title II (42 U.S.C. 2781–2837) (under authority delegated to the Secretary of Health, Education, and Welfare); and

(g) appropriations Acts heretofore and hereafter relating to such laws.

(f) If any provision of this section or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the section and the application of such provision to other persons and circumstances shall not be affected thereby.

(g) All laws or parts of laws in conflict herewith be and the same are hereby repealed.

(h) This section shall take effect upon the date of its enactment, and shall expire at midnight on June 30, 1973.

(i) Subsections (a) and (b) of this section shall not apply to support furnished to any local educational agency pursuant to the written request of such agency, but this subsection (i) shall permit such support only for the purposes requested by such agency and only until such request shall have been withdrawn.

[From the Congressional Record—Senate, Nov. 8, 1971]

EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENT NO. 609

ed to be printed and to lie on the table.)
y of amendment No. 609 to S. 2515 may be found on p. 551.)
vin submitted an amendment, intended to be proposed by he bill (S. 2515) to further promote equal employment ities for American workers.

AMENDMENT NO. 611

y of amendment No. 611 to S. 2515 to be found on p. 553.)
ed to be printed and to lie on the table.)
MINICK. Mr. President, on behalf of myself, Mr. Baker, Mr. r. Buckley, Mr. Ervin, Mr. Fannin, Mr. Hollings, and Mr. introduce for printing and future appropriate consideration ment to S. 2515, the Equal Employment Opportunities En- Act of 1971. Essentially, the amendment strikes all language e Equal Employment Opportunity Commission with cease- powers and substitutes therefor language giving the EEOC bring employment discrimination disputes to Federal court tion.

endment does not affect present bill language which: first, the respondent's rights of due process by requiring a 10- cation of the filing of a Commission charge and a 2-year of back pay liability; second, provides procedures whereby ately 10.1 million State and local government employees and n civil service and postal workers can redress their employ- rimination grievances through Federal district courts; third, he coverage of Commission jurisdiction to those private of eight or more employees: fourth, does not limit ag- ployes to only Title VII remedies or limit class action; and sfers the Justice Department's "pattern and practice" suit on and the Labor Department's Office of Federal Contract ce to the EEOC.

sident, what this amendment would do is to guarantee the of both parties' rights through fair, effective, and expedi- eral court machinery. It would avoid the legendary vicissi- residentially appointed boards and vest adjudicatory power belongs—in impartial judges shielded from political winds ure. Judges who render their decisions in a climate tempered l reflection and supported by a historical judicial inde- influenced only by stare decisis. This amendment permits ssive and active advocacy of equal employment opportunity

so necessary at the investigatory and prosecutory levels, yet pres
the impartiality of the courts at the adjudicatory level.

Mr. President, effective protection of the rights of all parties
demands a speedy resolution of a dispute. A court approach, r
than a cease-and-desist procedure, better serves this goal. Only
step—a district court order that is immediately self-enforcing
backed by the court's contempt powers—is needed. A commis
cease-and-desist order, on the other hand, must be brought to a
of appeals before it achieves similar sanction powers. Additio
the judge who is enforcing his own orders rather than those of
commission will be more determined that such orders are obey

The determination of how best to fulfill our national commit
to the elimination of all forms of employment discrimination m
determined by clear consideration of the alternatives. If the iss
examined objectively, I believe my colleagues will agree that a
approach provides the best and fairest machinery for providing
for the future of all Americans.

Mr. President, I ask unanimous consent that the text of the am
ment be printed at this point in the Record.

There being no objection, the amendment was ordered to be pr
in the Record.

Calendar No. 412

CONGRESS
ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1971
Ordered to lie on the table and to be printed

AMENDMENT

nded to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: On page 41, beginning with line 10, strike out through line 14 on page 43 and insert in lieu thereof the following:

(k) (1) Any party aggrieved by a final order of the Commission may file a petition in any United States district court in which the unlawful employment practice in question s alleged to have occurred or in which such party resides or ransacts business, within sixty days after the service of such order to request that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith ubmitted by the clerk of the court to the Commission and o any other party to the proceeding before the Commission

Amdt. No. 609

and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. In any such proceeding under this subsection the party aggrieved by such an order shall be entitled to a trial de novo and upon the request of any such party shall be entitled to such a trial with a jury. In any such proceeding the court shall have power to grant to the petitioner or any other party, such temporary relief or restraining order as it deems just and proper, and to grant a decree affirming, modifying, or setting aside, in whole or in part, the order to the Commission and enforcing that order to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the district court.

(2) Any proceeding brought under this subsection shall be subject to the provisions of sections 1291 and 1292, title 28, United States Code.

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CONGRESS
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S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1971
Ordered to lie on the table and to be printed

AMENDMENTS

ended to be proposed by Mr. DOMINICK (for himself, Mr. BAKER, Mr. BROCK, Mr. BUCKLEY, Mr. ERVIN, Mr. FANNIN, Mr. HOLLINGS, and Mr. TOWER) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, after line 24, insert the following:

"SEC. 4. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e–4) is amended to read as follows:

"'(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of ap-

Amdt. No. 611

pellate proceedings in accordance with subsection (j) of this section, as redesignated by section 4(d) of the Equal Employment Opportunities Enforcement Act of 1971, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.'

"(b) Subsection (h) of section 705 of such Act is amended to read as follows:

"'(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, except that the Attorney General shall conduct all litigations to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commissioner.'"

On page 34, beginning with line 1, strike out through the end of the parenthetical in line 3 and insert in lieu thereof:

"(c) Subsections (a) through (e) of section 706 of such Act."

On page 38, beginning with line 7, strike all through line 7, page 50, and insert in lieu thereof the following:

"(f) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Com-

mission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge. If the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance."

On page 50, beginning with line 8, strike all through line 19, and insert in lieu thereof the following:

"(d) (1) Subsections (f), (h), (i), (j), and (k) of section 706 of such Act, and all references thereto, are redesignated as subsections (h), (j), (k), (l), and (m), respectively.

"(2) Subsection (g) of such section 706 is redesignated as subsection (i), and a new subsection (g) is inserted as follows:

"'(g) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.'

"(e) Subsection (i) of section 706 of such Act, as redesignated by paragraph (2) of section 4(d) of this Act, is amended to read as follows:

"'(i) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice,

and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.' "

On page 56, beginning with line 7, strike all through line 19.

On page 56, line 20, strike out "SEC. 8" and insert in lieu thereof "SEC. 7".

On page 60, beginning with line 3, strike all through line 9, page 61.

On page 61, line 10, strike out "(h)" and insert in lieu thereof "(f)".

On page 61, line 13, strike out "SEC. 9" and insert in lieu thereof "SEC. 8".

On page 62, line 18, strike out "SEC. 11" and insert in lieu thereof "SEC. 10".

On page 65, line 21, strike out "(q)".

On page 65, strike out lines 23 and 24.

6

On page 65, line 25, strike out "(e)" and insert in lieu thereof "(d)".

On page 66, line 6, strike out "SEC. 12" and insert in lieu thereof "SEC. 11".

On page 66, line 14, strike out "SEC. 13" and insert in lieu thereof "SEC. 12".

[From the Congressional Record—Senate, Nov. 10, 1971]

EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

AKER. Mr. President, when the Senate considers S. 2515, n the remaining days of this session or in the early days of the ill have to make a fundamental decision with respect to the of the Equal Employment Opportunity Commission. That ital decision is whether enforcement powers should be vested OC itself or in the Federal courts. I, for one, believe strongly authority should be left to the judiciary.

s the most prominent and effective spokesman for such a the able Senator from Colorado (Mr. Dominick) who suc- ated his views on the matter in an article published in the Nation's Business of October 1971. I ask unanimous consent rticle, entitled "Let's Be Fair About Equal Employment," be the Record.

[From Nation's Business, October 1971]

Let's Be Fair About Equal Employment

(By Senator Peter H. Dominick)

ourself as an employer visited one day by an investigator from the loyment Opportunity Commission.

cy, he says, has received a complaint that you have discriminated ob applicant. From then on, everyone you're up against is a member team.

man goes on to investigate, and to file a formal complaint—with the

e agency arranges a hearing at which another EEOC employee is the and still another is the trial judge. When a decision is handed down, (employees proceeded to act as a reviewing authority.

dissatisfied with their judgment, you can—after the time and ex- at drawn-out process—embark on new, lengthy and costly litigation in t of Appeals. But only after the EEOC has finished.

uations like that could come about under the approach urged by some Congress.

no doubt that the time has come for Congress to provide an enforcement which would give substance to the purposes of the legislation that the Equal Employment Opportunity Commission.

key to reaching this goal is a workable structure that would be fair to yee and employer.

why I believe the enforcement powers should be vested in the federal not be turned over to the EEOC itself in the form of "cease and hority.

e latter arrangement, to which I have strongly objected, the Commis- be empowered to go around the country issuing orders to employers, type of proceeding described above, to refrain from alleged dis- in hiring and on the job.

ongress established the EEOC under the Civil Rights Act of 1964. en authority to investigate complaints of discrimination in employ- o try to resolve grievances through conciliation procedures.

While the EEOC had no mandate to enforce fair employment practices, t... were immediate demands for legislation to give it those powers.

However, Congress has been divided over who should have the enforce... powers—the EEOC itself or the courts. The House last month passed an ... ministration-backed bill to turn the job over to the courts. But some Sen... favoring the "cease and desist" approach hope to revise the legislation ... those lines when the Senate considers it later this year.

POLICY INTO REALITY

I strongly believe in translating the policies embodied in the Civil R... Act into concrete realities for working men and women in this country ... have been denied employment opportunities because of race, color, religion, se... national origin.

In my opinion, the way to do it is through a plan such as the one passed by ... House.

Under this plan, the Commission would first seek to obtain voluntary ... pliance with the law by specifying immediately the nature of the complain... advising the employer that he was violating the law.

If a satisfactory agreement could not be reached through negotiations in ... manner, the Commission would be free to bring its own direct action against ... employer in a U.S. District Court.

Using established judicial procedures, the Commission could—pending a ... ruling—request a preliminary injunction or temporary restraining order ...

If a court, after hearing the case, decided a violation had occurred, it ... enjoin the employer from engaging in the unlawful practices. The court ... could order whatever relief was considered appropriate, including hiring ... employees, or reinstatment with or without back pay.

There are many reasons why the judicial approach is superior to admini... tive "cease and desist" procedures.

The principal objection to the administrative approach is that it harkens ... to the "Star Chamber" proceedings outlawed in England more than 300 ... ago. That is, the EEOC would, in effect, become investigator, prosecutor, ... judge and judicial review board—all before you ever got to the Court of Ap...

I do not believe this is appropriate for any Executive agency of governm...

Furthermore, as a practical matter, EEOC Chairman William H. Brown ... has told the Senate Committee on Labor and Public Welfare that his agency ... a case backlog of 18 to 24 months. If it is unable to handle the load under ... present arrangement, there seems little likelihood it could begin issuing cease ... desist orders for quite some time.

Chairman Brown estimated it would take almost two years to set up ... trial examiner procedure, and substantial staffing of trial examiners and ... lawyers would be needed to conduct the adjudication procedures before the C... mission itself.

We already have over 90 federal district courts and nearly 400 judges ... those courts.

Under the judicial approach, where there was a legitimate case, the C... mission could take it right into one of those courts—already set up, staffed ... paid for.

Naturally, use of the existing court system would mean more immedi... action than the cease and desist method, which would be more than two ye... down the road, even after a bill had been signed into law.

OTHER WORRIES

And the judicial approach, of course, would bring together and preserve ... the expertise of the EEOC in investigating, processing and conciliating ... employment cases and the expertise and freedom from shifting political winds ... the federal courts.

There are other matters of concern to many businessmen in proposals ... changes in the law.

For example, Chairman Brown indicated in testimony last year that rem... for discriminatory practices should reach back to the effective date of the C... Rights Act—July 2, 1965.

r the threat of the enormous back pay liability that would confront
! A fairer solution would be limiting liability to two years prior to
i complaint is filed. This is not an unprecedented procedure—the Fair
ndards Act has followed it to the satisfaction of most parties for many

al concern to many businessmen is the Commission practice of con-
ull-scale personnel audits of an employer's company-wide employment
whenever a charge is filed against him.
nately, in too many cases, little attention is paid to the specific charge,
'ommission engages in fishing expedition, looking for evidence to sup-
ation of a "pattern of practice" of discrimination. This type of action
direct benefit to the individual filing the original complaint, because
his limited grievance more often than not is abandoned or delayed while
ission is engaged in the broad investigation of the entire company.
employee suffers and the company suffers. This inequity should be
in any new legislation.

DOING THE JOB—PROPERLY

mary: There is a need to put some teeth into the equal employment
the 1964 Civil Rights Act—and to avoid inequities.
OC cannot do its job unless there are some enforcement powers behind
e of this immediate need, and because of my belief in the separation of
nong the three branches of this government, I maintain that use of
is the proper way.
pproach would give the EEOC the power it must have, and, at the
. insure that the procedures would be workable—and fair to all.

Calendar No. 412

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1971

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 40, line 8, following the words "filing of a", strike the word "charge" and insert in lieu thereof the word "complaint".

On page 40, line 9, strike the word "and".

On page 40, line 11, strike the period following the word "allowable" and insert in lieu thereof the following: ", and (3) no order of the Commission shall require the admission or reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 4(b) of S. 2515 and

ithin the time required by section 4 (c) of S. 2515, neither
ed a charge nor was named in a charge or amendment
ereto, or was refused admission, suspended, or expelled
was refused employment or advancement or was sus-
nded or discharged for any reason other than discrimination
account of race, color, religion, sex, or national origin or
violation of section 704 (a) of the Civil Rights Act of
964 (78 Stat. 255; 42 U.S.C. 2000e–3 (a)), as amended
section 8 (c) (1) of S. 2515."

Calendar No. 4

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1971

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to f
ther promote equal employment opportunities for Ameri
workers, viz:

After subsection (d), page 37, line 12, the follow
new subsection (e) is added; subsection (e) of section 7
S. 2515 and all succeeding subsections of said section
redesignated as appropriate:

"(e) Where proceedings are commenced under St
or local law pursuant to the requirements of subsection
or (d), and the State or local authority terminates or co
mences proceedings under said State or local law, the St
or local authority shall promptly serve notice of such ac
upon the Commission. Said action shall be the exclu

Amdt. No. 636

emedy under this title for any person claiming to be ag-
rieved by any unlawful employment practice alleged therein
nless the Commission, within thirty days after such notice
as been served upon it, shall find that the termination or
ommencement of proceedings by the State or local authority
oes not effectuate the purposes of this title and serves notice
ithin five days of such findings and the basis therefor upon
ie State or local authority and all parties. Upon receipt of
ich notice from the Commission, the State, or local authority
iall take no further action with respect to any proceedings
ommenced under State or local law unless in a proceeding
nder subsection (l) or (m), a United States court of
ppeals sets aside the finding of the Commission that the ter-
ination or commencement of proceedings by the State or
ocal authority does not effectuate the purposes of the Act."

Subsection (e) of section 4 of S. 2515 is redesignated
nd subsection (f) is amended to read as follows:

On page 38, line 1, following the word "occurred," add
except as provided in subsection (e),".

On page 38, line 4, following the word "law,", add the
ords "or after receipt of the notice by the Commission that
ie termination or commencement of proceedings by the
tate or local authority does not effectuate the purposes of
ie Act,".

[From the Congressional Record—Senate, Nov. 16, 1971]

EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

MINICK. Mr. President, on October 28, the Labor and Public ommittee reported favorably S. 2515, as amended, and H.R. out recommendation. The primary issue concerning the two es around which enforcement procedure—independent court nt or EEOC-held cease-and-desist powers—will best protect of all parties to an employment discrimination dispute.

final House approval of independent court enforcement in , the Wall Street Journal published Elliot Carlson's article ject. Mr. Carlson, in providing an objective analysis of the es some interesting observations which court enforcement have either failed or refused to consider. Mr. Carlson points nee-jerk liberal reactions" assume that cease and desist will for employees what the NLRB did for unions. This is not so. Mr. Carlson cites Rutgers law professor, Alfred W. 's findings that "minorities have been far more successful heir rights through courts than administrative procedures." Blumrosen, who authored a comprehensive minority em- study, "Black Employment and the Law," found that the resently having fair employment practice commissions with lesist powers "have invariably failed in their own efforts to ob bias through administrative cease-and-desist powers."

ident, I recommend Mr. Carlson's article to my colleagues as arified analysis to what has unfortunately become a rather and muddled area. I ask unanimous consent that Elliot Vall Street Journal article of September 15, 1971, be printed ord.

ing no objection, the article was ordered to be printed in the follows:

[From the Wall Street Journal, Sept. 15, 1971]

How Best To Toughen the EEOC?

(By Elliot Carlson)

ON.—Just about everybody thinks the Equal Employment Oppor- ission needs more teeth.

ars ago, the dean of the Columbia University Law School derided agency as "a poor enfeebled thing . . . (having) the power to con- ot to compel." The 1970 report of the U.S. Civil Rights Commission as almost powerless, slow and saddled with lax administration, high l general inexperience. "We're out to kill an elephant with a fly gun," former EEOC chairman.

present chairman, William Brown III, agrees the commission's weap- lequate. Recently he noted that of 35,445 charges recommended for since 1965, reasonable cause to believe that bias existed was found vo-thirds of the cases. Yet in less than half of these was the EEOC ve a totally or even partially successful conciliation.

There's little agreement, however, on how to strengthen the six-year-old as will be evident today, when proponents of two distinct remedies clash House. Labor and civil rights groups back a Democratic-sponsored bill that give the EEOC the same "cease and desist" powers possessed by the N Labor Relations Board and other federal agencies. Business groups and opponents are rallying behind a Republican-backed alternative that merely empower the agency to go to court to enforce its orders. Conser who would prefer that the EEOC's power not be strengthened have lig behind the Republican version, seeing it as the lesser of two evils.

Most civil rights advocates write off this Republican-backed alternativ predictable move to water down an obviously stronger Democratic approa it's significant that a growing number of scholars strongly committed to rights disagree. They doubt that giving the agency cease and desist au would be either effective or desirable. They think a sort of knee-jerk reac liberals is binding them to the potential inherent in the GOP counterpro

MR. BLUMROSEN'S ARGUMENT

"An awful lot of liberals haven't stopped to think that what they're for isn't appropriate to the problem," avers Alfred W. Blumrosen, a Rutge professor. "They're basing their views on the NLRB experience, and that because the board helped unions get established the EEOC can do the sa civil rights groups. That's not necessarily so."

In his 1971 book, "Black Employment and the Law," (Rutgers Uni Press), Mr. Blumrosen argues that minorities have been far more suc achieving their rights through courts than administrative procedures. H asserts that states have invariably failed in their own efforts to eradic bias through administrative cease and desist powers. (Of 34 states wi employment practice commissions, 32 have such powers.) Others suppo argument.

"I doubt whether cease and desist orders could get at the vestiges of bias than the courts," declares Bernard Anderson, assistant professor of indu the University of Pennsylvania. "It would take years to build up the ga on which to base such orders, but if you had a good case you could be a next week."

Court action is what the Republican-backed bill provides for. Legal e find a few of the measure's provisions disastrous, such as one prohibitin action suits under Title VII of the Civil Rights Act. But there's no questi granting the EEOC court enforcement authority would add considerably agency's weapons, now severely limited.

At present, the EEOC may only investigate charges, determine whether sonable cause" exists to indicate the presence of bias, and, if so, attem conciliate. When wrong-doers prove obstinate, it may only recommend th Attorney General institute civil action.

This means that a party can successfully defy the EEOC just by sitting secure in the knowledge that eventually the commission must withdraw a the Justice Department, anxious to conserve its resources, is selective in t it brings, says the EEOC's Mr. Brown. "All that an intransigent respondent to fear," he recently testified before a House committee, "is the unlikely bility that whomever he has discriminated against will take him to court has happened in less than 10% of the cases where our attempts at conc were unsuccessful. . . ."

To many civil-rights advocates, the answer is the Democratic-sponsored ure, which would drastically overhaul the government's entire job bias effort. Indeed, the bill would transfer to the EEOC most federal anti-bia tions, such as the Labor Department's Office of Federal Contract Comp the Attorney General's authority to initiate "pattern or practice of discr tion" suits, and responsibility for overseeing antibias efforts throughout Civil Service. It would also broaden EEOC jurisdiction to include 10.1 state and local government employes.

Perhaps the most important to liberals, the bill would empower the a after it had exhausted conciliation efforts, to issue cease and desist orders discriminatory practices and then to seek enforcement of its orders in courts. "The EEOC must have cease and desist power," Rep. Shirley Chis the Brooklyn Democrat, recently declared. "Just having them will create mode of voluntary compliance and, of course, will provide an additional in instances of intransigence."

eally knows how either this proposal or its Republican alternative
in practice. Proponents of cease and desist base their expectations
ormance of the NLRB, whose average time for settlement of cases in
vas 11 months.

s point out that NLRB cases can remain unresolved for as long as
when parties appeal board decisions to the courts. While this happens
inority of NLRB litigation, they argue that such appeals would be
equent at the EEOC, where the law would be less developed and
ore controversial. They claim that aggrieved persons would do better
C went first into U.S. district courts, whose median length for non-
n 1970 was 10 months. A weakness in this argument, though, is that
e courts that would be used the most have the greatest backlogs.
The delay was 35 months for non-jury cases in the Southern District
k in 1969, 44 months in the Eastern District of Pennsylvania, and 24
he Eastern District of Louisiana in 1970.

l is only one measure of effectiveness; final results are a better gauge.
measure, too, the scholarly critics doubt that complex problems of
rooted in many aspects of the society, lend themselves to resolution
se and desist orders. For one thing such orders issued by the labor
the relatively limited function of getting parties to negotiate. At
they would presumably have to carry a greater problem-solving load.
e, some experts worry that a substantially strengthened EEOC
e subversion from special-interest groups.

A CHANGE IN PHILOSOPHY

fact an agency has cease and desist makes it necessary for labor and
t to be concerned with its make-up," Mr. Blumrosen observes. "You'd
change in the philosophy of the agency. Its personnel would have
il-rights orientation."

rosen argues that it is a fundamental misconception to expect the
o for the civil rights movement what the NLRB has done for the
nent. This is because the two movements are substantially different.
isparity: "the persistence and staying power of the labor movement
of lobbying, pressuring and influencing activity, backed by financial
hich have become stable and significant in recent years."

lities, he contends, make labor more effective in dealing with the bu-
precisely because it is deficient in them, "the civil-rights movement
nuscle at the EEOC. It lacks the staying power to stand up to labor
ment in that kind of a contest." Mr. Blumrosen concludes that the
movement can best compete in court.

nia's Mr. Anderson contends that most discriminatory treatment is
: subtle practices that leave minorities at a disadvantage because
and educational differences. He doubts whether such forms of bias
ted out by cease and desist orders.

abor board, individual cases are decided on individual merits," he
ns cease and disist orders fail to create broad legal principles, and
ood enough for race questions." Mr. Anderson questions, for instance,
such order could ever have had the impact of the Griggs vs. Duke
ecision, in which the Supreme Court recently held that employ tests,
ly applied, are invalid if they have a discriminatory effect and can't
n the basis of business necessity.

roversial, although also hotly debated, are the provisions that would
e EEOC virtually all federal job anti-bias efforts. Scattered among a
of agencies, such programs often have worked at cross-purposes. Most
advocates agree with Clarence Mitchell, director of the Washington
he NAACP, who snaps, "You don't want a lot of different pots when
rying to cook one stew."

EFFECTIVENESS QUESTIONED

ffective an anti-bias superagency would be is questioned by at least
ylvania's Mr. Anderson believes that "Competition between federal
s contributed to a more rapid expansion of equal opportunities,"
es have been under at least some pressure to outperform each other.
ome observers suggest that labor is backing the transfer of the Office
Contract Compliance to the EEOC in hopes of weakening it.

They say the OFCC, which has imposed goals and timetables on gover contractors for hiring minorities, could lose this authority if it were transf This could happen, they say, because the Civil Rights Act of 1964, which lished the EEOC, specifically disallows racial-hiring quotas.

According to the conspiratorial theory, labor favors the OFCC's transf the expectation that its "goals and timetables" would conflict with the E ban on quotas, thus depriving the OFCC of its key sanction and, at the same "removing a thorn from labor's side," as one exponent put it.

It's by no means clear, however, that this would be the effect of such a Some courts, for example, have ruled that "goals" aren't necessarily the thing as "quotas." And it's hard to imagine that the OFCC would be less eff at another agency. "How could the OFCC be weaker than it is now?" ask NAACP's Mr. Mitchell.

No doubt, the new powers Congress confers upon the EEOC will profo affect the future course of the civil-rights movement. While most civil-r advocates prefer cease and desist, it's by no means clear that this appr would ultimately prove more effective than merely authorizing the EEOC t courts to enforce its anti-discrimination rulings. As Mr. Blumrosen writes court decision is worth 10 written conciliation agreements and one hundr nual reports of administrative agencies."

[From the Congressional Record—Senate, Nov. 18, 1971]

EQUAL EMPLOYMENT OPPORTUNITY

LEN. Mr. President, giving emphasis to the rising tide of against the EEOC expansion bill, S. 2515, is a splendid lead which appeared in the Birmingham (Ala.) News of Novem-

"A Dangerous Grab for Power," the editorial cogently that S. 2515 is deliberately designed to subvert the prime Anglo-Saxon jurisprudence that an individual is presumed cent until proven guilty. The legislation would do this, Mr. by lodging in the Equal Employment Opportunity Com- ase-and-desist powers, coupled with the unfettered author- s investigator, prosecutor, judge, and jury, with only limited the courts. I wholeheartedly agree with the wise words of the riter that:

hat agency in a position where it may investigate and file complaints, turn, heat arguments and defense and then rule on the issue is too "hanging jury" to fit the concept of the democratic process.

ion to making an out-and-out mockery of our dedication to s of law, S. 2515 also does violence to other rights and free- h our Founding Fathers and the framers of our Constitu- d indispensable to liberty. For example, S. 2515 would vest OC autocratic and despotic power over the internal admin- f State and local governments. In addition, it encroaches ious and academic freedom by seeking to gain control of the promotion policies of all educational institutions, including pported schools.

sident, I witnessed such a bold and colossal grab for naked s represented by the combined impact of S. 2515.

that the groups and individuals who have been called upon the far-reaching proposals contained in S. 2515 have not full explanation of the fundamental and basic constitu- es which are involved and the threat which this pernicious poses to individual rights, liberties, and freedoms. I do not t fully informed Americans would sponsor or support legis- as S. 2515 which calls for the outright surrender of prin- concepts which are so inseparable from our cherished sys- ocratic government.

animous consent that the editorial from the Birmingham ovember 8, 1971, be printed in the Record.

ing no objection, the editorial was ordered to be printed in , as follows:

[From the Birmingham News, Nov. 8, 1971]

A Dangerous Grab for Power

ove to deliver statutory enforcement into the hands of a federal ve agency at the expense of the country's employers is presently be- s.

What this would amount to, if granted, would be to place a federal age the position of being prosecutor, judge and jury in cases where adjudicati rested effectively, until the present, in the federal courts.

The basic effort is known as the Williams Bill (S. 2515), the provisi which would hand over to the Equal Employment Opportunity Commissio and desist powers in the area of employment complaints, similar to that now held by the National Labor Relations Board, a lever that has proved more of an abuse of employers than a protective arm for complainants.

There is no argument heard today that protection against unfair emplo practices is unneeded or that still more stringent enforcement powers sho be given the EEOC. To place that agency in a position where it may inves and file complaints, and then, in turn, hear arguments and defense and the on the issue is too much like a "hanging jury" to fit the concept of the demo process.

The Dominick amendment to the Williams measure provides for initi judication of employment complaints in federal district courts, an area contrary to arguments by proponents of the Williams Bill, is equipped to decisions within a reasonable length of time.

Supporters of the Dominick amendment do not base their arguments desire to thwart the presentations of fair employment opportunities qualified persons regardless of race, sex or creed. The day when job bia be tolerated is past. And it is the duty of Congress, as we see it, to fa legislation which will give appropriate federal agencies the power to fair employment opportunities to all people who are qualified and willi hold a job.

We do not believe, however, that another step in the encroachment of fe bureaucracy, which possesses no greater expertise in this field than courts, is the answer to employment abuses.

The Williams Bill suggests handing government another cudgel to wa the private sector of the nation's economy. The Dominick amendment su a far more conciliatory method and one that will have a more satisfactory for all parties involved.

Progress in the area of job opportunities will not be accomplished expense of equitable treatment for all.

BUSING OF SCHOOLCHILDREN

Mr. Brock. Mr. President, I am delighted to join the distingui Senator from Georgia (Mr. Gambrell) in cosponsoring amen No. 551 to S. 2515 the Equal Employment Opportunity Comm legislation. Tennessee is not alone in its agony and frustration br on by the mass program of forced busing of our schoolchildre vain attempt to satisfy the courts and the Department of Healt ucation, and Welfare. In our sister State of Georgia and, in fa of the South as well as across the length and breadth of this mothers are sending their children off in the morning schoolbus a prayer for their safe return. This is not a problem of race, of graphy or of creed but one of deep concern for the safety and being of children as well as for our public schools as an institu

In Norfolk alone, according to the superintendent of schools ment has dropped some 7,000 pupils, denying funds to the s which their attendance would have made available.

Where are these children? If my mail is any indication they been sent to stay with relatives to escape the agonies of forced bu they have been enrolled in private schools, or they have deter that they will not go to school if they must attend a strange in strange surroundings and they have become dropouts. Is this

want for our children? I think not. Amendment No. 551
would do two things: First, remove the schools from the
on of the courts until all final appeals are decided; second,
HEW from requiring more busing than ordered by the
rder to qualify for Federal funds.
admittedly a short-time solution. It is meant to be for I be-
a constitutional amendment can settle this problem con-
However, during the interim, giving us time to pass an
nt I believe this measure would afford some relief for the

Calendar No. 412

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 1971

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ALLEN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, beginning with line 14, strike out through line 24.

Redesignate the succeeding sections accordingly.

Amdt. No. 707

Calendar No. 412

ONGRESS
SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 1971

Ordered to lie on the table and to be printed

AMENDMENT

led to be proposed by Mr. ERVIN to S. 2515, a bill to rther promote equal employment opportunities for Ameri- n workers, viz: Following subsection 4(g) of S. 2515, as nended, the following new subsection (h) is added; sub- ction (h) and all succeeding subsections are redesignated appropriate:

(h) No order of the court shall require the admission or instatement of an individual as a member of a union or the ring, reinstatement, or promotion of an individual as an ployee, or the payment to him of any back pay if such lividual, pursuant to section 4(b) of S. 2515 and within time required by section 4(c) of S. 2515, neither filed harge nor was named in a charge or amendment thereto, was refused admission, suspended, or expelled or was

Amdt. No. 784

refused employment or advancement or was suspended o
discharged for any reason other than discrimination on ac
count of race, color, religion, sex, or national origin or i
violation of section 704 (a) of the Civil Rights Act of 196
(78 Stat. 255; 42 U.S.C. 2000e–3 (a)), as amended by
section 8 (c) (1) of S. 2515. No order made hereunder sha
include back pay or other liability which has accrued mor
than two years before the filing of a complaint with said cour
under this title.

Calendar No. 412

CONGRESS
T SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 1971
Ordered to lie on the table and to be printed

AMENDMENT

ded to be proposed by Mr. ERVIN to S. 2515, a bill to
rther promote equal employment opportunities for Amer-
an workers, viz: After subsection 4 (e), of page 38, line 6,
e following new subsection (f) is added; subsection (f)
f S. 2515 and all succeeding subsections are redesignated as
ppropriate:

(f) Except as provided in subsection (b) through (e),
n), and (q) of this section, section 707 of the Civil Rights
ct of 1964 (78 Stat. 255; 42 U.S.C. 2000e-6), as
mended, and the Equal Pay Act of 1963 (29 U.S.C. 206
d) (1), a charge filed hereunder shall be the exclusive
emedy of any person claiming to be aggrieved by an un-
wful employment practice of an employer, employment
gency, or labor organization.

Amdt. No. 785

[From the Congressional Record—Senate, Dec. 17, 1971]

MPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

of West Virginia. Mr. President, in accordance with the der, I ask that the Chair lay before the Senate Calendar 2515, and that it be made the pending business.

IDING OFFICER. The bill will be stated by title.

ative clerk read the bill by title, as follows:

2515) to further promote equal employment opportunities for kers.

te proceeded to consider the bill, which had been reported ndment.

[From the Congressional Record—Senate, Jan. 19, 1972]

EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

d to be printed and to lie on the table.)

AMENDMENT NO. 797

WEIKER (for Mr. Taft) (for himself and Mr. Javits) sub-mendment intended to be proposed to the bill (S. 2512) to romote equal employment opportunities for American

T. Mr. President, many businessmen have expressed the t the Equal Employment Opportunity Commission will be r, prosecutor, and judge. I share the concern that this uld not have all of these powers combined under a cen-hority. For that reason I am today introducing for myself, from Pennsylvania, Mr. Schweiker, and the Senator from Mr. Javits, an amendment to separate the Office of Gen-l so that it can operate autonomously from the remainder nission.

his amendment, the General Counsel of the Commission onomous and shall be appointed by the President, by and vice and consent of the Senate, for a term of 4 years. The unsel shall have full responsibility for the issuance of all the prosecution of such complaints before the Commission duct of litigation.

eliberately separated the investigatory and prosecutory nder this amendment, since I believe that the General ll be able to act far more objectively and dispassionately g these cases if there is a separation of personnel so that nave investigated a case will not be those who will make y decision.

to facilitate the working relationship between the General aff and the EEOC staff in the field, this amendment pro-he chairman shall concur in the appointment of the regional nd the General Counsel shall concur in the appointment of ectors.

hat this provision will go a long way toward avoiding the which otherwise might be present in having a divided staff level. In all other respects, however, the General Counsel's e completely autonomous from that of the Commission.

here will be no misunderstanding of the intent of this , the General Counsel will be able to decide whether or not o bring an action. The only area in which the General ll not have discretion shall be in those instances where the recommends that the General Counsel seek a temporary n court. In such cases the General Counsel shall act. I the discretion of the General Counsel is not required in ces because these cases will be brought in the U.S. Circuit ppeals and consequently these cases do not involve situ-

ations where the Commission is able to act as investigator, pros and judge.

In all other situations, the General Counsel will be able to facts independently and decide for himself whether or not he to launch a prosecution and the manner in which that pros shall be handled.

Under this amendment, after the issuance of a complaint, pr ings may be ended by agreement between the General Counsel a respondent upon the approval of the Commission.

If this amendment is adopted, I will be able to support the written. As I stated in my supplemental views to the committee the adoption of this amendment "will insure procedural fair the administrative operation of the Commission and eliminate serious objections to broaden Commission authority." If this a ment is not adopted, I may not be able to support the bill as w

I have discussed the amendment with the chairman of the com and my staff has worked closely with the staff of the chairman paring the amendment. I have written to the chairman abo amendment and have received his reply. I ask unanimous conse the letters be printed in the Record. I also ask that the text amendment be printed in the Record.

There being no objection, the items were ordered to be prin the Record, as follows:

JANUARY 17

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Labor and Public Welfare Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you will recall, when we were marking up S I indicated that I would be offering an amendment to make the office of Counsel independent from the remainder of the EEOC. You requested reserve this amendment in order that our respective staffs could have portunity to get together and work out agreeable language.

I am enclosing a copy of the amendment which I intend to offer. I unde that it has been reviewed at length by members of your staff. I wou that this amendment will be agreeable to you and that you will be able t it on the floor.

With kind regards,
Sincerely,

ROBERT TA

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE
Washington, D.C., January 18,

Hon. ROBERT TAFT, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TAFT: This will acknowledge your letter of January which you express your intention to introduce an amendment to S. 25 would create a statutory General Counsel within the organizational fra of the Equal Employment Opportunity Commission.

I know how concerned you have been that the enforcement procedures by the Committee in S. 2515 have the maximum requirement of fairness process for all parties. The approach you suggest has been a part of the Labor Relations Board and has worked successfully for many years. A provision was offered to S. 2453 last year and accepted, and I will rec that the Senate agree to your amendment at the appropriate time in the d It certainly is agreeable to me.

With kind personal regards,
Sincerely,

HARRISON A. WILLIAMS, Jr.
Chair

of amendment No. 797 to S. 2515 may be found on p. 635.)
SIDENT pro tempore. Under the previous order, the Chair
the Senate the unfinished business, which will be stated by

tant legislative clerk read as follows:
2515) to further promote equal employment opportunities for Amer-

te proceeded to consider the bill, which had been reported
Committee on Labor and Public Welfare with an amend-
ike out all after the enacting clause and insert new lan-
e form of a substitute.
of S. 2515, as reported, may be found on p. 157.)
D of West Virginia. Mr. President, I suggest the absence
n.
SIDENT pro tempore. The clerk will call the roll.
LIAMS. Mr. President, I ask unanimous consent that the
e quorum call be rescinded.
IDING OFFICER (Mr. GAMBRELL). Without objection, it is so

PRIVILEGE OF THE FLOOR

LIAMS. Mr. President, I ask unanimous consent that during
. 2515, Gerald Feder, Donald Elisburg, Robert Nagle, and
ttelman, members of the staff of the Committee on Labor
Welfare, be permitted the privilege of the floor.
SIDING OFFICER. Without objection, it is so ordered.
LIAMS. Mr. President, for more than a century now, the
n of the United States has guaranteed the equal protection
to all Americans. Congress has, in bits and pieces, over
erations, enacted legislation to fulfill these rights for all

had the rights of minorities before the public in the area of
ts, schools, and public accommodations. In equal employ-
ook a major step forward in 1964, more than 7 years ago,
Title VII of the Civil Rights Act.
months ago, this body debated and passed S. 2453, the Equal
nt Opportunities Enforcement Act of 1970.
ately, the House did not act before the 91st Congress ad-
his past year the House has passed such a bill and the duty
us to act now and once again.
onsidering this bill again because we have not achieved the
obedience to the congressional mandate of 1964 that Mem-
gress of that year expected. Parenthetically, it can be re-
today there are 63 Members of this body now serving who
ers of Congress in 1964 when the Civil Rights Act of that
nacted. The concept of equal employment opportunity is
ouched in not unpleasant terms such as the desirability of
irness in employment, the right to have a decent job, and
on of all citizens to help our disadvantaged Americans.
ssions, however, fail to perceive that those institutions and
in our society responsible for providing equal employment
are deliberately disregarding their obligation to contrib-
nd order in society when they violate the Civil Rights Act
denying jobs to minorities and denying jobs and equality to

As we all know, that act declares that it is an unlawful e ment practice to fail or refuse to hire or promote, or to other criminate against a person with respect to his employment b of race, color, religion, sex, or national origin. When these vio take place, they cause the loss of economic security and the inab maintain a decent household just as surely as the burglar in the when he steals money, savings, and possessions.

Title VII of the Civil Rights Act established the Equal E ment Opportunity Commission as an independent bipartisan charged with the administration of the act's substantive provis

The act contemplated informal methods of conciliation an suasion as the primary mechanism for obtaining compliance its provisions. Only when a pattern or practice of resistance statute was indicated did it make provision for enforcement Government and then only by the Attorney General. Indiv who failed to receive relief through the Commission were l private lawsuits, an expensive procedure not readily availa most complainants.

Title VII, quite frankly, has not been a notable success. In employment discrimination tended to be viewed as a series o lated and distinguishable events, for the most part due to ill w the part of some identifiable or individual or organization. I thought that a scheme that stressed conciliation rather than pulsory processes would be most appropriate for the resolut this essentially human problem, and that litigation would be sary only on an occasional basis in the event of determined re trance. Unfortunately, this view has not been borne out by t perience of the last 7 years. Not enough is being done to obey and improve the situation. In its first 6 years of experienc Equal Employment Opportunity Commission has received 81,000 actionable charges of which approximately 50 percent plained of discrimination because of race; 30 percent were conc with sex discrimination, with the remainder of the charges in ing discrimination on a basis of national origin or religion.

Furthermore, during each year of the Commission's existen number of charges filed per year has increased. In fiscal year 197 the Commission received 14,129 new charges; in fiscal year 197 number increased to 22,920; and the indications for the curren are that more than 32,000 charges will be filed with the Commis

Compliance reviews and employment surveys continually the same traditional situation. Minority workers—black, Sp surnamed, Oriental or Indian—are relegated to the lowest pa least desirable jobs—if, indeed, they get hired at all. Often, se systems further perpetuate the problem by locking the mi worker into a line of progression that tops out at an hourly far below the highest positions in an all-white line of progress

I think it is useful in illustrating the results of this continue flagrant disregard of the law to examine this unlawful cond it affects the ability of so many members of minority groups country to participate in the economic life of our society.

The statistics are vivid, and I would like to recite just a few more significant results.

In a special report released this year by the Bureau of the C entitled "The Social and Economic Status of Negroes in the

e evidence is clear that while some progress has been made
ttering the economic position of the Nation's black pop-
e avowed goal of social and economic equality is not yet
near a reality. For example, the report shows that the
mily income for Negroes in 1970 was $6,279, while the
ome for whites during the same period was $10,236. This
ap shows that Negroes are still far from reaching their
ace in our society.

for the above statement is provided by statistics in the
reau report which show that Negroes are concentrated
er paying, less prestigious positions in industry and are
ecluded from advancement to the higher paid, more
positions. For example, while Negroes constitute about
of the labor force, they account for only 3 percent of
the high-paying professional, technical, and managerial
n the nine industries with the highest earning capabilities—
nd publishing primary metals, fabricated metals, nonelec-
hinery, transportation equipment, air transportation, and
s manufacture—Negroes hold only 1 percent of professional
erial positions. On the other hand, in the lowest paying
l service worker categories, Negroes account for 24 percent

nomic disparity is further reinforced by statistics which
the unemployment rate for Negroes is considerably higher
or whites. Figures available for 1970 show that while 4 per-
ite males were unemployed, and the unemployment rate
ites was 5.4 percent, 9.3 percent of all Negroes were un-
Even in the managerial and professional positions, the area
owest unemployment rate, Negro unemployment was 2.1
ile white unemployment was 1.7 percent.

atistics on Spanish-speaking Americans are not nearly as
as complete, available data indicates that this, the second-
nic minority group in the Nation, with approximately 7.5
mbers, is in a similar situation. In 1969, the median family
Spanish-speaking American families was $5,641. About 17
these families had incomes of less than $3,000. Both male
Spanish-speaking American workers, as has already been
e the case with Negroes, are also concentrated in the lower
upations. Only 25 percent of employed Spanish-speaking
n white-collar jobs compared to 41 percent of all men. On
and, 58.8 percent of Spanish-speaking males are concen-
lue-collar occupations. The statistics for Spanish-speaking
kers indicate a similar disparate distribution. Also, as with
panish-speaking workers suffer a higher unemployment rate
ared to the white population. In 1969, 6 perecnt of Spanish-
mericans were unemployed, compared to 3.5 percent for
he Nation.

ident, if I stated that too rapidly, that goes back to 1969.
t of Spanish-speaking Americans were unemployed. The
he rest of the Nation was 3.5 percent.

mployment figures are far worse today and with the best
e have of unemployment today of 6 percent, this is one of
es of our land at this time. The unemployment of Spanish-
mericans has increased in degree and is greater by far than
lly high general unemployment of 6 percent.

COMPARISON OF TITLE VII, CIVIL RIGHTS ACT OF 1964, PUBLIC LAW 88-352, 78 STAT. 241, 253; 42 U.S.C. 200E ET SEQ., AS PROPOSED TO BE AMENDED BY S. 2515 (WILLIAMS, ET AL.), AS REPORTED TO SENATE (S. REPT. NO. 92-415), AND H.R. 1746 (ERLENBORN) 92D CONG., 1ST SESS., PASSED BY THE HOUSE OF REPRESENTATIVES, SEPT. 16, 1971—Continued

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The EEOC's chief responsibilities include the investigation and conciliation of complaints, promulgation of recordkeeping requirements, and participation in a variety of cooperative efforts to further *voluntary* compliance with the title. (Sec. 705.)		case may be. Second it would amend the provision which permits the EEOC to appoint attorneys to represent it to authorize the Commission to appoint attorneys to handle its litigation in all cases except appeals in the courts of appeals and in the Supreme Court which appeals "shall" be conducted by the Attorney General. Sec. 2.
Enforcement:		
EEOC procedures are initiated by filing a charge of unlawful discrimination. The charge must be filed within 90 days after the occurrence of the alleged unlawful employment practice. It must be in writing and under oath and may be filed by either the person claiming to be aggrieved or by a member of the Commission who has reasonable cause to believe that a violation of Title VII has occurred. (Sec. 706(a).)	The bill would rewrite substantial portions of this part of the law in conformity with the fundamental change from an EEOC authorized to effect voluntary compliance to an EEOC empowered to compel compliance with its orders. Thus, the Commission is empowered to prevent persons from engaging in unlawful employment practices as defined above. (Sec. 4(a) "(a)".)	This bill retains the major portion of the administration and enforcement provisions of existing law with a few changes to various subsections which are intended to authorize the EEOC to *bring court suits* to eliminate unlawful employment discrimination. (Sec. 3.)
Upon receipt of the charge the EEOC is to furnish the accused employer, employment agency or labor organization, as the case may be, with a copy of the complaint and to make an investigation. Charges are required to be kept confidential. (Sec. 706 (a).)		The bill proposes two amendments to the provision dealing with the filing of charges with the EEOC. First, to the present law's requirement that charges set out the facts upon which they are based, the bill would require that the "person or persons aggrieved" be identified. Second, the bill would require that the Commission serve the respondent with a copy of the
If, after investigation, the EEOC determine that there is reasonable cause to be		

process in the course of its investigation except in the course of litigation arising under the title. (Sec. 706(a).)

An unlawful employment practice charge may be filed "by or on behalf of a person claiming to be aggrieved" or by an officer or employee of the EEOC. Oath requirement of the Act is not retained. The EEOC must serve the charge upon employers, employment agency, labor organization, or joint labor-management committee (termed respondent) as the case may be. The requirement of existing law that charges filed by a member of the EEOC must be based upon reasonable cause to believe that a violation has occurred is not retained. The charges must be in writing and contain information specified by the EEOC. The EEOC is not to disclose the contents of the charges. The EEOC is required to serve the respondent employer, employment agency, or union, as the case may be, with "notice" that a charge against him has been filed. The notice must specify the date, place, and circumstances of the alleged unlawful employment practice within ten days after the filing of the charge. If after investigating, the EEOC determine that there is no reasonable cause to believe that the charge is true, it must dismiss the charge promptly, notifying the parties of its action. Con-

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	versely, if the EEOC determines that there is reasonable cause, it is required to correct the unlawful practice by informal methods. The EEOC must make its finding as to reasonable cause as promptly as possible, and, "as far as practicable," within 120 days from the filing of the charge or from the date it can begin to take action as described shortly hereafter. The EEOC must in its determination of reasonable cause accord substantial weight to final findings and orders made by State or local authorities pursuant to their respective laws. Personnel of the EEOC are required to maintain information obtained during the preliminary phase in strict confidence and are prohibited from using it in any subsequent proceeding without the consent of the persons concerned. Breaches of confidentiality may be punished by maximum fine of $1,000 or imprisonment for one year or both. (Sec. 4(a) "(b)".)	
In State and localities which have FEP laws applicable to the incident complained of, and that law establishes or authorizes a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto,"	Charges alleging commission of an unlawful employment practice in an area subject to State or local anti-discrimination law may be filed with the EEOC, but it must defer acting until passage of 60 days from commencement of proceedings	

insure against the adoption of onerous requirements by State and local agencies as a means of forestalling Federal proceedings, the Act deems it to be sufficient compliance with the requirement of deference to local authority if the person aggrieved submits a written statement of the facts to such agency by registered mail. If the charge is filed by an EEOC Commissioner, the Commission "before taking any action," must notify the appropriate State or local agency and "upon request," allow it 60 days (120 days in the case of a new agency) to deal with the complaint. However, once the 60 days have passed, the complainant may take his case to the EEOC, regardless of the statue of the case or its outcome at that time. (Sec. 706 (b), (c).)

As previously noted, the charge must be filed within 90 days of the alleged discriminatory practice. If the complainant has pursued the State or local remedy, he may file his charge with the Commission within 210 days after the occurrence of the activity complained of, or 30 days after receipt of notice of termination of the State or local proceedings, whichever is earlier. (Sec. 706(d).)

If attempts at voluntary compliance fail, the EEOC is to notify the complainant.

law. However, if a State or local law requires something more than the filing of a written charge, proceedings thereunder shall be deemed to have commenced at the time a written statement of the facts is sent to the local agency by certified mail. (Sec. 4(a) "(c)".)

An alternate provision is set out to deal with the case of deferring to State or local agencies when the charge is filed by an officer or employee of the Commission. The time period is the same as that authorized when the charge is filed by a person aggrieved or someone in his behalf. The procedure also is the same except that the EEOC must notify its State or local counterpart. (Sec. 4(a) "(d)".)

An unlawful employment practice charge must be filed within 180 days after it has occurred. This contrasts with 90 days authorized under existing law. In cases where the EEOC defers to a State or local agency the charge must be filed within 300 days (the law presently allows 210 in these circumstances) or within 30 days after the person aggrieved receives notice that the State or local agency has terminated proceedings, whichever is earlier. (Sec. 4 (a) "(e)".)

Another two amendments are directed to the provisions of Title VII which set out the time for the filing of charges. The first would extend the allowable time for the filing of an unlawful employment practice charge from 90 to 180 days. The second would make EEOC enforcement the person aggrieved's exclusive remedy save for deferrals to State or local FEP agencies and so called "pattern or practice" actions brought by the Attorney General. (Sec. 3(b).)

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Within 30 days of receipt of such notice, a civil action may be brought by the person claiming to be aggrieved, or if such charge was filed by a Commissioner, by a person whom the charge alleges was aggrieved by the discriminatory practices. If the person aggrieved files suit on his own behalf, the court is authorized to appoint an attorney for him and to discharge him from liability for fees, costs, or security. (Sec. 706(e).)	If the EEOC determines that informal methods cannot produce an acceptable conciliation agreement, it can issue and serve respondent with a complaint stating the facts upon which the alleged unlawful employment practice is based together with notice of an impending hearing. The EEOC's determination in this regard is not subject to judicial review. The hearing may not be held less than 5 days after service of the complaint. An officer or employee of the Commission who files a charge in a case may not participate in the case except as a witness. An alternate procedure is provided where the respondent is a government, government agency, or political subdivision. In that case, if conciliation fails the EEOC would take no further action and would refer the matter to the	As proposed by the bill, the EEOC would be authorized to bring a civil action if, within 30 days from the filing of the charge (or within 30 days of the expiration of the time allowed for complying with the deferral period), it determines that informal methods will not achieve voluntary compliance. However, should the EEOC fail or refuse to bring such proceedings within 180 days following the filing of a charge the person aggrieved has an additional 90 days during which to bring his own action. He may bring his own action in these circumstances without regard to whom filed the initial charge. As is the current practice, the court may appoint an attorney to represent the party aggrieved and discharge him from any and all liability for fees, costs, or security. Similarly,

If permitted by the court, the Attorney General may intervene in any action brought by an individual under the Act. However, before being permitted to intervene, the Attorney General is required to certify that the case is one of general public importance. (Sec. 706(e).)

General are subject to provisions of sections 706 (q) through (w). (Sec. 4(a) "(f)".)

Respondent has the right to file an answer to the complaint and the EEOC shall whenever reasonable grant him leave to amend it. Respondent and person aggrieved are deemed to be parties and may appear at any stage of the proceedings with or without counsel. The EEOC has discretion to allow persons other than parties to intervene, file briefs, make *amicus* appearances, etc. All testimony is to be under oath and recorded in writing. To the extent practicable, the EEOC shall conduct its proceedings in accordance with the rules of evidence in U.S. District Courts. (Sec. 4(a)"(g)".)

If the EEOC finds that respondent has engaged in an unlawful employment practice, it shall state its findings of fact and issue and serve the parties with an order requiring the respondent to cease and desist from such unlawful employment practice and take such affirmative action as will effectuate the policies of the Act. An award of back pay is not to exceed that which has accrued more than two years prior to the filing of a charge with EEOC. Interim earnings operate to reduce backpay otherwise allowable. EEOC also may require respond-

voluntary compliance. (Sec. 3(c).)

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	ent to make periodic reports detailing compliance with its order. If EEOC does not find an unlawful employment practice, it shall state its finding, notify respondent, and dismiss the complaint. (Sec. 4(a)"(h)".) After filing the charge but before filing the record in a court, proceedings may be ended by agreement between EEOC and parties and EEOC may at any time, upon reasonable notice, modify or set aside, wholly or partly, any order or finding issued or made by it. An agreement thus approved by the EEOC is enforceable in the courts in keeping with other provisions of this bill. (Sec. 4(a) "(i".) Findings of fact and orders made or issued are to be determined on the record consistent with the requirements of the Administrative procedure Act. (Sec. 4(a) "(j)".).	
If an employer, employment agency, or labor organization fails to comply with a court order, the EEOC may institute proceedings to compel compliance. (Sec. 706 (i).) All appeals from a district court judgment are to be made to the courts of appeals. (Sec. 706(j).) Reasonable attorney's fees are authorized as an element of costs. Although neither the EEOC nor the United States is eligible to receive attorney's fees, they are liable for such costs the same as a private [illegible]		

in 60 days after service of the order. Review of such an order may be had in the court of appeals having jurisdiction over the place where the act complained of occurred or where respondent resides or transacts business. A copy of the petition is to be sent to the EEOC and to all other parties to the administrative proceedings and the EEOC, in turn, is to file a copy of the record of its proceedings with the court in accordance with 28 U.S.C. 2112. Upon filing of the petition, the court acquires jurisdiction and may issue such temporary relief or restraining order as it deems just and proper and enter on the record a decree enforcing, modifying, and enforcing as so modified, or wholly or partly setting aside the EEOC order. Intervention by parties before EEOC is authorized. The filing of a petition for judicial review does not stay the contested order unless the court directs otherwise. Objections not urged before EEOC, its members or agents shall not be considered by the court except in extraordinary circumstances. EEOC findings on questions of fact are conclusive if supported by substantial evidence on the whole record. The court may direct the EEOC to take additional evidence upon a satisfactory showing that such evidence is material and that

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	there were reasonable grounds for failing to adduce it earlier. The record thereafter may be modified in accordance with any evidence so turned up. Upon the filing of the record with the court, its jurisdiction shall be exclusive and its degree final except that it may be reviewed by the Supreme Court. The courts are urged to handle expeditiously all matters related to equal opportunity enforcement proceedings. (Sec. 4(a) "(k)".)	
	The EEOC may petition the courts of appeals for enforcement of its orders and appropriate temporary relief or restraining orders. Procedures are the same as those authorized in connection with review of EEOC orders. (Sec. 4(a) "(1)".)	
	If a petition for judicial review of an EEOC order is not timely filed (within 60 days after service of the order) the findings of fact together with the order become conclusive in any action by the EEOC to enforce the same. Upon the filing of a petition for enforcement by the EEOC in these circumstances, the clerk of the court of appeals is to enter a decree enforcing the order and to transmit copies of the decree to the EEOC and the [illegible]	

view it nor the EEOC has moved for its enforcement. Here also, findings of fact and the order are deemed to be conclusive and the clerk of the court is to enter a decree enforcing the order and to transmit copies of the decree to the EEOC and the parties. (Sec. 4(a) "(n)".)

The EEOC's attorneys are authorized to conduct all litigation involving the Commission except in the Supreme Court. Litigation involving the Commission in the high court is to be conducted by the Attorney General. (Sec. 4(a) "(o)".)

If, after the filing of a charge, the EEOC's preliminary investigation leads it to conclude that prompt judicial action is necessary to preserve its power to grant effective relief, it may bring an action for appropriate temporary or permanent relief in U.S. District Court for the district where the unlawful employment practice was allegedly committed or in the district where the aggrieved person would have been employed, or, as a final resort in the district where the respondent had his principal office. Accordingly, the district court in its discretion may grant injunctive relief or temporary restraining order subject to Rule 65 of the Federal Rules of Civil Procedure. (Sec. 4(a) "(p)".)

The occurrence of either one of two circumstances enables the person aggrieved to

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	bring a civil action to obtain relief from an alleged unlawful employment practice. First, such an action may be brought within 60 days of receipt of notification from the EEOC that it has dismissed the charge. Second, such an action may be brought if the EEOC fails to act on a charge within 180 days of its filing (or such time as required to defer to State or local law). The commencement of a civil action pursuant to these provisions divest the EEOC, or the Attorney General in a case involving a government, governmental agency, or political subdivision, of any jurisdiction in the case. However, the court, in its discretion, may allow the EEOC to intervene in any private suit which the EEOC, or Attorney General in a case involving a government, governmental agency, or political subdivision certifies to be of "general public importance." (Sec. 4(a) "(q)(1)".)	
	Similarly, the right to bring a private action is terminated when the EEOC either issues a complaint or enters into a conciliation agreement which is agreeable to it and the person aggrieved. The right of an aggrieved person to bring a private action would terminate if the Attorney General files suit under section 706(f). The party	

if the EEOC shows that it has been acting with due diligence, that it expects to issue an order within a reasonable time, that the case is exceptional, and the extension of its jurisdiction is warranted. (sec. 4(a)"(q)(2)".)

Retains provision of existing law with language making it clear that the district court shall have jurisdiction to grant "such temporary or preliminary relief as it deems just and proper." (Sec. 4(c).)

The Federal district courts have jurisdiction to try job bias suits authorized by this act. Proper venue lies with the judicial district in the State in which the practice occurred, in the district in which the relevant employment records are kept, or in the district in which the plaintiff would have been employed but for the alleged discrimination. In the rare case where the respondent cannot be served in any of these districts, suit may be brought in the district of his principal office. (Sec. 706(f).)

If the court finds an intentional violation, it may enjoin the respondent from engaging in further violations and order such affirmative action as may be appropriate. Appropriate forms of relief include reinstatement or hiring of employees, with or without backpay, but interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. The court cannot, however, require the admission or

Retains provisions of existing law.

The bill conditions the grant of relief in two particulars not found in the current law. First, the court may not grant any relief with respect to any person who neither has filed a charge nor had a charge filed on his behalf. Second, the court is prohibited from ordering backpay or other liability which accrued more than two years before the filing of the complaint. (Sec. 3(e).)

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reinstatement or promotion of an individual as a member of a union or the hiring, reinstatement or promotion of an individual as an employee, or the payment to him of any backpay, if he was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin, or for participation in an investigation, proceding, or hearing designed to eliminate discrimination. (Sec. 706(g).)		
		The bill would add a new provision which would authorize the EEOC to seek judicial aid as may be needed pending final administrative proceedings in connection with an unlawful employment practice charge. The courts are directed to expedite the handling of this and all other litigation brought by the EEOC. However, before the court may grant any form of temporary, interim relief, the EEOC would be required to show that absent such relief "substantial and irreparable injury to the aggrieved party will be unavoidable." (Sec. 3(g).)
Enforcement (Attorney General):		

of these rights. The complaint must be signed by the Attorney General and must set forth facts pertaining to such "pattern or practice" and request such relief, including an application for a permanent or temporary injunction, restraining order or other order as he deems necessary. (Sec. 707.)

President in the exercise of his Reorganization Act authority. All "personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in this connection" are to be transferred to the EEOC. During the transfer period, "proceedings shall continue without abatement, all court order and decrees shall remain in effect, and the EEOC will be substituted as a party for the United States Attorney General, as the case may be." After passage of this bill, the EEOC will investigate "'pattern or practice" charges filed by or on behalf of a person or by a Commissioner. Proceedings in "pattern or practice" suits are to be the same as those authorized for judicial review of and enforcement of EEOC orders. (Sec. 5.)

Investigations, inspections, records, State agencies:

Title VII grants the EEOC access to and the right to copy evidence of a person being proceeded against or investigated. The right to copy is strictly limited to evidence that relates to unfair employment practices as defined above, and that is relevant to the charge under investigation by the EEOC. (Sec. 709(a).)

Retains provisions of existing law.

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The EEOC is authorized to utilize the services of State and local agencies, and with their consent, and reimburse them for services rendered to assist the Commission in carrying out the provisions of this title. In addition the EEOC is authorized to enter into agreements with State and local agencies relinquishing the Commission's concurrent jurisdiction over such classes of cases as may be specified therein. (Sec. 709(b).)	The bill would enlarge the EEOC's present authority to utilize the services of State and local agencies, and to reimburse them for services rendered by way of assisting it to carry out its responsibilities. As amended by this bill, the EEOC would be permitted, *inter alia*, to contribute to research and other projects of mutual interest. Payments in advance as well as by reimbursement are authorized. (Sec. 6(a) "(b)".)	
The EEOC is authorized to impose record-keeping and reporting requirements on employers, employment agencies, and labor organizations subject to the Act. Similarly, covered persons and organizations are required to maintain records including, but not limited to, a list of applicants who wish to participate in apprenticeship and other training programs, the chronological order in which applications are received, and a detailed description of the manner in which participants are selected. (Sec. 709(c).)	The bill would keep the recordkeeping requirements of the Act intact except that the provision allowing for modification in certain hardship situations is altered so as to permit persons or organizations experiencing hardship to petition the courts for relief after having exhausted all administrative avenues for such relief. (Sec. 6(a) "(c)".)	
If an employer, employment agency, or labor organization is subject to a State or local FEP regulation, it is not subject to [illegible]	In place of the provision to Title VII which permits modification of recordkeeping requirements where similar or related [illegible]	

tion that such agencies maintain confidentiality of material prior to the commencement of its proceedings. Disclosures in violation of this condition constitute grounds for refusing to honor future requests (Sec. 6(a) "(d)".)

Another exemption from the record-keeping requirements is authorized in the case of Government contractors who are subject to the reporting requirements of Executive Order 11246, as amended, which governs employment practices by contractors and subcontractors on federal projects or federally assisted projects. (Sec. 709 (d).)

EEOC officials and employees are prohibited from disclosing any information obtained during an investigation. This prohibition carries a maximum fine of $1,000 or imprisonment for one year (Sec. 709 (e).)

The bill would add a new provision authorizing the EEOC or the Attorney General to require any person having custody of records or papers kept pursuant to the law to make them available for inspection or copying. The district court having jurisdiction over the place where the demand is made may be petitioned for purposes of compelling production of such records or papers. (Sec. 6(b) "(e)".)

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"The Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation." It may "demand" (1) the right to examine and copy evidence in the possession or control of the respondent, (2) production of such evidence, and (3) the testimony of a witness under oath. If such a "demand" is not complied with, the EEOC may seek court enforcement of its "demand". It cannot require the attendance of a witness outside the State where he is found, resides, or transacts business, or the production of evidence outside the State where it is kept. (Sec. 710(a), (b).) Anyone served with a "demand" for access to or the production of evidence by the EEOC has 20 days in which to object. A petition for relief from a Commission "demand" must specify each ground upon which the petitioner seeks relief, but objections not raised within a 20-day period cannot be raised in defense to a proceeding to enforce the "demand", in the absence of special circumstances. (Sec. 710 (c).)	The bill would revise the provisions of existing law relating to investigations by incorporating the provision of section 11 of the National Labor Relations Act (29 U.S.C. 161). Accordingly, the EEOC would have access to and the right to copy relevant evidence of a person under investigation or party to a proceeding. It shall issue subpoenas to require the appearance of witnesses or the production of evidence upon application of a party to a proceeding. Any objection to a subpoena on grounds that the evidence sought is not relevant, must be made within five days of its being served. The attendance of a witness or the production of evidence may be required from any place in the U.S. or U.S. possessions and the Federal courts may be petitioned to compel compliance with a subpoena. Witnesses may not refuse to comply with a subpoena on self-incrimination grounds, but may not be proceeded against on the basis of evidence obtained from him. Complaints and all other forms of process may be served personally or by registered mail or telegraph, or by leaving a copy at the principal office for the person being served. No subpoena shall be issued on the application of any party to the proceed-	

other relevant information. Willful violations of the posting requirements carry a fine of not more than $100 for each offense. (Sec. 711.)		
Veterans' preference: Title VII makes clear that it does not repeal or modify any Federal, State, territorial or local law creating special rights for veterans. (Sec. 712.)	Retains provisions of existing law.	Retains provisions of existing law.
Rules and regulations: The EEOC is empowered to issue, amend, or rescind suitable procedural regulations to carry out its functions. Such regulations must be in conformity with the standards and limitations of the Administrative Procedures Act. (Sec. 713(a).)	Retains provisions of existing law.	Retains provisions of existing law.
In any action or proceeding based upon an alleged unlawful employment practice, no person will be subject to any liability or punishment because of the commission of an unlawful employment practice if he shows that the act complained of is in good faith, in conformity with, or in reliance upon a written interpretation of the EEOC. No such person will be subject to any liability or punishment because of his failure to publish or file such information in good faith in conformity with instructions of the EEOC. These good faith defenses are effective even though the interpretation or opinion in question is modi-		

PRESENT LAW, TITLE VII	S. 2515 WILLIAMS ET AL., AS REPORTED TO SENATE (S. REPT. NO. 92–415)	H.R. 1746 (ERLENBORN)
fied or rescinded or is determined by judicial authority to be invalid and even though, after publishing or filing, it is determined by judicial authority not to be in conformity with the provisions of Title VII. (Sec. 713(b).)	The bill would amend the EEOC's rulemaking authority to authorize it, except in specified instances, to delegate its powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, etc. Exemptions from this broad authority to delegate include the power to issue cease and desist orders, the power to modify or set aside its findings, the power to make rules of general applicability, the power to enter to rescind agreements with the State and local nondiscrimination agencies whereby it refrains from processing a charge in any case or cases or to relieve certain persons from recordkeeping requirements; however, it is not given authority to provide for conduct of hearings by other than hearing officers as specified in 5 U.S.C. 556. The EEOC may delegate to three or more of its members all of its power. The bill also would extend criminal safe-	

complete study of the problem of age discrimination in employment and to report to Congress thereon by June 30, 1965. In its place the bill would add a new provision transferring to the EEOC all functions relating to contract compliance conferred upon the Secretary of Labor by Executive Order 11246, as amended, together with necessary personnel, property, records, and unexpended balances. (Sec. 10.)

A new section would be added to the Act dealing with non-discrimination in employment by the federal government.

All personnel actions of the U.S. Government and in the U.S. Postal Service and Postal Rate Commission in the D.C. government affecting employees or applicants for employment are to be free of discrimination on account of race, color, religion, sex, or national origin. Aliens employed abroad are excluded from these provisions.

The Committee report gives the Civil Service Commission authority to enforce these provisions. The CSC may remedy violations by awarding back pay for applicants as well as employees, denied promotion opportunities, reinstatement, hire, immediate promotion and any other remedy needed to carry out the purposes of this section. The CSC is authorized to issue appropriate rules and regulations.

COMPARISON OF TITLE VII, CIVIL RIGHTS ACT OF 1964, PUBLIC LAW 88 352, 78 STAT. 241, 253; 42 U.S.C. 200E ET SEQ., AS PROPOSED TO BE AMENDED BY S. 2515 (WILLIAMS, ET AL.), AS REPORTED TO SENATE (S. REPT. NO. 92–415), AND H.R. 1746 (ERLENBORN) 92D CONG., 1ST SESS., PASSED BY THE HOUSE OF REPRESENTATIVES, SEPT. 16, 1971—Continued

PRESENT LAW, TITLE VII	S. 2515 WILLIAMS ET AL., AS REPORTED TO SENATE (S. REPT. NO. 92–415)	H.R. 1746 (ERLENBORN)
	It also is charged with mailing annual reviews of national and regional equal employment opportunity plans and conducting reviews and evaluations of all agency equal opportunity programs. Agency and department heads of the executive branch and D.C. officials are required to comply with rules and regulations issued pursuant to this section, to submit an annual equal employment opportunity plan, and to notify any employee or applicant of any final action taken filed by him.	
	Provisions of 706(q) through (w.) applicable to private actions by aggrieved persons are made applicable to U.S. government workers and applicants for Federal employment. Both would be authorized to file a civil action within 30 days of notice of final action on their complaints or, alternatively, after 180 days from the filing of an initial charge, or an appeal with the EEOC.	
	A final subsection makes clear that nothing in this bill, if adopted, would relieve any governmental agency or official of his duty not to discriminate as spelled out in the Constitution, statutes or Executive	

Miscellaneous. Title VII provides that "nothing in this title shall be deemed to exempt or relieve any person from liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit doing any act which would be an unlawful employment practice under this title." (Sec. 708.)	Retain provision of existing law.	Retains provisions of existing law.
Nothing in Title VII requires that preferential treatment is to be given to any individual or group on account of an imbalance that may exist with respect to the total number of persons of any race, color, religion, sex, or national origin in comparison with the total number or percentage of persons in that or any other community. This provision applies to the admission to apprenticeship or other training programs as well as hiring by employers, referrals or classifications by employment agencies, and admission to union membership. (Sec. 703(j).)	Retains provisions of existing law.	Retains provisions of existing law.
	The bill adds a provision which makes it clear that the new enforcement authority conferred hereby is not to apply to charges filed before this bill becomes law. (Sec. 13.)	

Mr. ERVIN. Mr. President, will the Senator yield for some ques
Mr. WILLIAMS. I am happy to yield to the Senator from
Carolina.
Mr. ERVIN. As I understand this bill, after the lapse of a year
its enactment, the Commission would undertake to supervise the h
of State employees.
Mr. WILLIAMS. Well, that is not exactly what the bill provid
reply to the Senator, it does not provide for supervision of hiri
would provide that the Commission would work together wit
States to insure that there is not discrimination for the listed re
in employment at the State and local levels of government.
Mr. ERVIN. The Commission would have the power to deter
whether there was discrimination, and then to tell the States tha
would have to hire the man that had been discriminated against
man or the woman?
Mr. WILLIAMS. As the Senator knows, under the procedures
vided in the bill, the Equal Employment Opportunity Comm
would first be required to wait upon State action. I believe that
the States have comparable provisions in State law providing fo
forcement of the general prohibition against discrimination in
public and private employment.
Obviously, as the Senator knows, discrimination in employme
government at any level is prohibited. The State law specifically
vides for enforcement of that in 26 States.
Mr. ERVIN. But the 22 States that do not have any State law to
effect——
Mr. WILLIAMS. On the question of enforcement in State and
government employment, the answer, as I understand it, is
Whether that is precisely the number, there are a number of S
that do not have enforcement, yes.
Mr. ERVIN. As I understand the measure, it would apply to all S
officials who had the power to hire people. Would the Commission
the power, under the bill, to tell the Governor of North Carolina
example, whom he should hire as a secretary?
Mr. WILLIAMS. The answer is clearly no.
Mr. ERVIN. Well, if the Commissioner found that the Gover
North Carolina preferred to hire a secretary of his own race, w
the Commission not have the right to compel him to hire a secreta
another race?
Mr. WILLIAMS. This bill would provide that he could not discrim
in his employment because of the listed reasons. Race is one of the
Mr. ERVIN. Is there any difference between a discrimination a
preference? Suppose the Governor of a supposedly sovereign S
prefers to hire a secretary who is of his own race. If he did so, he w
violate the provisions of this bill, would he not?
Mr. WILLIAMS. The Senator referred to a secretary. Is this a ca
position that the Senator is referring to?
Mr. ERVIN. No, a secretary that takes dictation from the Gover
Mr. WILLIAMS. I see. I refer the Senator from North Carolina to
11 of the committee report, and suggest we read it together:

A question was raised in the Committee concerning the application of Tit
in the case of a Governor whose cabinet appointees and close personal aid
drawn from one political party. The Committee's intention is that nothing

e interpreted to prohibit such appointments unless they are based on on because of race, color, religion, sex or national origin. That in-flected in sections 703(h) and 706(g) of the law.

IN. Suppose the Governor of a State prefers to dictate to a tary. He has some ladies who apply to him for the job. He hire a man for that purpose rather than a woman, and does gh all applicants are equally capable of doing the job, or the ght be superior to the man in qualifications. Then the Federal nt would have the power to tell the Governor of a State that ave to hire a woman rather than a man to be his secretary, ot?

LIAMS. The question is——

IN. The question is that the Federal Government would have to tell the Governor of a supposedly sovereign State that he a male secretary in preference to a female, or the converse, ale secretary in preference to a male, would it not?

LIAMS. If the question was simply brought down to that he hire a person because the person was a woman, this is inter-aw.

IN. By this law. Not other law, but this law.

LIAMS. I believe that this particular question has come to the Court, or I believe that it is on its way to the Supreme Court

IN. Yes. But the existing law about so-called fair employ-tices does not apply to State governments or political sub-f a State.

LIAMS. That is right.

IN. This bill is designed to make them apply to State employ-ices.

LIAMS. That is right.

IN. So under this bill a Federal agency would have the t thought there was any discrimination on account of race, ional origin, to tell the University of North Carolina whom hire as a professor of philosophy, would it not?

LIAMS. Of course, the procedure here is for enforcement, if came law. In this area, the Attorney General brings the com-inst the agency that is charged, in the State or the local nt, with discrimination against an individual because of his olor, his sex, or his national origin, and this goes to trial. trial right there in the district court in the State of North

IN. Is the Senator from North Carolina correct in saying bill makes a distinction in its enforcement as against the olitical subdivision of the State and its enforcement against employer?

LIAMS. Yes.

IN. And one has to go to the Federal district court to gainst a State or a political subdivision of a State.

LIAMS. That is right.

as originally introduced did not proceed in this way. It was as sitting as chairman—and I agreed, after it was fully that it would be better received, perhaps, when the Federal nt was moving into the dispute with a State or one of its

subdivisions; that an agency of the Federal Government not
moving party, but one of its departments, its law department, th
the Attorney General. The administration did accept and agree w

Mr. ERVIN. By this bill, the executive branch of the Federal
ernment is given the power to go into the judicial branch
Federal Government and ask it to tell State officials who contr
hiring practices of the State what to do. Is that not so?

Mr. WILLIAMS. It says there shall be no discrimination beca
one's color. I will tell the Senator that. It is as clear as can be.

Mr. ERVIN. Does not the word "discrimination" mean a prefere
if one exercises a preference, is he not practicing a discrimina

Mr. WILLIAMS. A prejudice or a preference, put it as you w
would say a prejudice rather than a preference.

Mr. ERVIN. Those of us who are married proposed to one gi
cause we preferred her over another. Is that not a discrimina

Mr. WILLIAMS. That will be the day, when the Senate involves
in that.

Mr. ERVIN. The Senate has involved itself in that, and Con
has, because in the open occupancy bill it is stated that it is discri
tion to prefer to rent a house to a man of your own race in prefe
to a man of another race, or to rent it to a person of your own re
in preference to a man of another religion.

Mr. WILLIAMS. I thought the Senator was talking about matri
The Senator shifted gears on me, from matrimony into housing.

Mr. ERVIN. I brought out the point to show that every one
discriminates every day in all the relationships of life. We dis
nate when we decide to walk along the right side of the street in
of the left side, because that is the exercise of a preference.

Under this bill the Governor of a State, which was at one
alleged to be sovereign, cannot even exercise this own preferen
employing his secretaries, without running the risk of being h
into a Federal court by the Department of Justice, and having
Federal court tell him who he has to hire. I think it is rather d
to enact a bill which empowers a Federal agency to supervise w
the University of North Carolina employs to teach philosophy.
is exactly what this bill will do.

The distinguished Senator from New Jersey said earlier that
is something in the committee report that states that one cannot
fere in the case of employees of Cabinet members, but nothing i
bill says that; and the bill controls rather than the committee re

Mr. WILLIAMS. If the Senator is talking about racial discrimin
or preference, the 14th amendment goes back more than one hun
years. There, the constitutional equality is protected. What w
doing is exactly what is suggested in the 14th amendment, sect

The Congress shall have power to enforce, by appropriate legislation
provisions of this article.

And here we are, legislating.

Mr. ERVIN. One of the provisions of that amendment is that no
shall be deprived of liberty without due process of law; and at
time the 14th amendment was construed to mean that a man had
of contract, which this bill would take away.

Mr. WILLIAMS. Nor deny to any person within its jurisdictio
equal protection of the laws.

are protected in this country against discrimination because
lack. The Constitution has said it, and what we are doing
aking sure that the Constitution means what it says. It is
as that.

VIN. The Constitution also says, in substance, that the Con-
was written to create an indestructible union composed of
ible States; and here is a bill that would give the Federal
nt, acting through the Federal court, the power to supervise
practices of every official in the State or its subdivision.
ould empower the Federal court at the suit of the Attorney
govern the employment practices whereby all persons, other
d officers, are engaged to work for a State or any of its poli-
visions. Neither a State nor any of its subdivisions could ex-
preference in employment on account of race, religion, or
rigin.

LLIAMS. I stated earlier that it is not as broad as that. Basic-
l employees, yes. But there are those who can be hired for
ons, even political reasons, but they cannot be discriminated
cause of color.

IN. But nothing in this bill says that. The bill controls, not
of the committee. The State cannot exercise any preference
persons of different races, religion, or national origins. It
practical operation that the State will be compelled to hire
of minorities in preference to members of the majority.

NTOYA. Mr. President, will the Senator yield?

LLIAMS. If the Senator would refer to page 63 of the com-
ort and permit me to yield to the Senator from New

IN. The Senator from North Carolina looks at the bill. The
report is inconsistent with the provisions of the bill on that
the provisions of the law control over a committee report
e is an inconsistency.

NTOYA. Mr. President, will the Senator yield at this point?

LLIAMS. This is amending present law, and present law covers

NTOYA. I have listened with great interest to the colloquy, and
omething has not been mentioned which is the main thrust
l—that the provisions of this bill do not apply to a State
t State has a law which prohibits the practice about which
nt is being made. If a State has no such law and if the particu-
e which is being complained of is not violative of any criteria
e law, the Equal Employment Opportunity Commission has
intervene, under the provisions of this bill. Is that correct?

LLIAMS. Where there is State procedure, the Federal Gov-
s upon the States.

NTOYA. Yes. As I understand the provisions here I am re-
the provisions on pages 35, 36, and 37 of the bill, the State
a law which prohibits such an employment practice. The
have a certain procedure which must be adhered to, and it
certain findings that either the practice complained of did
id not occur. Then the Federal Employment Commission
make a final judgment; but before that final judgment is

made, they go in to persuade, if a certain practice has been g
which is violative of State law. Is that correct?

Mr. WILLIAMS. That is basically correct.

Mr. MONTOYA. So, up to that point, there is no mandate fr
Federal Commission. The Federal Commission has no autho
step in unless there is substantial evidence that the State law h
violated by a State official with respect to the employment of
dividual.

Mr. WILLIAMS. That is right. That pertains in 26 States. New
is one of those States.

Mr. ERVIN. I say this with all due respect to the Senator fro
Mexico. The way I read the bill is that it applies to all 50 States
Union regardless of whether they have a State law on the sub
not. The only difference between a State which does not have
law and a State which does have a State law on this subject is t
Federal authorities will stay their hands temporarily to give th
authorities, acting under State law, a chance to decide the matte

Mr. WILLIAMS. That is not inconsistent with what the Senato
New Mexico said.

Mr. ERVIN. Oh, yes. He said that the bill did not apply to
that did not have the State law.

Mr. MONTOYA. Let me read the particular provision, on pa
beginning on line 22, section (d):

> In the case of any charge filed by an officer or employee of the Com
> alleging an unlawful employment practice occurring in a State or politi
> division of a State which has a State or local law prohibiting the
> alleged and establishing or authorizing a State or local authority to
> seek relief from such practice or to institute criminal proceedings with
> thereto upon receiving notice thereof the Commission shall, before tak
> action. . . .

Mr. ERVIN. Before any action, yes——

Mr. MONTOYA. "Before taking any action with respect t
charge," yes—

> notify the appropriate State or local officials and, upon request, afford
> reasonable time, but not less than sixty days (provided that such
> period shall be extended to one hundred and twenty days during the
> after the effective date of such State or local law), unless a shorter p
> requested, to act under such State or local law to remedy the practice

The condition in that particular position is that the State mu
a law prohibiting such practices.

Mr. ERVIN. I hate to disagree with my good and genial frien
New Mexico, but what I read says exactly the opposite. The bi
that where a State has a law on the subject the Commission
acting in respect to a charge arising in that State will notify the
priate State or local officials and afford them a reasonable time
rect the matter.

But those provisions have no application to a State which
State law on the subject. The Commission can "sic" and the A
General can "sic" a Federal judge on the State having no such
law immediately.

Mr. WILLIAMS. If I could intervene there, this is the situat
is understandable because the State of New Mexico has such
What the Senator from New Mexico is stating applies comple
the State of New Mexico.

TOYA. Right.

LIAMS. I come from a State, and the Senator from North
mes from a State which are otherwise. Our States do not
laws that come from a State, which are otherwise. There-
uation is different.

N. But the Senator from North Carolina would say, if his
paratus is working properly, that what the distinguished
m New Mexico said is that this bill did not apply to a
did not have a State law on the subject covered by the

t the bill applies to all 50 States and the only difference
n is that the bill can and will be immediately applied to a
does not have a State law, but that where a State does
e law on the subject the Commission must wait until the
ime specified on page 37 of the bill in section (d) has

LIAMS. I can only point to the word "immediately." All
le procedures are there before the Federal Attorney Gen-
indeed, move to file in a court of law against a State or
ounty. So it is not immediately. All of the reasonable re-
are there for reasonable men to try to work towards no
on in a State or local government; but I will say again
ue the State of North Carolina and the State of New
h we represent, are two of the States that do not have the
he great State of New Mexico, enlightened as it is, does.

TOYA. If the Senator will yield further to me, in answer to
nator from North Carolina has stated, I would like to ask
enator from New Jersey or the Senator from North Caro-
the purpose of this particular language, then, if the Sen-
orth Carolina is correct, the language occurring on page
g on line 3—

mission shall accord substantial weight to final findings and orders
e or local authorities in proceedings commenced under State or
suant to the requirements of subsections (c) and (d).

. That makes the same distinction. It provides that where
ate law on the subject the Commission will accord respect
gs of State authorities acting under the State law.

TOYA. Therefore, this law presumes that its application
ggered only when it seeks to review findings by State or
th respect to prohibited employment practices.

. Oh, no. Oh, no. Not the way I read it. This bill applies to
n the Union and every political subdivision of every State.
a distinction between a State which has a law authoriz-
orities to deal with the situation under State law, and a
does not have such a law.
pplies to all States, but the Commission is required to
ion until in a State having a State law the State authori-
n a chance to act. In States where the State acts under
he Commission will not reverse its action peremptorily,
due respect to the findings of the State or local author-

g about this bill would be dissipated substantially if it did
ere was nothing in the bill applicable to any State which

does not have a State law of this nature. If the Senator fr
Jersey would accept an amendment to that effect, I will sit d
be quiet for the time being.

Mr. Montoya. I have not been able to find any language in
which indicates that the bill does apply in two situations. If t
ator is correct, then there are two proceedings here. One w
where the Federal Employment Opportunity Commission s
to review the reactions under a State or local law, and the oth
be a proceeding whereby the Federal Employment Opportuni
mission steps in to review, prohibiting an employment practi
Federal law when there is no State law or local law to gover
violation.

Mr. Ervin. I have no difficulty finding the provision that
friend has not found. It is on pages 32 and 33, subsection
amends the original act of 1964 so as to make it applicable to
ments, governmental agencies, and political subdivisions.

Also on the next page, page 33, subsection (b), it brings all St
political subdivisions of States under the bill by omitting the
of the 1964 act which exempted States and political subdiv
States from the act. So that brings them in.

Also on page 35, subsection (5), it describes the activities th
under this bill by these words in—

. . . and further includes any governmental industry, business, or ac

So that is why the State governments and their subdivi
brought in—all of them. None of them are exempted.

Let me ask another question. If the authorities of a private
for example—a private military school prefer to hire a ma
their instructor in military tactics, and a former WAC or
WAVE want the job, but they prefer the man to the former W
the former WAVE, this Commission can compel that private s
hire the WAC or the WAVE rather than the man, can it no

Mr. Williams. If the sole reason for denying employment
the employed person in that case was a woman, that would
hibited.

Mr. Ervin. Or if they preferred to hire the one they did hir
he was a man rather than the WAC, that would be a violati
act.

Mr. Williams. I am not too sure that that follows. If the
no WAC waiting to be hired, there would be no way to test

Mr. Ervin. I am asking a hypothetical question.

Mr. Williams. The Senator means if there were two appl
one from a WAC and one from a WAVE?

Mr. Ervin. The Senator is correct, and if they were fami
military tactics in the school. If the board of trustees prefer
instead of a woman, they would be discriminating.

Mr. Williams. The Senator could put it in the context of t
Academy. We would then have a little problem. It is an int
problem that the Senator is exploring.

Mr. Ervin. We have a proposed constitutional amendment p
that would convert the service academies into coeducation
academies.

Does not the Senator from New Jersey think that the b
trustees of a State university are better qualified to select a f

atics or philosophy than a Federal judge or the Attorney

LIAMS. If there is discrimination practiced in the university, action at law for the individual discriminated against it, if s race.

N. For example, this bill also refers to national origin. Let e matter of national origin. Assume that the University of olina wants a professor of history, and they prefer that that e a man who was born and reared in North Carolina, rather one who was born and reared in Australia. If they prefer Carolinian to teach that history course rather than someone alia, they would be subject to being hailed into the Federal being told by the Federal judge that they would have to ustralian rather than the North Carolinian, would they not?

LIAMS. Is the hypothesis the Senator is suggesting that the for not employing the other individual was that he was alia?

N. If both of them are equally qualified and the board of efers to hire the man born in North Carolina rather than a n Australia to teach North Carolina history at the Univer- h Carolina.

LIAMS. Even in the hypothetical question I see a reason for e North Carolinian that does not have to do with national

N. But I am assuming that the board of trustees prefers North Carolinian rather than the Australian, even though ually qualified.

LIAMS. If the reason that a man from Australia, Italy, or s not receive a job that he has been found to be equally or is his national origin, that is discrimination. That is the that is what this legislation goes after.

N. The board of trustees of the University of North Caro- not be allowed under this act to prefer a North Carolinian, Georgian, for example. They could be hailed into Federal

LIAMS. The national origin is specifically mentioned. I think eparate question as to the State of origin. That is not the f the legislation.

N. No, but even though they do not get their full rights Constitution of the United States, North Carolinians are onsidered to be Americans. That would be their national

orth Carolinian law, the sheriff of a county is allowed to ty sheriffs to serve under him. This bill would give the dge jurisdiction on petition of the Attorney General to eriff whom he shall appoint as deputies, assuming that he more.

LIAMS. No.

N. Why not?

LIAMS. I should have referred to a section in the current did not refer to in our earlier discussion. Section 703(c) in a different way, really. The Senator suggested that a not hired, because of his national origin.

There can be a preference in employment where that was a
able basis in terms of the job, because the present law says:

(e) Notwithstanding any other provision of this title, (1) it shall n
unlawful employment practice for an employer to hire and employ em
for an employment agency to classify, or refer for employment any ind
for a labor organization to classify its membership or to classify or r
employment any individual, or for an employer, labor organization,
labor-management committee controlling apprenticeship or other tra
retraining programs to admit or employ an individual in any such prog
the basis of his religion, sex, or national origin in those certain instance
religion, sex, or national origin is a bona fide occupational qualificatio
ably necessary to the normal operation of that particular busi
enterprise . . .

So, there can be a selection on that basis, if that were a bo
basis.

Mr. ERVIN. Would the Senator tell me what text he is rea

Mr. WILLIAMS. Page 50 of the committee report. And this
current law. It is printed from the current law.

Mr. ERVIN. I respectfully submit that the committee repor
controlling where the committee report states something that
in the bill. The bill is what controls.

Mr. WILLIAMS. Or the law that the bill does not change.

Mr. ERVIN. The only law that I know about on it is in t
act where it says that one can discriminate on the grounds o
sex or national origin where such factor is a bona fide quali
for the job.

Mr. WILLIAMS. This is Public Law 88–352. The provisio
read from is from the law. It is printed word for word in th
mittee print under the provisions of our own rules. This is
committee print. This is in the public law and it is from section

Mr. ERVIN. I assume that the Senator is reading from th
act.

Mr. WILLIAMS. The Senator is correct. And that is the law.

Mr. ERVIN. Yes, but there is no bona fide qualification abo
sex, religion, or national origin in teaching history. There is n
fication whatever. There is no bona fide qualification in respect
sex, religion or national origin with relation to a police forc
has no application, I submit.

Mr. WILLIAMS. These would be employers who would be e
and that would apply.

Mr. ERVIN. But that is where race, sex, religion, or nationa
is a qualification for the job.

Mr. WILLIAMS. The Senator is correct.

Mr. ERVIN. The provision the Senator has just read allows a
to get a preacher who belongs to the denomination of the chu
things like that.

Mr. WILLIAMS. Or whether it is North Carolina histor
whether the applicant was reared and born and raised in
Carolina.

Mr. ERVIN. There is no qualification either in race, sex, n
origin, or religion in teaching history. That is not a qualificatio

Mr. WILLIAMS. It is a bona fide qualification. There can be
tion because of–

IN. Well, I will have to say I do not think that race, sex, r national origin is a bona fide qualification for teaching

LIAMS. It would be hard to conceive the situation where it de qualification.

IN. Yes. In fact, I do not have enough imagination to con- h a situation.

LIAMS. In the hypothesis the Senator was giving was the lina history to be taught by a North Carolinian and not an ?

N. Yes.

LIAMS. I can see every reason to find this bona fide qualifica-

N. Not when you turn this over to a bunch of crusaders.

LIAMS. We are dealing in this matter with the district court hem mostly to be reasonable men.

IN. They would have jurisdiction in the case of Duke Uni- ich is not a State school. Under this legislation the Com- pass on qualifications of doctors of philosophy or profes- hematics in all non-State colleges in the United States.

out police forces? Here is the police force of the town. measure the Federal judge, who is set in motion by the t of Justice and the Department of Justice which is set in the Commission, can tell my hometown whom they have to olicemen. I do not think that is a proper function for any he Federal Government to exercise.

LIAMS. They can say they cannot discriminate, because the nal origins run back to the other part of the universe.

N. They can say, "You cannot refuse to hire this man." We fer someone brought up in the hometown to this other fel- qualifications are the same. So they say, "You have discrimi- st the man from Tierra del Fuego to be a policeman there do not hire him, you have to pay his wages anyway."

t what the bill provides?

LIAMS. That is not really a part of this legislation. The ques- dency for employment for a police officer is not the thrust f this legislation. There are other provisions, "privileges, ities."

N. No. In this case one man was from Tierra del Fuego and an was born and raised locally. So we have that proposition.

IAMS. That is possible, yes.

N. All I hope is that if this bill becomes law the people e it will have more discretion than I think many human .

LIAMS. We are dealing with State and local governments. again, that the enforcement of this legislation, when the y is applied to State and local governments, should come restigious level of the Department of Justice, the Attorney

think this is particularly a crusade here that we are dealing ot a crusade.

Mr. ERVIN. No, but on most of these commissions there a
Most of the members of such commissions are crusaders.

Mr. WILLIAMS. What is a crusader? How does the Sen
crusader?

Mr. ERVIN. They are necessarily so. The Commission is
tor; it is an agency which can prefer the charge. It can p
charge, it can act as a jury and determine the facts in con
the charge, and be the judge and executioner.

Mr. WILLIAMS. That is an alliteration and it sounds lik
out of the theater, but it is not the case.

As I explained to the Senator, the Commission refers t
ney General, the Attorney General carries it against the S
local government, and it goes to a district court.

Mr. ERVIN. That is only where the proceeding is against
but in the case of a private employer, the Commission ca
charge——

Mr. WILLIAMS. We are not dealing with governments no

Mr. ERVIN. No, I am now discussing private employers. It
charge, it prosecutes the charge, and then it tries the charge
enters judgment. In other words, it combines the office of p
jury, and judge in one agency. The Supreme Court has had
to say in this regard:

More fundamental, however, was the purpose to curtail and chan
tice of embodying in one person or agency the duties of prosecutor an

I say that no agency should ever be both the prosecuto
judge. I say it is incompatible with fair play and it should
incompatible with due process of law, because if a man
charge against me and prosecutes me, and he will be prone t
me guilty. The accused has a poor chance of ever having
cence established. So I think that this combining of the
prosecutor and judge in the same agency is a prostitutio
judicial process.

Mr. WILLIAMS. If the situation were as the Senator has
after this becomes law I would feel somewhat as the Sena
North Carolina does, but even the bill as first introduced
separation of functions. But this bill, after it is finally co
here, will have, in my judgment, all of the separation of f
and powers that the Senator is addressing himself to.

Before the Senator came into the Chamber I indicated for t
mittee that an amendment would be offered by the Senator fr
creating the Office of General Counsel. That will more certai
arate the various functions or investigations, the hearing pro
prosecutions. These will be separated and it will not be o
It will be in its separate compartments, in the whole orderly
process under due process.

Mr. ERVIN. I have not seen the amendment of the Senator fr
but will it take away and eliminate from the bill the provision
izing an officer or employee of the Commission to prefer a charg

Mr. WILLIAMS. No; that part is not dealt with by this. A
can be——

Mr. ERVIN. They can prefer charges?

Mr. WILLIAMS. Yes.

N. And then, the Commission can determine the validity of

LIAMS. Yes, but not the same man.

N. That is about as separate as the Siamese twins were.

LIAMS. The General Counsel would, as in other agencies, dependent evaluation for prosecution.

IN. Would it prohibit an officer or agent from prosecuting ? I refer to the amendment of the Senator from Ohio.

LIAMS. I am sorry. I missed the question.

IN. Would the amendment to be offered by the Senator forbid an officer or agent to prosecute a charge?

LIAMS. As I understand it, the answer to that, if I under- proposed amendments that will be offered, and if I under- uestion, the answer is he cannot prosecute the charge.

N. Can he prefer a change?

LIAMS. Prefer, yes.

N. And still the members of the Commission are going to e trial.

IAMS. He will not be in the trial.

N. General Counsel will bring the proceeding, but the same n whose agents prefer the charge will be the judge and ot the prosecutor, but the judge and the jury.

LIAMS. Where a Commission employee prefers the charge, rt of the jury, and the same would, of course, apply to the cluding an officer or employee who first puts in the charge.

N. But it is going to be tried by members who are on the ission with him and whose offices are in the same building sociate with him daily and draw their pay from the same

LIAMS. That is right, and the district attorneys live right all from the district judges, appointed by the same appoint-

N. Yes, but one is the judiciary and the other is the exec- here we have the executive and judiciary all balled up

LIAMS. It is easy to say, but it does not work out that way. sy to say that.

N. Yes, it is.

LIAMS. That is why we are separating these functions.

N. It is comparable to having the prosecuting attorney, the charge or the grand jury that returns the bill of in- tting on the bench to determine the validity of the bill of So the divorce is not enough.

IAMS. Let me stay with this analogy. I hope the respondent ith him an attorney more than a defendant can have in a There is a record of this. When it comes to a record, the d goes to the Court of Appeals and, if necessary, to the ourt of the United States.

N. Yes, it does, but there is a provision in the bill that if the the Commission are supported by substantial evidence— ut may be substantial—they are binding on the courts and do anything about it. If I can write the verdict, I do not

care who writes the judgment: the findings of fact determine
of judgment which must be written.

Mr. WILLIAMS. I think we are talking about the time-hono
of "substantial evidence." This is time-honored. I always thou
term was better than "weight of the evidence." "Substantial."
is better than "weight of the evidence."

Mr. ERVIN. Oh, no. "Substantial" is any part of it. Five per
be substantial, but it takes a little over 50 percent of the co
force of the testimony to be the weight of the evidence.

Mr. WILLIAMS. I always thought it was a little more than
thought it was the bulk.

Mr. ERVIN. I remember a number of decisions which Federal
have written in which they stated, "If I had the power to find t
in this case, I would find the facts exactly opposite from thos
by the board, but I am powerless."

So you can take 5 percent of the evidence and that may con
matter, and no power on earth can correct that finding of fact,
it is binding on the courts. That is one reason why we ought
jury trials in all cases.

Mr. WILLIAMS. Yes, and we have our anxious moments before

Mr. ERVIN. Yes, but you have 12 impartial men. The jury is
with ascertaining the truth between two conflicting sides, and
is not charged with enforcing the law, except to do justice and
the facts. Here you have this very agency which is charged w
duty of enforcing the law having the power to prefer charges
power to act as judge, even if you adopt the amendment of the S
from Ohio and keep him from being prosecuting attorney, too.

I want to thank the Senator. I hope I have not tried his pa
He is a very patient man.

Mr. WILLIAMS. Not at all. I believe it was helpful to the re
know it was helpful to the Senator from New Jersey. I appre

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous
that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, for the record wh
pending question before the Senate?

The PRESIDING OFFICER (Mr. ROTH). The pending question
the Senate is on agreeing to the committee amendment to
S. 2515.

Mr. BYRD of West Virginia. I thank the distinguished Pre
Officer.

Calendar No. 412

NGRESS
ESSION

S. 2515

N THE SENATE OF THE UNITED STATES

JANUARY 19, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

d to be proposed by Mr. SCHWEIKER (for Mr. Taft) (for self and Mr. JAVITS) to S. 2515, a bill to further pro- e equal employment opportunities for American workers.

On page 38, line 11, immediately after "shall", insert following: "so notify the General Counsel who may".

On page 40, line 23, immediately after "Commission" rt the following: "or, after issuance of a complaint, the eral Counsel upon approval of the Commission".

On page 43, line 15, immediately after "The" insert following: "General Counsel, upon the recommendation he": immediately after "Commission" insert a comma: strike out the word "may" and insert in lieu thereof ll".

Amdt. No. 797

42

On page 43, line 18, strike out "its" and insert
thereof "the Commission's".

On page 43, line 20, strike out "its" and insert
thereof "the Commission's".

On page 43, line 22, strike out "Commission
insert in lieu thereof "General Counsel".

On page 45, line 19, strike out "Commission
insert in lieu thereof "General Counsel".

On page 46, line 3, strike out "Commission" and
in lieu thereof "General Counsel".

On page 46, line 4, strike out "its" and insert i
thereof "the Commission's".

On page 46, line 21, immediately after "the" inse
following: "the General Counsel, upon the recommen
of the"; and immediately after "Commission" ins
comma.

On page 46, line 22, strike out "it" and insert it
thereof "he".

On page 46, line 23, strike out "its" and insert it
thereof "the Commission's".

On page 47, line 23, strike out "Commission"
insert in lieu thereof "General Counsel".

On page 49, line 6, strike out "Commission" and
in lieu thereof "General Counsel".

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On page 50, line 1, immediately after "and the" insert
eneral Counsel, upon the recommendation of the"; and
nediately after "Commission" insert a comma.

On page 50, line 1, strike out "may" and insert in lieu
reof "shall".

On page 56, lines 16 and 17, strike out "Commission"
insert in lieu thereof "General Counsel".

On page 58, line 18, immediately after "and", insert
following: ", except as provided in subsection (b),".

On page 58, line 22, immediately after "employees",
rt the following: ", except that regional directors of the
mmission shall be appointed by the Chairman with the
currence of the General Counsel.".

On page 59, immediately after line 22, insert a new
ection (e) as follows:

"(e) (1) Section 705 of the Act is amended by insert-
the following new subsection (b):

"'(b) There shall be a General Counsel of the Com-
ion appointed by the President, by and with the advice
consent of the Senate, for a term of four years. The
eral Counsel shall have responsibility for the issuance
omplaints, the prosecution of such complaints before
Commission, and the conduct of litigation as provided
ctions 706 and 707 of this title. The General Counsel

shall have such other duties as the Commission may p
scribe or as may be provided by law. The General Cou
shall appoint regional attorneys with the concurrence of
Chairman, and shall appoint such other employees in
Office of the General Counsel as may be necessary to as
in carrying out the General Counsel's responsibilities a
functions under this title. In accordance with the provis
of section 554(d) of title 5, United States Code, no e
ployee or agent of the Commission may engage in the p
formance of prosecutorial functions for the Commissio
a case or any factually related case, and also participate
advise in the decision, recommended decision, or Comm
sion review of a decision, except as a witness in pu
proceedings. The General Counsel of the Commission on
effective date of this Act shall continue in such position
perform the functions specified in this subsection unti
successor is appointed and qualified.'

"(2) Subsections (b) through (j) of section 70
such Act are redesignated as subsections (c) through
respectively."

On page 59, line 23, strike out "(e)" and insert
lieu thereof "(f)".

On page 60, line 3, strike out "(f)" and insert in
thereof "(g)".

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On page 60, line 7, strike out "(g)" and insert in lieu reof "(h)".

On page 61, line 10, strike out "(h)" and insert in thereof "(i)".

On page 61, following line 23, add the following new section 9(d), as follows:

"(d) Section 5316 of such title is amended by adding he end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

[From the Congressional Record—Senate, Jan. 20, 1972]

EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

NSFIELD. Mr. President, I ask unanimous consent that the hed Senator from Pennsylvania (Mr. Schweiker) be recog- peak on S. 2515 when the Senate reconvenes today, following of the Union address by the President; and I ask unanimous at the unfinished business be laid down at this time.

ITS. Mr. President, let us hear the statement about S. 2515.

NSFIELD. The Senator from Pennsylvania (Mr. Schweiker) cognized after the State of the Union message.

ITS. Mr. President, I want to offer an amendment. I have not recognized as the ranking minority member to make my open- ent on this matter. I would like to do that. I will arrange to enator from Pennsylvania yield to me.

NSFIELD. That will be satisfactory.

ESIDING OFFICER. Without objection it is so ordered. The bill ted by title.

stant legislative clerk read as follows:

2515) to further promote equal employment opportunities for Amer- s.

ESIDING OFFICER. Is there objection to the request of the Sen- Montana? There being no objection, the Senate proceeded r the bill.

* * * * * *

of Amendment No. 797 to S. 2515 may be found on p. 635.)

nate resumed the consideration of the bill (S. 2515) a bill to romote equal employment opportunities for American work-

ESIDING OFFICER. According to the previous order, the Sen- Pennsylvania is recognized.

AMENDMENT NO. 797

IWEIKER. Mr. President, I call up my amendment No. 797.

ESIDING OFFICER. The amendment will be stated.

slative clerk proceeded to read the amendment.

IWEIKER. Mr. President, I ask unanimous consent that fur- ng of the amendment may be dispensed with.

ESIDING OFFICER. Without objection, it is so ordered; and, bjection, the amendment will be printed in the Record.

endment was ordered to be printed in the Record.

IWEIKER. Mr. President, it is my intention to ask for the nays on the amendment upon the conclusion of the debate endment.

PRIVILEGE OF THE FLOOR

Mr. President, I ask unanimous consent that Richard D. of the staff of the Committee on Labor and Public Welfare b mitted the privilege of the floor during the debate on S. 2515.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent th Senator from New York (Mr. Javits) may be recognized f purpose of offering opening remarks on the bill, and that wh has finished his opening remarks I be permitted to continue wi presentation of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHWEIKER. Mr. President, I suggest the absence of a qu

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I am grateful to the Senator from sylvania for yielding to me so that I may make my opening sta with respect to this measure, with which I have been very i involved, as I am the ranking minority member of the Comm Labor and Public Welfare, which has reported the measure floor.

Mr. President, I fully support S. 2515 as reported out by the mittee on Labor and Public Welfare. This is a landmark m an effort to bring up to date the historic Civil Rights Act of 19

S. 2515 is a piece of unfinished national business which ha before us several times in past years. A similar bill passed the S during the last Congress, only to die in the House Rules Co and in 1966 a similar bill passed the House of Representatives to die in the Senate. We are now, however, finally at the point both the House and the Senate can both act during the same Co for during the first session of this Congress the House pas EEOC bill. It is now up to the Senate to act on S. 2515 to s stage for a conference report and final enactment into law.

Mr. President, it is well known that throughout my service Senate I have been devoted to the issue of equal opportunity have stayed with that interest in many measures and through struggles waged here and outside of this Chamber. I feel tha sense, this bill is the capstone of everything I have done in Co in the civil rights field.

I come from a State which has a number of large cities, part New York City. I am a slum child myself, having been born and in the slums of New York City. I think I understand what the members of minorities and the poor, and those who are o badly used in our society, have a failing of incentive. We ne they will move forward into the normal ranks of aspiring an American society and there is nothing that is more importa employment to achieve that result. Indeed employment is, judgment, the very key to the whole problem that we still face country, the most critical kind of emergency in respect of our re with minorities, and especially the black minority of the

ritical element, whether we will or will not be successful or
ountry will be torn with strife, as it has been in the recent
yment.
o has a job and a little money in his pocket is capable of
etter housing, emergence from the slums, participation,
ional opportunity, a cessation of the rates of dependence
encies, including brushes with the law; but a man who
e that kind of substance and status is a man who is not
ut also adrift, and it is the root of all our troubles.
ze this because it is critically important that we under-
bit of this bill and what it is meant to do. It seeks to cor-
r defects in Title VII of the landmark Civil Rights Act

cies are lack of enforcement power in the Equal Employ-
unity Commission to effectuate the equal employment
hich we gave in Title VII. Also, we seek to correct failure
cover as many employees as it should in terms of busi-
nments and to cover employees at the State and local
s the bill now reads, to centralize the administration of
practice and the Federal contractor equal opportunity
EEOC. I deal with these now, briefly, and in turn.

ENFORCEMENT POWER FOR THE EEOC

II of the Civil Rights Act the Congress guaranteed to
an the right to be free from racial or religious or sex
n in employment. We also established the Equal Em-
portunity Commission to administer the law but, un-
as the result of compromises necessary to overcome a
had to agree to strip the Commission of any effective
rce the act.
architect of the bill in this Chamber was Senator Everett
llinois, the minority leader. I believe history will both
mpromise which had to be made and will not be unfair
irksen. He followed what he thought were his deepest
ill would not have passed or would not have been possible
him. There are many sections or parts of the bill which
critical to the achievement of social justice in the United
dherence to the Constitution, but, even with respect to
ment, the door was opened, albeit not as wide as I should

say is not in any way derogating from the historic per-
Senator Dirksen in bringing about enactment. I think he
important single personality who had most to do with
the Civil Rights Act of 1964, notwithstanding my feeling
njustice and deficiency remained with respect to the en-
forcement machinery for equal employment opportunity.
compromise fashioned in 1964 and embodied in present
ommission is not successful in inducing voluntary com-
the act, it is up to the person who is the subject of the
crimination to institute his own lawsuit against the
nion guilty of violating the law, unless it can be shown

that a pattern or practice of discrimination exists, in which Justice Department has the power to sue.

The purpose of S. 2515 is to remedy this wide gap in the Civ Act of 1964 to granting to the Equal Employment Opportun mission the power to issue administrative cease-and-desist orde lar to those issued by other administrative agencies, such National Labor Relations Board.

When the 1964 act was under consideration, I and a nu other Senators were convinced that a governmental agency w form of enforcement power was absolutely necessary to g the fulfillment of the basic rights created by Title VII of the we had to accept the emasculation of the Commission's power sary to secure the votes needed for cloture.

This is not very new. We tried to get it done in 1964. We k experience would be that of deprivation as a result of our fa have that remedy. As I said, we had to compromise in orde a law. We did, and I am glad we did it. I hope now, given the tunity to pass the bill, we repair what was so lacking then.

Sadly enough, experience under Title VII to date has borne concerns. Conciliation alone has not succeeded in ending dis tory employment practices, nor does it show any reasonable of doing so.

The failure of the conciliation approach was strongly emp by many witnesses who testified before the committee. M William H. Brown III, present Chairman of the Commiss failure of the conciliation approach is summarized very well 5 of the committee report as follows:

> The failure of the voluntary conciliation approach is reflected in the EEOC workload statistics presented by its Chairman, William H. Br Since its inception, the Commission has received 81,000 charges. Of thes the Commission has been able to achieve a totally, or even partially sa conciliation in less than half. This means that in a significant numbe the aggrieved individual was not able to achieve any satisfactory s of his claim through the EEOC, and was forced to either give up his cl or, if the necessary funds and time were available, to pursue the cas the Federal courts.
>
> While the above noted number of charges is disturbing by its very s comes even more significant when considered in light of the fact that the number of charges filed with the Commission continues to in example, in FY 1970, 14,129 charges were filed with EEOC; in FY 1 number increased to 22,920 charges; and current estimates submitte Commission indicate that more than 32,000 charges will be filed i It is obvious that without effective enforcement powers, the EEOC w little more than a receptacle for charges of violations of Title VII, and ever increasing number of aggrieved individuals will be left without an remedy for violations which are clearly prohibited by the law.

Another indication of the need to give the Commission enforcement power is the statistical evidence of the disparate ment situation faced by women and members of minority throughout the Nation. For example, during 1970 the unemp rate for whites was 5.4 percent, while unemployment rate for was 6.3 percent. Similarly, in 1969 while the overall unemp rate was 3.5 percent, unemployment for Spanish speaking p 6 percent.

Insofar as women are concerned, the evidence indicates that the Equal Pay Act and Title VII of the Civil Rights Act

still paid less than men for doing the same job. Thus, edian salary for all scientists was $13,200, for women was $10,000.

ean to imply that Title VII of the 1964 Civil Rights Act ffect. Some of the successful lawsuits brought by private l the Justice Department under its pattern-or-practice ve resulted in important and far-reaching changes in the the employers or unions involved. Equally important, such lawsuits and the general change in social attitudes he country have resulted in the end of many of the and overtly discriminatory hiring practices which at ted throughout American industry. But this does not mean nent discrimination has ended; rather, it means that ances it has become more sophisticated and subtle. In- ply, as attention turns away from entry level jobs to the promotions and highest management positions, where necessity are much more subjective, proving actual dis- becomes more and more difficult.

bstantial agreement on the need to put teeth into Title ing the Commission some sort of enforcement power. The ally before us is what kind of enforcement power shall

that enforcement power will be used as an imposition business, to harass employers, and so forth, are absolutely ot shown by experience. I was a party to the enactment uinn bill in New York, the first antidiscrimination statute imination in employment, in 1945, when I first got out We heard the same predictions then—that there would upon thousands of cases of terrible harassment, the business to operate at all, and so forth, and so forth. g happened. It is now accepted, after 26 years, as an ndamental element of the law of the State of New York. en to the extent of the limited powers of the Commission deral law, and will be if we give the appropriate powers ission—to wit, the cease-and-desist power.

PPROPRIATENESS OF CEASE-AND-DESIST POWER

hat the most appropriate type of power for the Com- e traditional cease-and-desist order remedy available to strative agencies with essentially quasi-judicial functions. LRB. This leads me to disagree with the administrations ermit the Commission to initiate proceedings in the Fed- courts, although I recognize that even that procedure reat step forward over existing law.

traditional arguments usually advanced to justify the e order approach are fully applicable to the EEOC. Thus, ly a need for uniformity in decisions under Title VII le decisionmaking agency can much better insure—at e Supreme Court decides a number of cases—than the eral courts can. There is also a great need for expertise g and applying the provisions of Title VII which only agency can insure. For example, one of the most critical Title VII is testing of applicants for employment.

Whether or not a given test is appropriate in a given case difficult psychological and sociological issues, as well as difficu lems in the analysis of job content and personnel policy. The sion has already initiated important work in this area, but administration's proposal it will have to educate not only its every Federal judge in the country on the proper resolution issues.

There is also the question of speed in case handling. While that the Commission now has a large backlog of cases. Its ca certainly no worse than that in some of our busier district co committee bill includes provisions encouraging the Commissio pose of cases within 6 months; that figure will rarely, if eve tained in Federal district courts.

Insofar as the question of fairness is concerned, some of t support a court enforcement approach seem to argue that the trative process is somehow inherently unfair and that the that due process can be obtained is through trials in the distr I cannot accept that premise. In the first place, the Admi Procedures Act, as well as various specific provisions of S. 25 antee procedural due process for all parties to Commission ings. Under the APA and the bill, all parties will have the ri represented by counsel, to examine and cross-examine wit have a hearing conducted by an independent trial examiner. Second, as a further safeguard for procedural due process, t shortly be offered an amendment, which I understand is acce the chairman of the committee, to provide for an independent Counsel. This will serve to guarantee the separation of pros and decisional functions within the Commission, which the A quires. The adoption of this amendment should completely a remaining fears that employers, or anyone else for that mat not receive the fullest possible due process in proceedings b Commission.

For these reasons, I support the granting of cease-and-desi to the EEOC, as S. 2515 does, and shall oppose the amend permit direct court enforcement.

EXPANSION OF COVERAGE—EMPLOYEES OF STATE AND LOCAL GOVE

Mr. President, I wish to address myself briefly now to the sirable changes in existing law, to wit, the expansion of co employers with eight or more employees, thereby materially the present requirement and reaching more of small busines in fact, is somewhat more likely, if anything, because of the of the enterprises and the lack of sophisticated personnel to to be in danger of discriminating than even larger busines whom the public eye is fixed.

So I am very strongly for including employers with eight employees, and also opening the law to employees of State governments and educational institutions.

I have long urged the coverage of employees of State and lo ernments, of whom there are over 10 million in the United St employment discrimination problem is especially acute in are there is heavy minority population. This goes for law enforce education, and for the administration of justice.

lasses of employment which should be subject to Title VII
ous, it seems to me, is employment in State and local gov-
:h, under the 14th amendment, must be free from arbi-
ination.

n the committee report on the bill, the employment dis-
problem is particularly acute in those governmental ac-
are most visible to the minority communities—notably
w enforcement, and the administration of justice—with
t the credibility of Government's claim to exist "for all
by all the people" is called into serious question. This
de particularly strong by the Civil Rights Commission
port on equal opportunity in State and local government
The Commission found that minorities are denied equal
te and local government jobs through both institu-
ert discriminatory practices. Perpetuation of past dis-
practices through de facto segregated job ladders, in-
techniques, and stereotyped supervisory opinions as to
es of minorities as a class were found to be widespread,
ng more pervasive than in private employment.
pecial nature of the State and local governmental activity
nsidered, the case for ending this kind of discrimination
er. As the Commission pointed out in the introduction to

al governments are the nearly constant companions of every
ited States. Most personal contacts with governments—so routine
for granted—are with State or local government. Policemen,
rbage collectors are included in its work force. From the time a
l at the city or county health department, to the time a burial per-
the city or county, the daily activities of the citizen—education,
mmerce, recreation—bring him into constant contact with State
nments.

ttee bill does treat employees of State and local govern-
ntly from other employees in one respect, however. Be-
trong feelings which this issue generated concerning the
a Federal agency passing on the conduct of State and
the committee adopted an amendment under which the
eral would litigate contested cases in the Federal dis-
conciliation by the Commission proved unsuccessful. I
this area, involving, as it may, delicate problems of Fed-
ationships, it is desirable to have the judiciary, rather
y in the executive branch, even though it is independent,
mine contested cases.

TRANSFER OF PATTERN-OR-PRACTICE SUITS

tee bill transfers the authority of the Justice Department
rn-or-practice suits under section 707 to the EEOC. As
amendment which I cosponsored and which was adopted
ttee, however, there is a 2-year hiatus during which the
tment will retain concurrent jurisdiction with the Com-
ng such suits. I believe that retention of concurrent juris-
ears is an excellent way of insuring that we do not waste
valuable expertise which has been gained by Justice De-
ers prosecuting pattern-or-practice suits during the time
e Commission to tool up to meet its new responsibilities.

TRANSFER OF OFCC

The committee bill also transfers the functions of the Of eral Contract Compliance under Executive Order 11246. tive order deals with nondiscrimination and affirmative ac ments which must be complied with by Federal contracto Executive order program under which such controversial the Philadelphia plan and Order No. 4 have been promulg

I have had some serious questions concerning the desirab particular transfer, at least at this time, and I am reservin tion on any amendment which I or others may offer to stri it. Some of the reasons which have caused me to question bility of transferring OFCC at this time are as follows:

First, the Commission presently has a large backlog of almost 2 years behind in processing its caseload. Giving sion enforcement power under Title VII will further increas load greatly. Under these circumstances would it be app give the Commission the added responsibility for enfor Executive Order 11246 right now?

Second, the nature of the Executive order program, in it does the cooperation of every single Federal executive a quires that its implementation come from the highest level ment, that is, a Cabinet officer.

Third, concentration of all equal employment opportuni in one agency could make it easier for those who are oppo achievement of full equality of employment opportunity in A curtail the program through a limitation on appropriations.

Fourth, the problems of coordination which existed among ous Federal programs dealing with equal employment o have largely been solved through the steps which this adm has taken to insure much closer harmony among the Civil R sion of the Justice Department, the OFCC, and the EEO ticular, the EEOC and the OFCC have entered into a memor understanding designed to avoid overlap, conflict, and dup the kind which regrettably did exist in prior years.

Fifth, proper implementation of the Executive order pr quires a close working relationship between the Manpower tration—which is in the Labor Department also—the contract cies, and the Federal contractors, for special manpower tra education programs are frequently an integral part of co programs.

Last, and by no means least, during the past few years present administration, OFCC has gone to great lengths to the concept of affirmative action as required under the Execu program as something much more than just the duty not to active discrimination in hiring. Under this concept of a action OFCC has been able to promulgate plans, such as the phia plan, and numerous similar plans in other cities throu country, under which contractors agree to undertake good fa to increase the utilization of minority group employees and without reference to whether they are actually guilty of di crimination. Many Senators will recall that in 1969 I vigoro ultimately successfully defended the Philadelphia plan on

happy to say that the legality of the plan was completely by the Third Circuit Court of Appeals in its decision— *Association of Eastern Pennsylvania* v. *Secretary of* F. 2d 1959 (3d Cir. 1971).

I of the Civil Rights Act of 1964, on the other hand, is ondiscrimination law. Affirmative action may be ordered, a remedy in a case of proven discrimination.

erstand it, the committee report so states on pages 29–30, tee does not intend, by approving the transfer of the func- CC to EEOC, to alter in any way the scope or meaning of ve order program. Thus, if this transfer were to be made, ency—EEOC—would be administering different standards VII and the Executive Order. The result might be confu- gency and confusion in the minds of Federal contractors in h the agency, or a watering down of the Executive order that it and the Title VII program become indistingishable.

n I have hesitated thus far in offering an amendment to ike the transfer provision is that despite some of OFCC's ives during the past 3 years, I must confess that I am far ed with the manner in which OFCC has discharged its ad- and management functions under the Executive order so the affirmative action concept looks good, and plans like lphia plan also promise a great deal, OFCC was unable o the committee staff concrete information showing the ts of some of the programs they have initiated, or that it pplying the Executive order in a manner differently than ould be applied. Thus, when the committee staff sought to hether the allegations of "motorcycle compliance" which ade by some critics of the Philadelphia plan were valid, unable to supply any information to show that a substan- of the additional black employees working under Federal d not simply been pulled off other jobs to satisfy the re- of the Philadelphia plan. Also, OFCC was unable to pro- te information dealing with the number of employers sup- assed over" for failure to submit acceptable affirmative

re serious than any of OFCC's management deficiencies in nt, is the fact that during the 7 years the program has been d by the OFCC, just one debarment order has been issued Federal contractor—with 10 employees. In the face of urt decisions in actions brought by the Justice Department parties in which employers have been found guilty of dis- , and the knowledge we all share that employment discrimi- ll a fact in this country, it is almost beyond understand- h that one exception, not a single debarment order has ever under the OFCC program.

is unfortunate indeed, that for whatever reasons, and they able to me, OFCC has been unable or unwilling to take the ssary to establish its credibility in effectuating an Execu-

of the matters I am exploring with the Labor Department is the possibility of obtaining appropriate assurances that y changes will be made in OFCC so that if, in fact, the

transfer provision is stricken or delayed we can be sure that O
more effectively administer the Executive Order 11246.

I know that organized labor is very desirous of having the
made of these Federal contractor equal employment opportun
ters to the Commission. I am very understanding of that, an
like to respond to it if possible. But I have felt it my duty
these doubts to the Senate, so that we may come to a collective
upon it, and within the next few days I shall hope to propos
Senate the way in which I think this ought to go, or to stat
Senate that I have been persuaded and will stand by the co
bill as submitted. As I say, I reserve that question.

To sum up, Mr. President, I feel that on the basic provision
bill, to wit, added enforcement power in the Commission of
tional character, which we have given to other commissions,
tion of the size of the establishment to which the law shall be
ble, and the bringing under the protection of the Commission
and local employment, there is no question that I shall do my
to persuade the Senate that this is absolutely essential to com
historic promise of the Civil Rights Act of 1964. Indeed, it
too long deferred.

For the Office of Federal Contract Compliance, I shall pres
own recommendations to the Senate, insofar as the Senate
interested in receiving them, well before any action is necessary
section of the bill.

Again, I express my appreciation to the Senator from Penns
for yielding, and I hope to join him in the amendment he in
propose.

Mr. Mansfield. Mr. President, I suggest the absence of a quo

The Presiding Officer. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. Schweiker. Mr. President, I ask unanimous consent
order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered

Mr. Schweiker. Mr. President, I rise in support of the a
offered by the distinguished Senator from Ohio (Mr. Taft
tinguished Senator from New York (Mr. Javits), the distin
Senator from Maryland (Mr. Beall), and myself. I am offe
amendment today in behalf of the distinguished Senator fro
as one of its cosponsors, as a result of his inability to be here be
pressing business in his home State.

This amendment would establish the Office of General C
under the EEOC, who would be appointed by the President, w
advice and consent of the Senate, for a 4-year term. Under
law the EEOC has a General Counsel's Office but that office
subordinate to the Chairman and other Commissioners. We fe
ever, that since this bill, S. 2515, is going to turn the EEOC int
very much like a court, this court should not either exercise con
its prosecutors or provide its own prosecutors. Instead, the pro
arm of the EEOC should be separate and distinct from the
arm. Hence, the reason for our amendment.

Our amendment, by setting up an independent General C
Office, would accomplish this. Thus, the Commission would not
to sit as prosecutor, judge, and jury combined. The prosecuting

ld not serve under an independent, presidentially appointed
'ounsel not tied to the rest of the agency. This would free the
on members to concentrate on their work of hearing cases
before them, much as judges would do in a regular court. The
'ounsel and his staff attorneys would issue complaints, prose-
complaints before the Commission, and conduct litigation
ndividual cases and the "pattern and practice" type of suits.
separate the prosecuting function from the EEOC's judicial
n this way, we are safeguarding due process of law before the
r all parties concerned.
he Administrative Procedure Act does require as a general
t these functions shall be separate within a particular agency,
dment underscores this in the case of the EEOC as a matter
ssional intent.
S. 2515, the EEOC would take on powers similar to those of
nal Labor Relations Board. It is significant, Mr. President,
Vational Labor Relations Board has since 1947 had an inde-
eneral Counsel's Office as an entity separate from the Board
ngress decided, in the case of the NLRB, that that Board had
power in its own right without also being in control of the
g arm. This is the way I feel about the new EEOC that we
ring in S. 2515. As we increase the powers of this agency,
good reason for doing so, nevertheless we should clearly ob-
traditional "separation of powers" doctrine that has always
o protect all citizens from the abuse of Government power.
r to explain in laymen's terms exactly what we are trying
ould say, first of all, that this bill, S. 2515, attempts to expe-
ases brought to the EEOC by citizens who feel they have
riminated against for one reason or another in their search
yment.
, S. 2515, as the distinguished Senator from New Jersey said
and my colleague on this side of the aisle, the distinguished
om New York, said today, gives enforcement powers to the
mely the power to hear complaints and issue cease-and-desist
ese orders are reviewable by the circuit courts of appeals, so
n effect provided proceedings within the EEOC at the trial
ead of holding these trials in the Federal district courts.
OC hears the case and issues an order, it is still subject to
a court of appeals and then the Supreme Court. So we still
distinct steps in resolving equal employment opportunities

the bill is substituting the Equal Employment Opportu-
nission as a hearing body for the district court, our amend-
tended to provide the normal safeguards found in a court of
amendment underscores that the EEOC prosecutor shall be
nd independent from the EEOC judge and the jury. The
the jury in this case will be the members of the Equal Em-
Opportunity Commission.
der our amendment, the prosecutor, a General Counsel will be
by the President, will be directly responsible to the Presi-
will be separate and independent from the judge and the
e EEOC Commission. So that by the amendment we are
oday, we make it crystal clear that even though we are sub-

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stituting what we believe is a fast, a fair, and a more efficient
dure—the EEOC hearing procedure—for the logjammed
courts, with their lengthy delays and great time consuming
processes, this will provide due process of law because the pro
and the judge are two distinct entities. So that this amendmen
nutshell, would simply provide that the prosecutor and the
not be the same person, shall not be in the same line of comman
shall not be responsible to the same people.

This amendment would give the President the right to n
independent EEOC General Counsel who would report solely
It would be his duty and his function to decide what cases to pr
and what cases not to prosecute from the cases presented to h
injustice is alleged on the basis of race, color, creed, or sex. This
assure that once the prosecutor makes the decision to prosecute
basis of discrimination, the judge and the jury in this case wo
separate and distinct and will be, in effect, the new Equal Empl
Opportunity Commission.

I can think of no better way to insure that the new and h
faster, more efficient system in S. 2515 will operate justly tow
Americans. Our amendment will protect the parties on both s
the dispute and assure that the prosecutor and the judge com
two different appointment procedures and have two different r
sibilities. In this case the prosecutor goes directly to the Pr
himself for his appointment, and for advice and consent of the S

This is a fair amendment. It is in keeping with our Nation's
history, judicial customs and our judicial system. It makes
clear the fact that we are tryng to achieve, by this bill, and this
ment, a fast, efficient, and fair way to determine where alleged
tices exist in our society and to provide a way whereby, once
to exist, they can be decided expeditiously so that the people
volved will know they can get a quick and fair hearing, for "
delayed is justice denied."

I urge, Mr. President, the adoption of this amendment giving
Equal Employment Opportunity Commission under our bill
independent General Counsel's Office.

The Presiding Officer (Mr. Gambrell). The question is on
to the amendment of the Senator from Ohio.

Mr. Williams. Mr. President, I first want to state that, as
of the bill, I am in agreement with the amendment which is
offered by the Senator from Ohio and fully explained by the S
from Pennsylvania. It will make a substantial contribution to
stance of this legislation. It certainly meets many of the anxie
about the bill as it now exists.

This amendment calls for the establishment of a General C
Office in the Equal Employment Opportunity Commission,
though a part of the Commission and empowered to act in
is to be independent of its control. The purpose of the amend
to insure that the prosecutorial and decisional functions of th
mission will be firmly separated and to eliminate any lingering
that the Commission would be involved in a conflict of acting as
cutor and judge.

Under the scheme of the Civil Rights Act of 1964, the Com
was established as an investigative body to facilitate a statutory

ng voluntary compliance through the processes of conference,
n, and persuasion. To this end the Commission was empow-
r investigation, to determine only whether reasonable cause
believe that an employer, employment agency, or labor orga-
ad violated the act. In essence, then, the Commission's pri-
sent function—deciding whether to proceed on charges filed
ved persons or individual Commissioners—has been wholly
ial in nature. Likewise, the Commission's function in ad-
g the day-to-day work of its component sections has involved
issioners, particularly the Chairman, deeply in investiga-
liation, case handling, and even litigation in Title VI cases
district courts.

l under consideration vests the Commission with extensive
rial powers similar to those possessed by many other ad-
ve agencies, such as the Occupational Safety and Health
n and the National Labor Relations Board. This amend-
ld reorganize the Commission along the lines of the NLRB
an independent Office of General Counsel created by Con-
Taft-Hartley Act.

mmission's present organization is devoted entirely to in-
and other prosecutorial functions. The preparation of
cause decisions is closely tied to the work of investigative
ho prepare draft decisions for the consideration of the Com-
many instances. It would be difficult for the Commission to
ll its current practices and procedures immediately; to
rop the reins of its present prosecutorial functions and with-
purely decisional role as the Administrative Procedure Act
ndeed, the several functions of the Commission have become
gled under present law that exceptional measures are neces-
ure that a firm dividing line is drawn between the Commis-
ecutorial and decisional functions in the future.

ie Administrative Procedures Act would mandate the sep-
functions in any event, one way to accomplish this goal is
pon the time-tested experience of the NLRB and establish
ndent General Counsel to exercise authority, on behalf of
ission, over the issuance of complaints, conciliation efforts,
ution of complaints before the Commission and litigation
ts.

r, vesting an independent General Counsel with these
ll free the Commission from many of its administrative
s enabling it to devote its time to quasi-judicial duties. The
mulating policy, of course, would be left to the Commission.
endment assures charging parties of expert representation
Commission because the charge will be prosecuted by at-
the General Counsel's Office instead of by appointed counsel.
l be noted that this amendment contains a significant check
vers of the General Counsel in respect to the issuance of
. If he decides not to process a charge of its conclusion, the
arty may nonetheless file an action in the appropriate dis-
seeking relief on his own behalf.

e, this amendment would accomplish the goal of insuring
ation of powers basic fairness requires. It would facilitate
ssion's work in eradicating employment discrimination by

enhancing public confidence in the fairness of its procedures. also permit the Commission to devote its time to its quasi-j duties. At the same time the integrity of the Commission is pr by its retention of its central policymaking role. And, finally, m group members are assured of competent representation by em of the General Counsel's Office, yet they are also protected aga undue concentration of power over the complaint process in th eral Counsel by the ability to seek judicial relief when he refuses

SUMMARY OF AMENDMENT

The amendment provides for the appointment by the Presi the Commission's General Counsel for a 4-year term. It gives th eral Counsel responsibility over the Commission's main prosec functions: Issuance of complaints, their prosecution before the mission, and conduct of all litigation in the Federal courts as other duties the Commission prescribes or the law provides. I not give the General Counsel authority over the investigat charges, the efforts of the Commission to achieve voluntary a tion with respondents, except after a complaint has been issu supervision over Commission personnel except for the appo of Regional Attorneys and concurrence in the Chairman's a ment of Regional Directors.

Furthermore, it contains the key language of section 5(c) Administrative Procedure Act which prohibits the same agen sonnel engaged in the prosecution of a case or any similar cas having anything to do with the decision in such case or case amendment also provides for the continuation of the General C or Acting General Counsel in that position after enactment o bill until a new appointee can take over. This will maintain se tinuity in this important position.

RATIONALE OF THE AMENDMENT

The purpose of this amendment is to ensure fundamental f for respondents, integrity of the Commission's decisions, and dence in the eyes of the public regarding such decisions. Th complished by the separation of functions that I have here de

The appointment of the General Counsel by the Presiden antees that he will not be the pawn of the Commission in carry his prosecutorial responsibilities. Those functions which are prosecutorial are, accordingly, made the responsibility of the G Counsel. It must be remembered, however, that the evil to be g against is the contamination of the judicial function by the p torial one. This would occur only when the same persons are engaged in both functions.

It is also necessary to avoid the creation of a two headed a with dual authority to make policy. Therefore, supervision a duties of agency personnel remains under the Chairman, w exception of the appointment of Regional Attorneys, so that C sion policy will be effectively carried out. The exception as w the requirement that the General Counsel concur in the appo of the Regional Directors is to better enable the General Co carry out his prosecutorial responsibilities in the field. The G

not the General Counsel oversees the conciliation endeavors
e bill. Since fundamental policy decisions may be made at this
the Commission should be responsible for the conciliation
s. The General Counsel may, however, after a complaint has
ed, engaged in conciliation attempts—like any lawyer—in
nce of his prosecutorial duties. Any agreement he may reach
approved by the Commission before it has any effect. In this
Commission exercises control over the policy regarding con-
agreements. Likewise, investigations are left under the super-
the Commission so that the Commission will be the responsible
the initial contact made with a respondent in the field as well
e manner, timing, and conduct of the investigation as well as
estigators.

esident, as I indicated at the outset, I am in agreement with
dment. The proposed change in the bill, in my judgment, is
vement in the bill as reported to the Senate by the committee.
ears ago when basically the same measure was before the
stood in the same position. An amendment with reference to
Counsel was offered, and again I indicated support. That
nt was agreed to. And we are in just about the same situation
ll is before the Senate this year.

LEN. Mr. President, will the Senator yield?

LLIAMS. I yield.

LEN. Mr. President, do I understand the distinguished mana-
bill to state that he is going to recommend the acceptance of
dment to set up a General Counsel for the EEOC?

LLIAMS. The Senator is correct.

LEN. In the absence of the amendment, who would do the
k for the Commission?

LLIAMS. The General Counsel. It is not set up in a procedural
r the bill with what we call an independent General Counsel.
General Counsel, and under the Administrative Procedure
nctions must be separated. The pending amendment, I think,
accurately described as formalizing the separation of func-
erwise required under the law.

LEN. In other words, without the pending amendment, the
Counsel for the Commission would do the legal work for the
on? And, with the pending amendment, the General Counsel
mmission would do the legal work for the Commission.

LLIAMS. Without, again, the precision of stating the separa-
nctions that this amendment does achieve.

LEN. How does it separate the functions? Just how does the
nt separate the functions?

LLIAMS. Under its provisions, the President appoints an in-
t General Counsel.

LEN. Yes, but who makes the policy? Will not the Commis-
nue to make the policy?

LLIAMS. It depends on what policy the Senator is inquiring

LEN. The General Counsel is not to be a policymaking official,

LLIAMS. Could I in part reply with a question? Would the
from Alabama believe it to be a policy decision when the
Counsel makes a decision to prosecute a complaint?

Mr. ALLEN. That is what I am trying to find out.

Mr. WILLIAMS. If that is a policy decision, that is what the G Counsel does. He makes the decision to prosecute the complain

Mr. ALLEN. Then he becomes, in effect, the Commission; a correct?

Mr. WILLIAMS. No. It is just the opposite. He becom prosecutor.

Mr. ALLEN. I am trying to find out in whom the policymaking reposes.

Mr. WILLIAMS. The policy decision to bring the charges, to cute, is made by the General Counsel. The General Counsel that policy decision.

Mr. ALLEN. The General Counsel would file any such pro in the name of the Commission; would he not?

Mr. WILLIAMS. I think that is correct. Insofar as the nomen is concerned, the answer would be "yes."

Mr. ALLEN. It is difficult for me to see just what change is wrought here except that the administration would appoint a G Counsel under the terms of the pending amendment. Who wo point the General Counsel without the pending amendment?

Mr. WILLIAMS. The General Counsel, without the pending a ment, would be appointed by the Commission.

Mr. ALLEN. So, the only change then is as to who appoints t eral Counsel.

Mr. WILLIAMS. No; the answer to that question is "no." T provides on page 38:

> The commission shall issue and cause to be served upon any respondent complaint . . .

The pending amendment provides a change in the bill to re General Counsel may issue and cause to be served."

This is a clear distinction.

Mr. ALLEN. He would issue it in the name of the Commission.

Mr. WILLIAMS. It is his decision. He can make it or not, b the General Counsel's decision.

Mr. ALLEN. Are not the complaints filed with the Commis are they filed with the General Counsel?

Mr. WILLIAMS. The original charges go to the Commission responsibility is to investigate and, again, try to conciliate.

Mr. ALLEN. After that investigation, would they then mak investigation available to the General Counsel so that he co mine whether a complaint should be filed, or would the Co tell the General Counsel to file it?

Mr. WILLIAMS. The Commission submits to the General C the work, whereupon the General Counsel would decide w will prosecute the charges.

Mr. ALLEN. Then, the initiation of the prosecution would to be in the hands of the Commission, would it not?

Mr. WILLIAMS. No.

Mr. ALLEN. I understood the Senator to say the complaint with the Commission which then makes the investigation.

Mr. WILLIAMS. The prosecution would be in the hands of th eral Counsel.

Mr. ALLEN. But who makes the investigation to turn it over t

LLIAMS. The Commission.
RD of West Virginia. Mr. President, may we have order?
ESIDING OFFICER. The Senate will be in order.
LEN. Who, then, directs the work of the General Counsel?
e Commission have any control over the General Counsel?
LLIAMS. That is the whole point. I am glad the Senator asked
that way. That is why the amendment is being offered, to
"prosecutorial" function an independence within the law.
er words, the question and this response clearly establishes
pendent General Counsel, so that the judge and the prosecu-
early separate and distinct. I think that would happen at any
matter of legal guidance under the Administrative Pro-
t. But I am happy this is being offered to make it crystal

t my amendment. The amendment is offered by the Senator
o and has been debated very effectively and completely by
or from Ohio.
e that this colloquy with the Senator from Alabama has
he support for this independent General Counsel to handle
ution of these charges.
LEN. That is what I am trying to ascertain. Is he, in fact,
nt?
LLIAMS. That is exactly what I think has been established.
LEN. Would he have the right to refuse to prosecute on a
rned over to him by the Commission?
LLIAMS. Yes. Exactly.
LEN. The Commission makes the investigation.
LLIAMS. Yes.
LEN. Complaints are filed with it.
LLIAMS. Yes.
EN. And the General Counsel, if he saw fit—in other words,
ct, would be a grand jury. Is that correct? He would deter-
her to go on with the proceedings.
LLIAMS. It has been so long since I practiced law, but I
there is an analogy here—something in the nature of the
ounsel and the U.S. attorney.
LEN. So the Senator would take it that he would serve in
ty of a grand jury?
LLIAMS. Well, would it not be more in the nature of a U.S.
aking a matter to the grand jury? Then, of course, the U.S.
oes take it before the district court.
EN. Would it be the duty of the Commission to turn every
nplaint and investigation over to the General Counsel for
tion as to whether discrimination existed, or would the
on have the authority at some stage of the proceeding to say
had been no discrimination and, therefore, that there is
o lay before the General Counsel?
LLIAMS. The Commission does not have to take every charge
igate it and refer it to the General Counsel. The answer to
on is no. It has its discretion.
EN. The Commission, then, would still continue to have dis-
ter having made its investigation, to determine whether

there had been discrimination; they would then have dis
whether to turn it over to the General Counsel.

Mr. Williams. The answer is crystal clear, yes.

Mr. Allen. Who is the General Counsel for the Commissio

Mr. Williams. The General Counsel now is a Commissio
pointed counsel to the Commission. As I understand it, at this pa
lar point in time he is an acting General Counsel. If my memory
me correctly, it is Mr. Pemberton. I believe that is his name.

Mr. Allen. If the purpose of the bill is to see that there is fai
fair play, and due process, I wonder why the sponsors of the bill
not satisfied to leave jurisdiction over pattern and practice suits
Department of Justice and why the sponsors saw fit to try to tra
under this bill the pattern and practice suits over to this Commis

Mr. Williams. Let me try to state it fairly and simply.

Mr. Allen. Would not the Justice Department be indepen
the EEOC, and would not that independence have the same des
ity as the creation of the Office of General Counsel would have?

Mr. Williams. There are other reasons. The situation with re
to pattern and practice suits is similar to other changes made by
bill, and that is the thought that in this area of discrimination in
ployment, as complex as the whole systemic national discriminat
shown to be, it requires an expertness, and it should be centered in
place. There should be one agency of Government which has the
responsibility to deal with discrimination in employment. Then
they become experts in all the complex questions. That is one of
reasons why this fragmentation is sought to be eliminated.

The pattern and practice suits have been effectively handled by
Department of Justice, by the Attorney General.

Mr. Allen. In effect, is there not an independent counsel there?

Mr. Williams. Yes. But here is another problem that is develo
I refer to the heavy burden that creates a degree of inequity and
fairness where people across the country can be subject to investig
and lawsuit from many quarters. We are trying to make a pote
respondent—in this area respondent is like a defendant—know
one place in Government to respond to and not to many. That is o
the basic reasons for bringing pattern and practice suits under
Equal Employment Opportunity Commission where the expert
edge there resides and to relieve the Nation of the duplication of
in three courts at one time.

Mr. Allen. Could not that duplication be avoided by, in effect,
ing the Justice Department General Counsel for the Commissio
leaving the pattern and practice jurisdiction over in the Justice
partment and putting the duties of the General Counsel over
Would it not be the feeling of the employers who have as few a
people under the bill that there would be more impartiality
Justice Department than a General Counsel who would be not
more, in my judgment, than an in-house lawyer?

Mr. Williams. I think it would be the view of many people th
all the prosecution and judicial decisions went over there it w
bring greater deliberateness to the job, and the job might be put off
put off, and it might not get done.

Yes, many employers would like to have it that way, but those
want to see an acceleration of the elimination of discrimination w
prefer it this way.

:N. What has been the record of the EEOC in its 7 years of
Has it not accomplished a great deal in removing discrim-

LAMS. Well, the number of charges that have been brought
ubled every year. This year it is anticipated there will be
ges. Three years ago it was 12,000 charges. Conciliation and
between the parties will cover only a fraction of that num-
.
ow, the EEOC has to stop. In so many cases the Commis-
say to those who are having bread taken from the tables
ilies, because they cannot get the jobs they are entitled to,
do anything more. You can pick the whole thing up and
e district court."
s, going to a district court is indeed taking a heavy burden
vidual in the way of time, expense, and the whole long
reaching a fair decision- a decision, not a fair decision.
ts it, he will get a fair decision, but to get to a decision in a
t is a long, long, and expensive journey. That is the way it

hy the committee is suggesting that we bring to the EEOC
t will make the promise of equal employment a more real
s simple as that.
icularly pleased that the Senator from Alabama has raised
and that we have had this colloquy.
N. The General Counsel would be a part of the same Com-
would be an integral part of it and would be housed,
the same Department and the same building, with the
ed by the Commission. It is difficult for the junior Sena-
abama to see that there is going to be a great deal of in-
on the part of the General Counsel.
the junior Senator from Alabama wishes to make is that
feel this amendment removes the objection to the bill, that
will in effect will still be prosecutor, judge, and jury, even
amendment is adopted. It does not accomplish what the
of the amendment and what the distinguished manager of
to feel that it will accomplish, in the humble judgment
r Senator from Alabama.
LAMS. I respectfully, of course, disagree. I do not know
re is any use in words of assurance from the Senator from
that the Senator need not fear. I do not know that I am
persuasive this afternoon to the junior Senator from Ala-
as I enjoy the opportunity for the Record to reflect our

N. I would like to make one further inquiry. Would the
er's complaint that can be filed under the proposed bill,
allow him to file a complaint without giving the name of
d party—more or less an anonymous shot in the dark—
be filed by a Commissioner, or would it be filed, if at all, by
Counsel? What effect would it have on the Commissioner's

LAMS. The Commissioner's complaint is not included.
N. That brings on a little more talk, then, the Commis-
plaint. The officer or employee of the Commission ob-

viously possessing knowledge of the facts of possible discri could make a complaint. Then it would go to the General Cou would make the decision for prosecution.

Mr. ALLEN. Where is that provision? Is that provision amendment?

Mr. WILLIAMS. Let us review this together?

Mr. ALLEN. The Senator said it would be referred to the Counsel. The Office of General Counsel is just now being set up amendment.

Mr. WILLIAMS. Let us read together page 55 of the report read section 706(a) together?

Mr. ALLEN. Yes.

Mr. WILLIAMS. I read:

SEC. 706(a). The Commission is empowered, as hereinafter provid vent any person from engaging in any unlawful employment practice in sections 703 or 704 of this title.

There appears (a) in heavy brackets: (a) comes out and (b):

Whenever it is charged in writing under oath by a . . .

Is stricken out to read:

Whenever a charge is filed by or on behalf of a person claiming to be or by an officer or employee of the Commission . . .

If the Senator is following it closely he can see that the heavy eted parts take out "a member" so the charge is filed by a or employee of the Commission. That does not include a the Commission.

It is that charge that goes forward, under this amendment General Counsel, and there, as the amendment changes the on page 38 of the bill, "the Commission shall so notify the Counsel who may issue, and cause to be served on any respondent so forth. That brings it together. It is an awkward way to ex but it is an accurate way.

Mr. ALLEN. The Senator would not feel that an officer of the mission, then, could be construed to be a Commissioner himself

Mr. WILLIAMS. He is not a commissioner himself.

Mr. ALLEN. A Commissioner is not an officer of the Com then, in the judgment of the distinguished Senator?

Mr. WILLIAMS. No. I think our committee records and the will make that very clear.

Mr. ALLEN. After the complaint is filed with the Commission see fit they turn it over to the General Counsel to determine discrimination from the evidence that they present to him. He no investigation on his own. Is that right?

Mr. WILLIAMS. I believe here we will draw on some exp other agencies. This is not a situation that is sui generis. other agencies that do this. He should have, and I am saying it this become the method of prosecution, I would think, a intelligent decision whether to prosecute the charge, have to himself beyond or in addition to the material constituting it.

Mr. ALLEN. I understood the Senator to state earlier that eral Counsel would not investigate, but that the investigation be by the Commission.

LIAMS. The basic investigation is by the Commission.
EN. And they could turn over to him such evidence as they urn over?
LIAMS. And then he makes the decision whether to proceed rosecution.
EN. Based on the evidence that they saw fit to lay before him. rect?
LIAMS. That is basically it, but I do not believe there is any- I would think that he would have to do or might have to quiry beyond that.
EN. Yes, but I understood that that was not planned by the , but that he would just pass on what was handed to him.
LIAMS. Well, I would think a reasonable General Counsel pendent situation, if he had any questions would go out and nquiry himself. That is the way I look at it.
EN. But the Commission receives these complaints, they vestigation, they turn the information over to the General may or may not—is seems uncertain—make an independ- ation, and then a complaint is filed by the General Counsel mission with the Commission itself. It comes back to them; ? It goes the full circle back to them.
LIAMS. It is brought and filed, and is prosecuted before the .
N. Yes. That is what makes it so difficult.
LIAMS. Again, of course, as we have in so many areas of es and departments, it is prosecuted before another inde- e, that of the hearing examiner.
N. Yes.
LIAMS. And this is time-honored. As long as I have been n administrative law, I have had respect for the trial ex- hearing examiner. In the Federal Trade Commission, the the agencies have this position, within our system in this a unique, quasi-judicial, independent hearing officer.
EN. Yes. I was interested in hearing the Senator, though. he Commission was not required to turn over to the Gen- l all of the complaints that it receives.
LIAMS. Yes.
EN. In other words, it sifts the complaints that have been nly where the Commission, one feels, felt that there has mination would they turn it over to the General Counsel gh the routine of filing a complaint back with the very ch received the complaint originally, and then the Com- ving received the complaint, having weighed it and de- t should be turned over to the General Counsel, then puts hat and sits, then, as judge of the complaint originally it, and then merely turned over to the General Counsel fting of a complaint. That is what makes it so difficult or Senator from Alabama to see where there is any inde- nd where the Commission will be other than prosecutor. jury.
VEIKER. Mr. President, will the Senator from New Jersey for the purpose of answering the Senator's question?
LIAMS. I shall certainly yield. I have tried and I have not

succeeded in clarification. I am happy to yield to the Sena
Pennsylvania.

Mr. SCHWEIKER. I thank the Senator from New Jersey for

I should like to point out two things to the distinguished
from Alabama. First of all, the independent General Counsel
own investigative resources.

Mr. ALLEN. That was not made clear in the colloquy.

Mr. SCHWEIKER. May I finish my point? He has his own
gative resources, so that if at any point they want to run a
investigation, or check the investigators, they have that opti
gives the defendants more right of protection for due proc
under the arrangement the Senator is talking about.

We have three steps that have to be gone through here. Eac
the way, someone may decide the defendant is not guilty. From
office personnel who look into the case, and to the indepen
eral Counsel's Office that decides whether to issue a complai
Commission itself, you have three steps where the defendan
chance to have the charges "thrown out of court" because the
not there. Far from restricting the rights of the defendant
giving the defendant more rights, because there are three
points where information has to go: First to the field office, t
independent General Counsel, and then, of course, to EEOC
and in the middle step of those three is a totally indepen
vidual who reports to the President. This insures more prote
if you had a straight line authority. It is just like the three br
our Government, with its checks and balances. I do not see
tor's point at all. I think the defendant, or respondent as he
in these proceeding, has three cracks to show he is not gui
really not guilty. I do not think the Senator understands the

Mr. ALLEN. The Senator from Alabama is not making
that the amendment offered by the distinguished Senator fro
sylvania does not make the bill more palatable, but it does
it palatable enough. That is the point I am making. It does
the problem of making the Commission other than a prosecu
and jury.

The distinguished Senator from Pennsylvania points out
General Counsel is going to have a bunch of investigators. S
a bunch of investigators over under the Commission, and the
gate the complaint, and then they turn it over to the Gener
who is working hand in glove with the Commission, and h
investigators investigates it still further, further harassing
players and the employees, and then, if he agrees with the
sion that there is a valid complaint of discrimination, he
complaint, which is to be heard by the very same Comm
received the complaint originally and felt there was enough
tion to turn it over to the counsel for prosecution.

The junior Senator from Alabama suggests that the Co
has already prejudged the matter when they turned it ov
General Counsel for the filing of a complaint to be heard by
mission itself.

Mr. SCHWEIKER. I would like to ask the distinguished Sena
Alabama a question. In the normal course of proceeding, if
defendant three times to have an opportunity to be proven

a fairer system, is it not better for the defendant's right
e him the opportunity only once or twice? I do not see
r's argument. We are giving him three opportunities to
not guilty before he is finally judged, and the Senator is
g about that.

EN. I will answer the distinguished Senator from Pennsyl-
sking him the same question that I asked the distinguished
m New Jersey: Why not leave this authority in the Justice
t, if you want a really independent counsel? Why take the
l pattern procedure away from the Justice Department and
is in-house General Counsel? If you really want independ-
not leave it in the Justice Department, where part of it

WEIKER. Well, then, of course, we would spread this work
r, larger agency, one more step away from the President. I
that very specifically: We would be putting in one more
reaucracy to make a decision when, under our proposal, the
t General Counsel is directly responsible to the President
fore the EEOC, and therefore, has more authority and in-
than if he were even an Assistant Attorney General, going
ps to the President. By giving him a direct presidential
t for this work, he is insulated from other problems. He
ve to worry about crime prosecutions coming up, about
utions, or about anything. These are specialized cases and
ing him more power by giving him the President's ear.

EN. Do we not already have the Justice Department set up?
have to set up another layer of bureaucracy, as proposed in
's amendment?

WEIKER. The reason we are changing the whole picture is
do not think the present pattern is working. The Subcom-
Employment, Manpower, and Poverty of our full commit-
ch I serve with our chairman, the distinguished Senator
Jersey, recently studied a very important report by the 20th
nd, pointing out not only that in many of our central city
lack youth unemployment rate is 17 or 20 times the white
ent rate, but also that in many areas when blacks do gradu-
gh school, when they do have skilled job training, they can-
jobs. That is exactly what the 20th Century Fund Task
ed.

g is wrong with the system, and we are trying to change
why we are restructuring this procedure, and giving the
nger enforcement tools.

EN. Are they going to be aided by putting it in the Office
ral Counsel, rather than in the Justice Department? It is
re now, is it? They do not have cease-and-desist authority,
t have until this bill is passed, if it ever is passed.

WEIKER. That is right; it is not anywhere now, and that is

EN. It is not because it is in the Justice Department; it is
not anywhere, is that not right?

WEIKER. The Government's legal work for equal employ-
tunity is in several places now.

Mr. ALLEN. Not on cease and desist. Where is cease-and-desist authority of the EEOC now?

Mr. SCHWEIKER. Let me answer the Senator's first question first, the third question.

The problem I defined is trying to be attacked in three different departments now. We have the EEOC, the Justice Department, the Office of Federal Contract Compliance in the Labor Department, three separate entities. One objective of this bill is to bring some order out of chaos and to have one responsibility. That is the reason.

That is the first question. What is the next question?

Mr. ALLEN. Is the Senator not, then, splitting it up? The Senator says he wants to put it all in one department. Now he says there is need for a special, separate, independent legal counsel. Is that not in effect splitting up the authority and the power?

Mr. SCHWEIKER. No. The Senator from Alabama again is misconstruing and misinterpreting what we are saying.

Mr. ALLEN. I would be interested in the Senator's answer, then.

Mr. SCHWEIKER. I should like to answer that.

The first thing we are doing, as I pointed out earlier, is to take the fragmented approach we have and put it primarily in one agency, the EEOC.

Mr. ALLEN. And then the Senator fragments it again.

Mr. SCHWEIKER. May I answer the question?

Mr. ALLEN. I wish the Senator would.

Mr. SCHWEIKER. If the Senator will let me answer one question at a time, we will get a little further ahead.

I am saying that we are taking the fragmented power from three agencies, putting it in one agency for the sake of efficiency, for the sake of handling, to improve the operation of the system. We are also saying that because we are putting new cease-and-desist power in the EEOC, we ought to be sure we protect the rights of the defendants and to protect the rights of the defendants, we are saying that there are three steps under the cease and-desist process that someone has to go through before he is proved guilty.

I see nothing inconsistent, nothing contradictory, nothing in any way opposed to that objective. The distinguished Senator from Alabama is trying to confuse the issue by saying there is, when in fact there is not.

Mr. ALLEN. Does not the Commission eventually serve as the jury on the validity of the complaint of discrimination?

Mr. SCHWEIKER. Under the new proposal?

Mr. ALLEN. Yes.

Mr. SCHWEIKER. The EEOC will serve in that way, yes.

Mr. ALLEN. Has it not initiated the complaint, however, by bringing the complaint and then sitting in judgment of the complaint in its investigation, sifting it, and then turning it over to the General Counsel? Has it not already prejudged the issue of discrimination or nondiscrimination?

Mr. SCHWEIKER. No. The Senator is using semantics.

We are separating two different levels of government. There is regional EEOC office. That office will do the field work and will decide whether to go on from that level. They will make that judgment, separate and distinct from the top people who make the judgment at the other end of the spectrum, the Commissioners in Washington.

are two levels of operations, one making local decisions, information and investigating, and the other doing the ecision, here in Washington. They are doing two separate say they are all doing the same thing is not an accurate tion of what we are proposing.

LEN. In other words, in the Senator's home State there is a ball team, Pennsylvania State——

WEIKER. The Senator knows my weak point.

LEN. This procedure reminds the junior Senator from Ala- he procedure in a football game. The Commission receives laint originally, it sifts it, it weighs it, it investigates it, it s there has been discrimination, and it tosses the complaint l over to the General Counsel. The General Counsel files a with the Commission itself and then tosses the football back mmission, which then has the power to judge whether or not tion exists.

ot a fair analogy?

WEIKER. Let me begin by saying that the reasoning and logic the distinguished Senator from Alabama improved immeas- en he talked about the great football team from Penn State. re are on the same wavelength and are thinking the same concur with that presumption.

LEN. I am talking about the postseason game, not the game essee.

WEIKER. We were pretty pleased with the ball game, our-

with the Senator on this point, butI fail to see how that re- he argument at hand, although I thank him for his nt.

LEN. The complaint is the football. It is tossed by the Com- er to the General Counsel, and it is tossed, in turn, by the ounsel back to the Commission, which has already prejudged and which certainly is going to hold that discrimination ed on the complaint it had decided initially.

WEIKER. It is the same football that our Constitution throws judicial branch to the legislative branch to the executive hat is the fundamental premise on which this country was tossing that football around among the three branches of nt.

LEN. It is all over in one branch. It is in the executive branch,

WEIKER. But the principle of tossing a football, or balance , was ingrained in our Republic. It is not un-American. It hole idea, the way we began, and the way we have continued ur laws, even our laws concerning only a specific executive

er specifically, the point that the Senator is confusing is that ep is an investigation. The local level operation at the field investigation; nothing more than that. It is an investiga- alogy, it is like what a grand jury might decide, and then it the grand jury to the regular jury. This goes from the field he General Counsel. There's nothing inconsistent at all.

EN. And back to the Commission.

Mr. SCHWEIKER. Then it goes upstairs, to the board of di
Three separate steps protect the rights of the people.

Mr. ALLEN. It gets back, after having prejudged the matter, b
it would not turn a complaint over to the General Counsel
thought that discrimination existed, would it?

Mr. SCHWEIKER. The Senator is confusing two things. He is
ing the fact that he is talking about field investigators——

Mr. ALLEN. That is an arm of the Commission, is it not?

Mr. SCHWEIKER. Not in the matter of judicial judgment, not
the matter of investigation.

Mr. ALLEN. That is what they have printed on the door of t

Mr. SCHWEIKER. No. I do not agree. This is a matter of the
gation. Then, the top tribunal, the Commission itself, sits in ju

Mr. ALLEN. I want to say to the distinguished Senator fro
sylvania that I am going to support his amendment. All I am s
that it does not do what the distinguished Senator from Penn
and the manager of the bill claim it will do, to remove the stigm
onus from the Commission of serving as prosecutor, judge, a
That stigma still will be with the Commission after the adop
this amendment, in my opinion.

Mr. SCHWEIKER. This happens all the time in our legal sy
committing magistrate will send a case to a grand jury for a
and they in turn will send it to still another part of the judicial s
It is still the same system.

Mr. ALLEN. It would not be the same committing magistrate.

Mr. SCHWEIKER. It is not the EEOC, either. It is the
investigator.

Mr. ALLEN. That is part of the same office.

Mr. SCHWEIKER. No.

Mr. DOMINICK. Mr. President, will the Senator from A
yield?

Mr. ALLEN. I am not sure I have the floor.

Mr. WILLIAMS. I yielded to the Senator from Pennsylvania.

Mr. ALLEN. Having assured the distinguished Senator fro
sylvania that I am going to support his amendment, feeling
does not go far enough but that it is better than the bill as
after the amendment is adopted, the junior Senator from Alaba
is going to oppose the bill.

Mr. SCHWEIKER. I thank the distinguished Senator for his s
I was in doubt for some time that this support was forthcoming

Mr. ALLEN. The Senator from Pennsylvania has convi
junior Senator from Alabama of the wisdom of his amendment
as it goes.

Mr. SCHWEIKER. Alabama has a pretty good football team, t

Mr. ALLEN. I agree—two great teams in fact—Alabama
burn—I thank the Senator.

Mr. DOMINICK. Mr. President, will the Senator from Penns
yield?

Mr. SCHWEIKER. I yield.

Mr. DOMINICK. I listened to this colloquy with a good deal
terest, once we got past the football range.

It struck me that the Senator from Alabama struck the key p
this matter, and that is that the EEOC, no matter how you

ill as it is presently worded, writes most of the rules and
, acts as an investigator as to whether the rules are being
ith, acts as a prosecutor in presenting rule violations to the
. Finally, the Commission acts, under adjudicatory powers
er this bill, to decide whether or not its own personnel have
rly.

me that one agency cannot shift hats to four independent
pidly enough to guarantee the necessary impartiality.

assure the Senator from Alabama that I intend to offer my
, which has been printed, which would have the effect of
Commission cease-and-desist powers but empowering them
Federal district court to determine whether any employ-
mination has occurred. I would think that this basic
would be just as viable with the creation of an independent
would be without it, because the independent counsel as it
thout it, because the independent counsel—as I understand
ding Senator SCHWEIKER's amendment, would have the
en combined with my amendment—to be able to prosecute
before the Federal district court. Is that correct?

EIKER. For the Federal district court?

NICK. Yes. If my amendment were adopted.

VEIKER. "Your" amendment? You are not talking about

NICK. If we adopt your amendment, the General Counsel,
ted, would be the agency which would then prosecute these
the Federal district court.

EIKER. If we adopt your amendment? You are not talking
?

INICK. Well, if yours and mine are combined——

VEIKER. I must say that I pretend to be knowledgeable on
ent, but will the Senator explain his amendment because
miliar with it.

INICK. My amendment is simple. The Senator is familiar
use I offered it in committee. What it would do would be to
EOC power to proceed to Federal district court on legiti-
meilable disputes for resolution rather than through cease-
orders issued by the Commission. Under such cases, the
unsel would then be the one to prosecute that case before
district court.

VEIKER. As I understand the Senator's amendment, from
s just said, if the amendment is adopted, there would seem
ss need to have an independent General Counsel. The Sen-
lment would substitute for our EEOC hearing procedures,
istrict court. This, by nature of the judicial system, would
ractically all need for an independent legal counsel within
since the court system would take over that level.

INICK. My amendment would take over at the level where
s fail but so far as the actual prosecution is concerned on
n of whether an unlawful employment practice occurred,
dent General Counsel would handle that on behalf of the
, would we not?

VEIKER. There would be far less need, because we would
he full judiciary system at the trial level and most every-

where else where this is operating, there is much less need f
dependent General Counsel. It is only utilized in areas w
agency is supplanting the trial court level with its own pr
such as in the NLRB.

Mr. DOMINICK. Let me ask the Senator from Pennsylvani

Mr. SCHWEIKER. Let me ask the Senator from Colorado
stances there are the Senator cites in government where we ha
dependent general counsel in an agency and still go to the dis
for trial-level proceedings?

Mr. DOMINICK. In this particular case, since we provide fo
by the circuit court of appeals within the bill, I would presu
dependent legal counsel would also coordinate with the Attor
eral's Office in representing the Commission before the circui
appeals.

Mr. SCHWEIKER. That is correct.

Mr. DOMINICK. If he is doing it, could he not easily and as
handle it before the district court as he would before the cir
of appeals?

Mr. SCHWEIKER. Yes, but I do not think the need would be
or as pressing if we adopt my colleague's amendment.

Mr. DOMINICK. I understand that the Senator from Pennsy
opposed to my amendment. I understand that fully. What I a
to say is that it would seem to me that the independent legal c
not necessarily contrary to what I am trying to do in my am
They would appear on behalf of the Commission before the
District Court.

Mr. SCHWEIKER. I want to say to the distinguished Senator
not think it is antagonistic. I do not mean to imply that it
would be far diminished under your proposal than it would
mine. I do not think they are necessarily antagonistic.

Mr. DOMINICK. That is interesting. Would the Senator fro
sylvania object at this point if we had a brief quorum call?

Mr. SCHWEIKER. No.

Mr. DOMINICK. Mr. President, I suggest the absence of a

The PRESIDING OFFICER (Mr. SAXBE). The clerk will call th

The legislative clerk proceeded to call the roll.

Mr. BELLMON. Mr. President, I ask unanimous consent
order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BELLMON. Mr. President, I rise to introduce a bill in
transportation

Mr. BYRD of West Virginia. Mr. President. Mr. Presi
mand the regular order.

The PRESIDING OFFICER. The regular order is called for.

Mr. BYRD of West Virginia. Mr. President, I suggest the
a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous
that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHWEIKER. Mr. President, I ask for the yeas and na
amendment.

and nays were ordered.
VEICKER. Mr. President, I ask unanimous consent that the
e distinguished Senator from Kentucky (Mr. Cooper)
a cosponsor of my amendment.
IDING OFFICER. Without objection, it is so ordered.
VEICKER. Mr. President, I yield back the remainder of my

SIDING OFFICER. All time having been yielded back, the
on agreeing to the amendment. On this question the yeas
ve been ordered, and the clerk will call the roll.
ative clerk called the roll.
of West Virginia. I announce that the Senator from
Ir. Bayh), the Senator from Nevada (Mr. Bible), the
n California (Mr. Cranston), the Senator from Louisiana
er), the Senator from Alaska (Mr. Gravel), the Senator
oma (Mr. Harris), the Senator from Michigan (Mr. Hart),
from Indiana (Mr. Hartke), the Senator from Washing-
ckson), the Senator from North Carolina (Mr. Jordan),
from Washington (Mr. Magnuson), the Senator from
ta (Mr. McGovern), the Senator from New Hampshire
yre), the Senator from Maine (Mr. Muskie), and the
n Rhode Island (Mr. Pell) are necessarily absent.
announce that the Senator from Alabama (Mr. Sparkman)
ator from Illinois (Mr. Stevenson) are necessarily absent.
ounce that the Senator from Utah (Mr. Moss), the Senator
rnia (Mr. Tunney), and the Senator from Hawaii (Mr.
absent on official business.
ote, the Senator from Illinois (Mr. Stevenson) is paired
nator from Louisiana (Mr. Ellender).
and voting, the Senator from Illinois would vote "yea"
ator from Louisiana would vote "nay."
announce that, if present and voting, the Senator from
(Mr. Jackson), the Senator from California (Mr. Crans-
e Senator from Rhode Island (Mr. Pell) would each vote

IN. I announce that the Senator from Colorado (Mr.
Senator from Kentucky (Mr. Cook), the Senator from
hire (Mr. Cotton), the Senator from Oregon (Mr. Hat-
enator from Illinois (Mr. Percy), the Senator from Ohio
and the Senator from Connecticut (Mr. Weicker) are
bsent.
or from New York (Mr. Buckley) is absent on official

tor from Alaska (Mr. Stevens) is absent on official
usiness.
or from South Dakota (Mr. Mundt) is absent because

or from Delaware (Mr. Boggs), the Senator from Ten-
Brock), and the Senator from South Carolina (Mr.
are detained on official business.
and voting the Senator from Oregon (Mr. Hatfield),
from Illinois (Mr. Percy), the Senator from Ohio (Mr.
e Senator from South Carolina (Mr. Thurmond) would
ea."

The result was announced—yeas 67, nays 0, as follows:

[No. 2 Leg.]

YEAS—67

Aiken	Fannin	Montoya
Allen	Fong	Nelson
Anderson	Fulbright	Packwood
Baker	Gambrell	Pastore
Beall	Goldwater	Pearson
Bellmon	Griffin	Proxmire
Bennett	Gurney	Randolph
Bentsen	Hansen	Ribicoff
Brooke	Hollings	Roth
Burdick	Hruska	Saxbe
Byrd, Va.	Hughes	Schweiker
Byrd, W. Va.	Humphrey	Scott
Cannon	Javits	Smith
Case	Jordan, Idaho	Spong
Chiles	Kennedy	Stafford
Church	Long	Stennis
Cooper	Mansfield	Symington
Curtis	Mathias	Talmadge
Dole	McClellan	Tower
Dominick	McGee	Williams
Eagleton	Metcalf	Young
Eastland	Miller	
Ervin	Mondale	

NAYS—0

NOT VOTING—33

Allott	Harris	Mundt
Bayh	Hart	Muskie
Bible	Hartke	Pell
Boggs	Hatfield	Percy
Brock	Inouye	Sparkman
Buckley	Jackson	Stevens
Cook	Jordan, N.C.	Stevenson
Cotton	Magnuson	Taft
Cranston	McGovern	Thurmond
Ellender	McIntyre	Tunney
Gravel	Moss	Weiker

So Mr. Schweiker's amendment (No. 797) was agreed to.

Mr. HUMPHREY. Mr. President, I support the Equal Em[ployment] Opportunity Act, S. 2515, as reported by the Committee o[n Labor] and Public Welfare.

The time has now come when we must firmly establish a[nd guar]antee the protections provided for under Title VII of the Civ[il Rights] Act of 1964. No longer can we permit millions of American[s—] women, blacks, Indian Americans, the Spanish speaking, a[nd other] minority groups—to continue suffering the indignities and i[nequities] of discrimination in employment. No longer can we be conte[nt with] a conciliatory approach to the resolution of complaints of civ[il rights] violations committed against any American who wants a job [or] seeks advancement to a position for which he or she is fully q[ualified]. Nor, in the protection of these civil rights, can we now be s[atisfied] with any enforcement procedure wherein the delay of justice [is] the denial of justice.

The experience of the past 7 years has shown us that by [failing to] provide the Equal Employment Opportunity Commission [with]

reement powers, we established an agency under the 1964
s Act which has been very successful in ferreting out the
discrimination, and pointing out to us how widespread
hed this discrimination is, but which has not been able
effective relief to eliminate this discrimination.
inal view that employment discrimination consists of a
lated incidents has been shattered by evidence which shows
rment discrimination is, in most instances, the result of
ained practices and policies which frequently do not even
discriminatory effects on the surface. The EEOC has
ny times that much of what we previously accepted as
yment policy does, in effect, promote and perpetuate dis
patterns which can be traced back to the Civil War and

speak for themselves. This Nation's minorities and women
e treated like second-class citizens. Their ability to obtain
ility to advance in these jobs, to receive the same wages as
by the dominant segment of society, and their higher
nployment continues to indicate the disparate treatment
cord this segment of our society.
rogress over the past decade in America in overcoming
economic position resulting from discrimination, we are
ay with a median-income gap between Negro and white
$3,957. And the gap is even wider for Spanish-speaking
ose median income in 1969 was $5,641. The unconscionable
on in salary levels for women for the same jobs as are
— women scientists who must accept a median salary that
than for their male counterparts, or women factory work-
edian earnings are $2,747 below those of male workers— is
by the all-too-frequent denial of opportunity for women
higher paying positions.
n Title VII of the Civil Rights Act of 1964, we have spe-
hibited all discrimination on the basis of "race, religion,
national origin."
dent, I submit that we have failed to achieve this goal.
has documented the persistence of employment discrimi-
Chairman of that Commission has told us that during
ars, the EEOC has received approximately 81,000 charges
ation. And the number of charges has been increasing each
ample, during fiscal year 1970, 14,129 charges were filed
mmission. In fiscal year 1971, this number rose to 22,920
the Commission estimates that during the current fiscal
receive more than 32,000 charges. Too often, employers
willing to accept the Commission finding where violations
nd as a result, the Commission's efforts at conciliation
effective in the vast majority of cases.
result of this has been that while we have provided the
for the elimination of employment discrimination in en-
VII of the Civil Rights Act, we have not provided the
ich this aim is to be achieved.
e last Congress, the Senate adopted S. 2453, a bill very
e present Committee bill, S. 2515, and which would have
e present defects in Title VII. However, the House failed

to act on that measure before the end of its term. This year, the House has already acted in this area, and the responsibility rests with the Senate to insure the civil rights guarantees of Title VII.

I would like to note briefly some of the major provisions of S. 2515 and explain why this bill would provide the most effective enforcement procedure for the implementation of Title VII.

S. 2515 provides that the EEOC shall be granted administrative powers by which it will be able to issue enforceable orders in cases where violations of the law are established. By this grant, the bill would establish the EEOC with the same kind of enforcement provisions currently granted to most Government agencies and generally recognized as the basic administrative enforcement mechanism.

It is now an admitted fact that Title VII litigation is as complex and as subtle as any of the other specialized areas of law presently administered by other Federal agencies. Judicial awareness of this complexity is evident in statements by the courts both in the awarding of liberal attorney's fees for Title VII lawyers and in extending the amount of time required to resolve Title VII claims. It has become obvious that Title VII litigation requires specialized knowledge and expertise. The one agency which has the necessary experience and expertise to deal with the multitude of issues and variations of employment discrimination is the EEOC. Through its experience of the past 6 years, it has developed an experienced staff and a wealth of information which provides the expertise needed to deal with the various aspects of employment discrimination. The courts, while recognizing that the EEOC has no enforcement powers, have nonetheless acknowledged the agency's qualifications and have frequently stated that EEOC opinions are entitled to great weight in subsequent court interpretations, and many a case has been decided on the basis of arguments presented by EEOC attorneys in amicus briefs filed with the courts.

Moreover, the administrative process foreseen by S. 2515 would provide for an inexpensive, efficient, and expeditious means for adjudication for both complainants and respondents. When a charge is filed by the Commission, it will retain its present procedures of attempting to secure voluntary compliance. If this should fail, however, and it is the opinion of the Commission that a violation may have occurred which should be resolved, it will then submit the case to a hearing examiner. He will then conduct, under the provisions of the Administrative Procedures Act, an administrative hearing on the charge, receive evidence, will allow for the examination of witnesses, and will, after the entire case has been presented, make a determination of the facts.

In addition, if either party feels that the hearing has not adjudged the facts, then an appeal may be had to the appropriate U.S. Court of Appeals. I believe the due process provisions of the bill, and an appropriate separation of functions in the administrative process, can effectively assure that the rights of the respondent are fully protected.

This use of the administrative process will expedite the resolution of Title VII claims, will guarantee to all parties fair and impartial adjudication of their claims, and will at the same time relieve the courts of the necessity to entertain the ever increasing number of Title VII suits. At the same time, the voluntary settlement of

ulated. Information available from other Federal agencies
nd-desist powers, and from State fair employment practice
ows that the vast majority of cases do not require resort
ng process, but are settled voluntarily.
so provides for an expansion of Title VII jurisdiction to
employers, employment agencies and labor organizations
or more employees or members, as well as employees of
y, and local governments, and all employees of educa-
utions. The need to expand Title VII in these areas is
olished. As stated by the Chairman of the EEOC in testi-
the committee this year, discrimination should be attacked
is found, and the small business is no less likely to be free
nination than the large corporation. The avowed purpose
is the elimination of all vestiges of employment discrim-
he country. Accordingly, employers with fewer than 25
he current jurisdictional minimum, should be subject to
ntrols applied to the other segments of business.
of State and local employees is another area where the
employment discrimination has been noted but no ade-
y has been available. The presence of discrimination in
ocal governments has been well documented by the U.S.
on Civil Rights in two extensive studies done during the
s. And yet the protection of Title VII available to the
nts of society have been denied State and local employees.
tion is in clear conflict with our concept of government.
is government by the people and for the people—all the
fundamental principle must be seen in government itself
believed. I feel that local governments, which most affect
es of every citizen in the particular community, should
mmitted to maintaining equal employment opportunity.
to promote this goal at the level of the State and local
can do nothing but breed discontent, mistrust, and harsh
vard the entire process of government.
s respect that S. 2515 extends the protections of Title VII
and local employees. However, the bill does recognize the
naracteristics possessed by States, and accordingly does
he administrative process of the EEOC to them. Rather,
against a State or local governmental agency is received
C, it will investigate that charge and attempt to conciliate.
fail, it will then submit the complaint to the U.S. Depart-
tice where further legal action may be instituted by that
If the Justice Department decides not to act on a com-
ndividual would still have the opportunity to pursue his
rt.
we cannot expect the advancement of equal employment
in State and local governments to occur without establish-
ample of Federal leadership at the forefront of this effort.
of the Senate Committee on Labor and Public Welfare
ise with exceptional clarity:

Government, with 2.6 million employees, is the single largest
e nation. It also comprises the central policy-making and adminis-
k for the Nation. Consequently, its policies, actions, and programs
ence the activities of all other enterprises, organizations and
rea is government action more important than in the area of civil

That is why I regard as of great importance the provisio
bill giving expanded authority to the Civil Service Comm
eliminate discrimination in Federal employment, and expres
ing to Federal employees a right of private action to obt
from such discrimination.

We cannot be satisfied with reports of progress when m
representing almost one-fifth of Federal employment, are
trated in the lower civil service grade levels, and when ov
fourths of the 665,000 women working for the Federal Gov
have positions below the level of GS–7.

The corrective remedies authorized in S. 2515 go beyond
Executive order policy pronouncements to get at the real p
discriminatory practices and effects that are institutional and
in nature, more than they are the result of private, intentiona

Serious inadequacies are clearly present in existing Federa
discrimination complaint procedures, in the credentials
with civil service selection and promotion techniques and
ments, in procedures to assure bona fide plans and efforts by
agencies to accomplish actual results in the promotion of e
ployment opportunity, and in the prohibition of employment
ination at regional and local Federal installations as well as at
offices in Washington, D.C.

There can be no further delay in opening the higher civ
grades to women and minority groups. We must make absolu
the obligation of the Federal Government to make all p
actions free from discrimination based on race, color, sex,
or national origin.

The Equal Employment Opportunities Enforcement Act
the fulfillment of this obligation. But it also provides for affi
action to place the same obligation at the door of our edu
institutions, employing some 2.8 million teachers and pro
staff members and another 1.5 million nonprofessional staff
In removing the existing exemption of employees of educatio
tutions from the protection of Title VII of the Civil Rights
1964, S. 2515 stipulates that they, too, must be provided an
Federal remedy to overcome employment discrimination.

Discrimination in America's educational institutions has
publicized in some of the most famous civil rights cases decide
courts and in daily articles in the Nation's newspapers. I can
reason why these institutions should enjoy a special immu
their employment practices. There is nothing in Title VII to
that employment in educational institutions is any different f
ployment anywhere else. If anything, it is our schools which
the future development of this country, and should, accordi
the leaders in equal opportunity in all respects.

S. 2515 also improves the effectiveness of equal employment
tunity enforcement by consolidating the administration of
minist functions in one agency. The bill transfers the functio
Office of Federal Contract Compliance to the EEOC, and over
of 2 years, also transfers the "pattern or practice" enforcement
tions administered by the U.S. Department of Justice to the
Currently, the Secretary of Labor, through the Office of Fede
tract Compliance, monitors, coordinates, and evaluates the

tract compliance program and supervises the compliance
e 15 Federal contracting agencies.
convinced that a single agency must be made responsi-
forcement of all Federal equal employment opportunity
must eliminate the confusion between policy directives
Federal agencies, duplicate investigations conducted by
es on the same issue, and the maintenance of different
es and guidelines.
e transfer of the "pattern or practice" enforcement func-
Justice Department to the EEOC, after 2 years, will
olidate enforcement of civil rights claims. While during
ars after the enactment of the present legislation, the
ve the concurrent power to bring "pattern or practice"
s administrative remedies, its ability to do so effectively
d by the need to expand its staff, reorganize its struc-
olish effective procedures to deal with the new enforce-
s. Given a period of adjustment of 2 years, however, I
ll then be in a position to handle all claims that are
, and there will no longer be a need for a parallel en-
em in the Department of Justice.
rge all Members of the Senate to support the Equal
Opportunities Enforcement Act, S. 2515. While the
ars since the defects of Title VII became apparent is an
ng period of time in which to correct the shortcomings
act, our prompt and favorable action now will firmly
primacy of equal employment opportunity as a national
sic right, effectively guaranteed, of every American

* * * * * *

continued with the consideration of the bill (S. 2515)
r promote equal employment opportunities for Amer-

AMENDMENT NO. 611

K. Mr. President, I call up my amendment No. 611 and
made the pending business.
NG OFFICER. The clerk will read the amendments.
t Legislative Clerk. The Senator from Colorado (Mr.
poses amendments identified as No. 611.
Amendment No. 611 to S. 2515 may be found on p. 553.)
West Virginia. Mr. President, will the Senator yield
nimous consent request?
K. Yes, if the Senator will wait just a moment.
West Virginia. Yes.
K. Mr. President, this amendment is proposed on behalf
Baker, Mr. Brock, Mr. Buckley, Mr. Ervin, Mr. Fannin,
nd Mr. Tower.
nous consent that the names of Messrs. Dole, Hansen,
oldwater be added as cosponsors.
G OFFICER. Without objection, it is so ordered.
K. I yield to the Senator from West Virginia.
West Virginia. Mr. President, it should be stated for
t the time consumed on the rollcall was 20 minutes. It

was thought best that, on this first rollcall, we not proceed
ance with yesterday's unanimous-consent request limiting
to 15 minutes, but that 20 minutes be allowed in this inst
all Senators would have ample notice that on each rollcall
forward during the remainder of this session, there will
minutes on each rollcall, the warning bell to be rung at
at the 7½ minute mark.

* * * * * *

The Senate continued with the consideration of the bill
a bill to further promote equal employment opportunities
ican workers.

Mr. Byrd of West Virginia. Mr. President, for the info
Senators, may I ask the distinguished Senator from Co
author of the pending amendment, as to whether or not he
a rollcall vote on his amendment today?

Mr. Dominick. Mr. President, in answer to the inquiry of
from West Virginia, I do not anticipate even a long dela
thought I would just put the amendment in and give a
ductory statement on it, and then take it up at some length
It is my hope that we could vote on it on Monday, as opp
morrow, if that would be satisfactory with the leadership.

Mr. Byrd of West Virginia. If I may respond on be
majority leader, it is the hope of the leadership that we
as expeditiously as possible, and I know I am speaking
tinguished manager of the bill in expressing the hope that
delay action on the pending bill one way or the other over
This bill will likely be followed by the Higher Educatio
the Foreign Aid bill coming along. We have the Welfare
and we have other very important legislation, and we do
delay too long. However, the Senator's wishes will be con
certainly we are to understand, as I gather from what he ha
that there will not be final action on his amendment today.

Mr. Dominick. That is correct.

Mr. Byrd of West Virginia. Then may I ask if there is
who has an amendment which he would be willing to call
noon following the statement by the distinguished Senator
rado, in the event that unanimous consent could be
temporarily set that amendment aside? I see no indicat
I assume there will be no further rollcalls today. I
Senator from Colorado.

Mr. Dominick. I thank the distinguished Senator
Virginia.

Mr. President, as far as my colleagues are concerned, I
that I am going to give just a brief explanation today, e
in a little colloquy with the Senator from New Jersey
and then go into the matter at more length with a numbe
who want to speak on this particular issue tomorrow. I
needs some extended discussion, because I think we are
perhaps the most important single issue in the complete
really is whether we should put into one executive age
to make rules, the powers to investigate whether or not
are being abided by, the powers to charge violations of the

rs to decide whether or not the violations are in fact in
if they are, to issue appropriate judicial orders.
have a word for this in the old English common law.
all it a Star Chamber proceeding, where one person or
uld have the power to issue the rules, decide whether
a violation, and then impose the punishment. That is
he cease-and-desist procedure would do.
me it is far more beneficial, from an overall govern-
standpoint, to separate these functions just as we have
ree branches of Government under the federal system.
seems to me that looking at it from the point of view
feel that they have been discriminated against, they are
much more objective hearing before the courts than
fore this particular body, the EEOC, and that they will
re expeditious hearing. As I believe, has probably been
lready by the distinguished manager of the bill, the
ithout cease-and-desist authority and without the addi-
provided by this bill, is 32,000 cases behind, with over
cklog, in determining and resolving unlawful employ-
. I do not care who it may be, or how long they may
ming discrimination, if they have to wait 20 months
en find out whether or not the Commission feels that
valid, all one can say is that justice delayed is justice

backlog of the Federal district courts at the present
2 months. So my amendment would immediately speed
justice up by 8 months by tranferring these matters to
strict courts, rather than keeping them within the Com-
if there were no additional employees put within the
the Commission.
wever, greatly enlarged the Commission's jurisdiction.
approximately 10.1 million State and local employees,
ivate employees of small employers, and 4.3 million
ployees. Thus, we are talking about an expanded cover-
mately 21 million-potential aggrieved.
enough, there has been a trend in recent EEOC in-
ncerning alleged discriminatory cases involving sex
. Are women being given unfair treatment or, con-
ly being given preferential treatment? In either situa-
n who feels aggrieved has charged sex discrimination
g these cases before the EEOC at the present time.
here will be the need, under cease-and-desist powers if
n the bill, for the training of hearing examiners who
t up special courts or special hearing rooms within the
These hearing examiners will need to be trained in the
at is or is not discrimination. It will take almost 2 years
ssary number of trained people on board in order to
se demands. Each one of these factors, as I see it, sim-
problems of discrimination in employment and frus-
ution thereof.
at I think all of us in this body, regardless of who we
to get rid of is discrimination, particularly when it
hing as essential as someone's livelihood. My feeling,

which is concurred in by a great number of knowledgeab
is that we can overcome employment discrimination mo
utilizing our existing Federal district courts, which are
political patronage, which are free from the subtleties
winds that occur when an administration changes cours
administration comes in, and consequently can handle th
on the same objective, fair basis that the Federal district
been handling cases before them of all kinds for a long per

There is a kind of simplistic argument that has been g
of sloganeering against that my amendment is anticivil
that it is anti the intents and purposes of the original E
neither of which could be further from the truth.

What I am trying to do is to find a mechanism whereby
can initiate prompt enforcement in an impartial tribunal
antees the protection of all constitutional rights to all pa
do it as soon as possible after conciliation has not worked
the charge seems legitimate.

I reiterate that my amendment is not contradictory to
pendent General Counsel amendment which has just be
unanimously by the Senate.

Mr. BYRD of West Virginia. Mr. President, will the Se
for a question?

Mr. DOMINICK. I yield.

Mr. BYRD of West Virginia. Would the distinguished S
willing to enter into an agreement at this time with respe
tation of time on his amendment, the time to begin runnin
day—say, one hour and a half on the amendment, to be
vided, with the one hour and a half to begin running at
and with a vote to occur on the amendment at 1 p.m.?

Mr. DOMINICK. The Senator from Colorado would hav
tion to that. In fact, I think it is a good suggestion. It give
certain, and it also gives us some time on Monday as well as
in order to get into this amendment.

* * * * * *

The Senate continued with the consideration of the bill
a bill to further promote equal employment opportunities f
can workers.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unan
sent that at the close of morning business on Monday nex
a.m., the amendment by the Senator from Colorado (Mr. D
which is now pending, be laid before the Senate.

The PRESIDING OFFICER. Without objection, it is so orde

Mr. BYRD of West Virginia. Mr. President, I ask unan
sent that time on that amendment then begin running; th
a limitation of 1 hour and a half on the amendment; tha
be equally divided between the distinguished mover of t
ment, the Senator from Colorado (Mr. Dominick), and t
guished manager of the bill the Senator from New Jersey
Hams); that time on any amendment in the second degree
to 30 minutes, to be equally divided between the mover of t
ment in the second degree and the distinguished manager

nclusion of the time on the amendment or any amend-
. a vote occur on the Dominick amendment.
ICK. Mr. President, reserving the right to object, for the
cation, let us suppose we have the hour and a half. It is
amendments are offered. But suppose an amendment is
amendment. What happens to the time when we vote,
incipal amendment?
f West Virginia. The vote on the principal amendment
reached until the amendment in the second degree had
of.
ICK. Then, I have no objection; and I ask for the yeas
e principal amendment.
d nays were ordered.
ING OFFICER. Without objection, the unanimous-consent
Senator from West Virginia is agreed to.
f West Virginia. Mr. President, according to the way I
equest, a tabling motion with respect to the amendment
from Colorado would not be in order.
NG OFICER. The Senator is correct.
West Virginia. I thank the Senator.
CK. I thank the Senator from West Virginia.
f West Virginia subsequently said: Mr. President, in
and all eventualities may be provided for, I ask unani-
that time on any motion, appeal, or point of order with
amendment of the distinguished Senator, or any amend-
second degree, with the exception of nondebatable mo-
ed to 20 minutes, to be equally divided between the
and the distinguished manager of the bill.
ING OFFICER (Mr. FANNIN). Is there objection to the
Senator from West Virginia? The Chair hears none,
ered.
West Virginia. Mr. President, I express the hope again,
he leadership, that on tomorrow other Senators may be
to call up other amendments, so that progress can be
event, of course, we would attempt to obtain unanimous
he pending amendment aside temporarily.
MS. This unanimous-consent agreement would not pre-
to table in the second degree?
f West Virginia. It would not preclude a motion to
dment in the second degree.
NG OFFICER. The Senator is correct.
CK. Mr. President, to continue the brief statement I was
e our unanimous-consent requests were proposed and
e people have been saying that my amendment is anti-
nti-civil rights. If you go along with that kind of reason-
really have to say is that the Federal District Courts
vee or anti-civil rights; and obviously this is just plain
ler, for a moment, where the minorities in this country
out the monumental court decisions which have recog-
tected their rights in education, in public accommoda-
g, in voting, and in equal employment.
in my own defense, having voted for every civil rights
tion since I have held public office, that it is highly un-

likely that I would be offering something which would co
kind of discriminatory action against the minorities in t
So I think we can dispose of that allegation briefly, wit
statement.

Also the implication has been made—that the aggriev
will not receive justice in the United States District Cou
of course, is equally absurd. Let me say a few things by w
ground on this.

Mr. WILLIAMS. Mr. President, will the Senator yield?

Mr. DOMINICK. I yield.

Mr. WILLIAMS. I am the manager of the bill, and I am
the amendment, but those are two arguments that this Se
never use.

Mr. DOMINICK. I fully understand that, and I was n
that the manager of the bill had. Some much less respons
have been circulating such implications. I just wanted that
completely.

Mr. WILLIAMS. I wanted early clarification of that.

Mr. DOMINICK. During the process of our committee h
this matter, I brought up, in the case of State and local
the problems inherent in a situation where one executive
Government is put into a position to issue injunctive ord
State and local employees and governments. It would be a n
situation, it strikes me, that if we established an agency t
help minorities, we should suddenly find the same agency
step into every local and State governmental system in the c
say: "Cease and desist. You cannot do what you have been d
past, and we are going to investigate your personnel hir
from here on out."

That, to me, would be wrong. I pointed out that there mig
kind of collusion here between the EEOC and the Justice D
so, with the consent of the remainder of the committee, we
language to say that EEOC cease-and-desist orders will n
State and local employees, but that enforcement of alleged
will occur through complaints filed in the Federal court sys
Attorney General's Office. Then we examined the Federa
situation and I pointed out again that we were creating an a
in the EEOC which could determine personnel policies in al
Federal agencies of the Government. I doubted the wisdom
such an omnipotent agency. After some discussion on this
the decided aid and assistance of one of my good friends
Mitchell of the NAACP, we were able to work out an agree
by a Federal employee who feels he is discriminated aga
through his agency, and if he is still dissatisfied, he is en
bring suit in Federal court or through the existing Civil Se
of Appeals and Reviews to Federal court. So on two of t
groups of employees covered by this legislation; namely, St
al employees on the one hand, and Federal employees on
the committee itself agreed to grievance remedy procedure
the Federal district courts; yet with the private employe
"No, you cannot have that. We will have an agency that can
itself." That is discrimination in and of itself, right with
and it strikes me that one of the first things we have to do

ees holding their jobs, be they government or private em-
e same plane so that they have the same rights, so that
same opportunities, and so that they have the same equal-
r jobs, to make sure that they are not being discriminated
ve the enforcement, investigatory procedure carried out

the difficulty in that concept. So I would say once again
ght that this amendment is anti-employee or anti-civil
ridiculous.

there are many people, including the manager of the
gree with my approach, and who perhaps think that it
ourts. I must say, that although those arguments can be
courts already established, and with the independent
sel that has just been created for the EEOC itself, we
ve the legal machinery to move rapidly on the enforce-
ver legitimate complaints may come before the EEOC
e solved by conciliation.

ain I would urge that, on the merits, this particular
adopted.

t, just a few minutes ago I was talking about the case
ommission has. I think it might be worthwhile to get all
ially in the record at this point.

rown of the EEOC testified that as of June 30, 1971, the
d a backlog of 32,000 cases. It anticipated that a load
ases would come in fiscal year 1972, and 45,000 in fiscal

ary 1971, almost a year ago, EEOC complaints required
months for disposition.

dy substantial backlog, we must add the impact of the
and time-consuming cease and desist procedures as they
l in the bill.

t, we must also consider expanded coverage. Included
e in the expanded coverage, as I pointed out, are approx-
llion employees of small employers—those employing
and 25 employees; 4.3 million educational employees—
ssional and nonprofessional staff members; and 10.1
nd local governmental employees whose disputes are to
prior to going to the Attorney General for court action,
t just a little while ago.

EOC will be responsible for an additional 21 million
ieved personnel.

s to me that if we look at this in any kind of logic, and
we can see immediately that the added load will require
at increase in administrative staff in the EEOC but is
mean a much longer backlog before any case can be

rlier, it seems wrong to me to say to an aggrieved em-
inly we will hear your case. We will do the investigating,
the charges. We will do everything else, but you will
on for over 2 years." That is not justice. This is not equal
portunity. But if we have the investigator saying that
ate complaint, and that it will be brought to the district
get priority treatment there, we can get the matter
f the time it would take in any other way.

It strikes me that this is right on principle. It is right
administrative procedures. It conforms to what we did wi
local employees and with Federal employees.

I believe firmly that the particular amendment we are i
now is something which is of great need, if we are going
discrimination which, unfortunately, occurs in this coun

Mr. TOWER. Mr. President, I am pleased to offer my su
Dominick amendment to S. 2515. I happen to be a cospo
amendment. I have joined with my distinguished colleag
orado, believing that his approach is far superior to pro
another quasi judicial, quasi legislative body with power
any which it was ever intended to handle. I can remem
when the EEOC was established under the 1964 Civil Rig
its sponsors roundly denied that this cumbersome body
should, ever have the authority to issue cease-and-desist
own. The Congress was assured that such would never be th
we would not again create a political body to deal with su
tions. Our only other attempt to at such a body, the Nat
Relations Board, has been nearly a total failure in dealing
matters. Pure logic alone dictates that we do not try to so
with a solution that has proven to be so untrustworthy
thought of this should be rejected by this body.

The EEOC was established to act as a mediator betwe
ployer and employee in job discrimination cases. It was hop
problem arose, by talking calmly with each side a ready so
be reached. Since the day of its inception, the EEOC has p
it was not qualified to deal with this problem. Instead of a
impartial mediator, the Commission has in many instan
antagonist. Instead of efficiently handling and processing
has allowed a backlog of over 31,000 cases to build up in it. Th
its existence. By granting the Commission the power to
and-desist orders as well as increasing its jurisdiction, t
would be further complicated and even greater backlogs, re
mated to be perhaps up to 3½ years, would result.

In addition to the Commission's being unqualified to h
new duties, there exists the fact that to grant it cease-and-d
would be a contravention of our Anglo Saxon judicial proc
turn to a "Star Chamber" proceeding. In the process as p
S. 2515, the Commission would be not only the investiga
charge, but it would also determine whether there were rea
to believe the charge were true and ultimately to decide if
charge were true and whether to issue the order. The C
would be judge, jury, and prosecutor, all at the same time. T
worked in the past; it will not work in this instance.

There are many advantages to allowing the courts to dec
or not a charge has been substantiated and then let it issue
the cease and desist order. First of all, it is a fact that the
done a good job in dealing with civil rights questions, incl
VII questions. This use of the courts would assure an im
bunal, thus guaranteeing each side the due process of law.
would likewise provide a more speedily solution to charges of
violations. The median time for the disposition of nonfa
the 10 States having the most EEOC complaints is less th

at, if you will, to the more than 2-year backlog that now
n the EEOC and the expected 3½-year backlog if cease-
owers are granted. Orderly procedures in business demand
be fairly determinable so that businesses may comply with
r them. Commissions such as the EEOC have proven to be
rustworthy, as I have previously stated, but likewise un-
There are no rules of stare decisis or other precedent that
ur Nation's businesses as to what to do. What may be a
practice today may not be tomorrow, but may be again
r tomorrow. In such a case, an employer cannot know what
o institute and be sure that he is in compliance. With the
ach, a body of case law will build up so that it will be deter-
at the law actually is. To do anything else would be to in-
this field.

o have a grievance under Title VII should have access to
this Nation. To now try to enact a solution that has been a
her areas is neither fair to those who have a legitimate
d are desirous of a quick solution or to those who have
y accused and seek a quick vindication. I urge the Senate
amendment which will provide a very reasonable and
ution. I commend the distinguished Senator from Colo-
adership in this matter.

NICK. Mr. President, I thank the Senator from Texas and
reciate his support. The points he has emphasized are ex-
es that the Senate ought to consider. We are not talking
nship or politics here. We are not talking about anything
stion of whether or not we can get alleged discrimination
irly for both the plaintiff and the defendant as expedi-
ssible.

ne that doing this in the way suggested in my amendment
more preferable way than the way provided in the bill

luring the process of the debate—and I do not know wheth-
or from Texas had an opportunity to hear it—we have
ided in the existing bill for State and local employees and
loyees to seek redress of their grievances to Federal Dis-
We are not doing so for private employees or private
t seems to me that is discrimination in and of itself.
rtainly urge, both on logic and an expeditious handling
blesome and emotional cases, that we adopt the amend-
as possible.

AMS. Mr. President, it is my understanding that, while
shed Senator from Colorado has offered his amendment
y and completely explained it, there will be debate on
will reserve most of my statement until then.

make one or two comments, however, at this time. First,
from Colorado described some of the changes made in the
the original bill. These were changes that, in my judg-
improved the legislation. The principal architect of these
ing with the civil service area, and certainly with the
forcement when charges are brought against State and
nents, was the Senator from Colorado.

ke to state that I am personally grateful for the work he
ommittee. And I applaud him for that.

On this issue, with respect to the pending amendment, I k
is a matter of deep conviction with the Senator from Colo
cause basically it is the amendment that was offered when th
before the Senate the year before last. We debated the mea
voted on it at that time. As I recall, it was a relatively clos
then. I do not know what the result will be this year. Perh
some of the changes that have been made, it will not be as clos
rate, I reiterate one thing that I do not want any misunderstan
My debate against the pending amendment will deal with t
the practical question of whether court enforcement as an e
method is the most efficient way of reaching the objectives of
islation. I think not.

Certainly if there are those who say that court enforcement
civil rights, I am not one of them. If there are any who say th
enforcement would be less just to those who complain of dis
tion, I am certainly not one of those either.

It is my feeling for the reasons that I will discuss tomor
in order to realize the objective of the legislation, of establis
forcement procedure by law to further the constitutional ri
statutory rights against discrimination, the proper way to
through the administrative procedure of cease and desist wi
its abundance of due process protections and, finally, of co
court review where parties disagree with the findings that le
cease-and-desist order.

I look forward to a fuller debate tomorrow and before we vot
on the pending amendment on Monday.

Mr. President, I yield the floor.

The Presiding Officer. What is the will of the Senate?

Mr. Dominick. Mr. President, I suggest the absence of a

The Presiding Officer. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the r

Mr. Byrd of West Virginia. Mr. President, I ask unanim
sent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordere

PROGRAM

Mr. Byrd of West Virginia. Mr. President, when the Se
venes tomorrow, it will meet at 11 a.m. Following the recogni
two leaders under the standing order, there will be a period
transaction of routine morning business of not to exceed 30
with statements therein limited to 3 minutes.

At the conclusion of morning business, the Chair will la
the Senate the unfinished business, and the pending questi
the amendment by the distinguished Senator from Colora
Dominick). There will be no vote on that amendment tom
order having already been entered to vote on the amendment
day next.

However, it is expected that there will be debate on that a
tomorrow. It is also anticipated that the debate on the p
amendment will not consume the entire day tomorrow.

ng the case, it is expected that Senator Ervin, Senator tor Randolph, or other Senators will call up amendments, nous consent having been given to temporarily lay aside Dominick amendment. Senators should be alert to the pos- refore, of votes tomorrow on amendments other than the mendment, and I would hope that the cloakrooms would e attention of Senators that there is a good possibility of es tomorrow on amendments other than the Dominick , the vote on which will not occur, as I have stated, until

[From the Congressional Record—Senate, Jan. 21, 1972]

MPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

ADMENDMENTS NOS. 805 THROUGH 809

to be printed and to lie on the table.)

in (for himself and Mr. Allen) submitted five amend-ded to be proposed by them jointly to the bill (S. 2515) to mote equal and employment opportunities for American

AMENDMENT NO. 810

to be printed and to lie on the table.)

SMALL BUSINESS RELIEF AMENDMENT

BRELL. Mr. President, I am offering today an amendment ng bill, which amends the Equal Employment Opportunity

y in offering this amendment, that I share a strong com-the principle of equal employment opportunities, regard-sex, or national origin. Fundamental to the goals of "life, the pursuit of happiness" are the right to vote and the for gainful employment. Neither of these should be re-itrarily, or for fanciful reasons, or by outmoded customs. expressed goal, shared by the President and both major hat of welfare reform. I consider this Nation's commit-ial employment opportunities to be plank in the welfare form. If we are truly committed to the reform of our em, we can hardly tolerate the denial of access to economic grounds of race, color, religion, sex, or national origin.

lege which we enjoy to make distinctions and selections us reasons, does not extend to distinctions and selections e reasons cited. If the luxury of discrimination for these o be tolerated, then our welfare system must necessarily l allowances for the harvest of unemployment, under-, irresponsible behavior, and poverty which naturally will annot permit the relegation of many of our citizens to economic opportunities and at the same time deplore f initiative and productive work habits.

. President, I am prepared to support adequate enforce-ions for the implementation of equal employment opportu-e truly believe in equal employment opportunities, and ional Government should accord these opportunities to all re can be no hesitation from assuring that these rights gful enforcement.

The House of Representatives has adopted a measure whi
support. An amendment to the pending bill has been offere
Senator from Colorado (Mr. Dominick) substituting the Hous
enforcement procedures for those recommended by the Senat
and Public Welfare Committee. I expect to support the ado
the Dominick amendment, and to vote for the Senate bi
amended.

At the same time, I do not feel that I can at this time,
conscience, support the method of enforcement contained in the
committee version of this legislation. My reasons for making
portant distinction between the House enforcement version a
Senate enforcement version are twofold.

First, I have confidence in the Federal judicial system to
ment a consistent and manageable job discrimination act. There
areas of public administration in which some peculiar experti
quired in the enforcement area, justifying the formation of a
Federal agency with cease-and-desist powers. I do not belie
this has been proven to be so in the case of equal employm
portunities. Such expertise as may be necessary, can be develop
fully exposed in Commission activity under the House bill.

However, if employers, for reasons sufficient to themselves
have court determinations of the issue of discrimination in
case, or legal questions arising in a given case. I believe the
court system to be completely adequate for this purpose.

The surge toward cease and desist powers smacks of an
play politics with job discrimination, and to leave the entire
a constant uproar, resulting in continued racial tension and cons
disruption of trade and commerce.

In my judgment, an advisable course would be to adopt th
enforcement provisions at the present time, and to evaluate pro
the elimination of job discrimination through experience und
form of enforcement. Should that experience disclose a need for
and-desist authority, then let it come at the proper time.

In addition, I have reservations about the cease-and-desist a
because of the experience which we have had in my section
country, the South, with administrative manipulations of civi
enforcement. The South has become a laboratory for social e
ment, where laws are enacted, and enforcement practices a
which are not and would not be enacted and applied for other s
of the country. In short, there is widespread evidence of disc
tory civil rights enforcement by Federal agencies against the
and I would be more hopeful of evenhanded treatment from t
eral judiciary than to an unbridled Federal agency.

My specific purpose today is to propose an amendment which
appropriate, regardless of the enforcement procedures adopted
legislation. Its purpose is to assure that enforcement of this leg
which must necessarily be selective and exploratory, does no
the effect of destroying small businesses which have been wro
of the sweat, blood, and tears of individual American citizens
only purpose in conducting business is to secure a decent liv
themselves. As a private practicing attorney in my home Sta
member of the Select Committee on Small Business, and as
Senator, I am constantly confronted with the devastating effe

ng Government regulations have on small business. Al-
Government has a legislative commitment to free enter-
ncouragement of individual opportunities, and categorically
isinesses of all kinds, we condone on every side regulatory
nd procedures which pit the overwhelming financial
d manpower of the Federal Government against the indi-
nessman. There is no question but what this imbalance of
engtli denies small businessmen a fair opportunity for self-
ainst Government regulation. Big and rich business enter-
afford to battle Government equally, and in some cases at
ge, securing for themselves much more favorable treatment
air trials" and "consent judgments."
ndment which I have offered, in a very small way, assures
of small businesses who may be selected for investigation,
, and enforcement under this act, that they will not have
full economic brunt of defending themselves. We owe this
l business community in simple justice, not only to balance
of individual cases but because almost all of those moved
he early stages will be "guinea pigs" for testing the laws
ures under it.
c terms, my amendment provides for the payment by the
nment of reasonable expenses and attorney's fees of very
esses proceeded against under the act, and for payment of
such costs in the case of somewhat larger business enter-
still cannot be considered to have the resources to engage
proceedings against the U.S. Government. Limits of $5,000
respectively, are placed upon the amounts which may be
reasonableness of charges submitted is to be based upon
able costs and expenditures of the Federal Government
ting and prosecuting the respective complaints.
the purpose, nor the effect, of this amendment to exempt
esses from the application of substantive provisions of the
tment will be simply a step in the direction of placing the
essman on an equal footing with the big businessman, and
overnment, in enforcement procedures adopted under this

ake this opportunity to say that I think similar provisions
nade with respect to a variety of other Federal enforce-
ams. I expect to ask the Select Committee on Small Busi-
stigate and report on the unfair impact of Federal regula-
es on small businesses, and the tendency of these practices
ie growth of small business in this country.
animous consent, Mr. President, that the amendment be
the Record at this point.
ng no objection, the amendment was ordered to be printed
RD, as follows:
of Amendment No. 810 to S. 2515 may be found on p. 790.)

* * * * * *

SIDENT pro tempore. The Chair lays before the Senate
is the Chair's understanding that the amendment by the
d Senator from Colorado (Mr. Dominick) is now in order.
will read the bill by title.

The legislative clerk read the bill by title, as follows: A
2515) to further promote equal employment opportunit
American workers.

Mr. BYRD of West Virginia. Mr. President, I suggest the
of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the r

Mr. DOMINICK. Mr. President, I ask unanimous consent t
order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so order

Mr. DOMINICK. Mr. President, is my amendment No. 611 th
ing business?

The PRESIDENT pro tempore. The question is on agreeing
amendment of the distinguished Senator from Colorado.

Mr. DOMINICK. Mr. President, yesterday I gave a brief state
my reasons for having introduced this amendment. Today, w
manager of the bill present, I should like to go into the matter a
more length. I do not intend to indulge in any terribly exten
cussions, but we have also, in addition to myself, some other S
who want to speak in support of the amendment, and I susp
this will take a large portion of the day. I am, however, willing
point that a noncontroversial amendment or other amendm
be ready for consideration, to let this amendment be set aside
others may be taken up, and then we can go back to this one.

Since enactment as part of the Civil Rights Act of 1964, Ti
has stood as a national commitment to the elimination of a
of employment discrimination. However, in many cases the
ment has remained only a declaration which, because of the
enforcement machinery, has not been translated into concrete
for those in the Nation's work force who have been denied
ment rights, because of their race, color, religion, sex or
origin. The Equal Employment Opportunity Commission is
with enforcing the law against infringements upon such emp
rights, but it is essentially limited in its enforcement powers to
tion and voluntary compliance. We would all prefer to see thi
divided in that way but the temper of the times militates ag

The issue, therefore, is no longer whether we need enforcem
ers for Title VII, but rather what form and scope of enforce
needed to best protect the rights of all parties involved. To ac
this end the Senate is given two types of enforcement mach
choose from—vesting EEOC with cease and desist powers o
EEOC the authority to sue directly in Federal courts.

As most of you know, I am a confirmed proponent of Fed
trict court enforcement. I firmly believe that the courts offer
est, most expeditious redress of employee discrimination g
For that reason I am offering this amendment which strike
amend vesting the Equal Employment Opportunity Commis
cease and desist powers and substitutes therefore language g
EEOC power to resolve employment discrimination disputes
eral courts.

Mr. President, at this point, with the acquiescence, as I und
of the manager of the bill, I send to the desk an amendm
amendment which will clarify the problems of my amendm

ion of the independent counsel procedure yesterday. These are simply technical. I do have to have unanimous consent n adopted. I would ask the manager of the bill if he has n to them.

AMS. I have no objection to the modifications.

DENT pro tempore. The modifications will be stated.

ative clerk read as follows:

arting on line 2, strike all through line 6, page 2.
ne 7, strike "(b)" and insert in lieu thereof "Sec. 4(a)".
ines 7 and 9 strike "(h)" and insert in lieu thereof "(i)".
ine 19, strike "(c)" and insert in lieu thereof "(b)".
ne 15, strike "3" and insert in lieu thereof "7".
fter line 6, insert the following:
)(1) starting on page 59, strike 'before the Commission, and the gation' and insert in lieu thereof 'and the conduct of litigation rict Courts.'"

DENT pro tempore. Is there objection to the request of the n Colorado? The Chair hears none, and the amendment lified.

ICK. I thank the Chair.

cussing the merits of my amendment, the dictates of ob- ire me to dispose of several simplistic arguments which r volume and weight of rhetoric have achieved credibility. nsensical and distressing of such arguments is that the endment is antiemployee or anticivil rights.

ger of the bill said yesterday, and I know this to be true, not consider this amendment to be of that nature at all, ciate that statement, even though he still objects to the

e amendment vests enforcement powers in the district primary tenet of such reasoning must be that Federal ts are antiemployee or anticivil rights. To even think s is potently absurd. Consider for a moment where minor- e without the monumental court decisions recognizing g their rights in education, in public accommodations, n voting and in equal employment. No less an authority OC itself, in referring to their experience as amicus par- 167 fiscal year 1970 Title VII private suits, endorse the standing of the equal employment problem. The EEOC fth annual report which covers the fiscal year 1970:

ion feels that the course of litigation over the past year has been d that the law has developed in a liberal fashion appropriate to a nd remedial statute. The implementation of Title VII gives hope f all Americans.

offensive than the absurdity of such an argument is its g implications that an aggrieved employee will not re- in U.S. district courts. By impugning the reputation of usted friend of minority rights, the civil libertarians are s proud. The old lament, "How soon they forget" was ppropriate.

l libertarians are to prevail with their argument, they at not only will the Dominick amendment not effectively mployment rights of minorities, but that cease-and-desist will. This, in and of itself, is a shaky premise. Essentially,

the argument must be that by vesting an acknowledged ad employee's rights such as the EEOC with enforcement po thereby guarantee the best protection of such rights. This simplistic for several reasons.

Prof. Alfred Blumrosen, of Rutgers Law School, finds su ing faulty. Mr. Blumrosen, an authority on minority em wrote a book on the subject in 1971, "Black Employmen Law." As quoted in a September 15, 1971, Wall Street Jour by Elliot Carlson, Mr. Blumrosen, in referring to cease- proponents, states:

An awful lot of liberals haven't stopped to think that what they for isn't appropriate to the problem. "They're basing their views on experience, and think that because the board helped unions get esta EEOC can do the same for civil rights groups. That's not necessari

The article continues to say:

Mr. Blumrosen argues that minorities have been far more success ing their rights through courts than administrative procedures. He that States have invariably failed in their own efforts to eradica through administrative cease-and-desist powers. (Of 34 States wit ment practice commissions, 32 have such powers.) Others support his

"I doubt whether cease-and-desist orders could get at the vestig better than the courts," declare Bernard Anderson, assistant profess try at the University of Pennsylvania. "It would take years t guidelines on which to base such orders, but if you had a good case be in court next week."

The article further states:

Pennsylvania's Mr. Anderson contends that most discriminatory pr institutional: subtle practices that leave minorities at a disadvantage cultural and educational differences. He doubts whether such forms of be rooted out by cease-and-desist powers.

"At the labor board, individual cases are decided on individual observes. "Thus cease-and-desist orders fail to create broad legal prin 'that's not good enough for race questions.' Mr. Anderson questions, fo whether any such order could ever have had the impact of the Griggs Power Co. decision, in which the Supreme Court recently held that e tests, even if fairly applied, are invalid, if they have a discriminatory can't be justified on the basis of business necessity.'"

Additionally, this logic fails to consider the legendary vi of presidentially appointed boards. Such boards tend to react cal winds rather than stare decisis and, consequently, what employee board today could well be a proemployer board to Probably the best example of this is the National Labor R Board. The NLRB, which possesses cease and desist enf powers similar to S. 2515, has been criticized for lack of l consistency, fluctuating from promanagement decisions du Eisenhower administration to prolabor positions during the and Kennedy administration. Determination of employe rights deserves and requires nonpartisan judgment. This pro best afforded by Federal court judges who, shielded from influence by life tenure, are more likely to withstand politica and render their decision in a climate tempered by judicial and supported by historical judicial independence.

Allegations have been made that in placing enforcement of ment disputes in Federal courts, the amendment will clog court and greatly extend the settlement time of such disputes. Cons of this contention is most important as a speedy resolution of

s vital to both employees and employers. Interestingly
ts indicate that the potential administrative snarl created
anguage threaten effective resolution of employees griev-
nore so than court enforcement backlogs.
these facts. I referred to them yesterday, and they are
repeating today. Chairman Brown of the EEOC testified
me 30, 1971, the Commission had a backlog of 32,000 cases.
anticipated a caseload of 32,000 new cases in fiscal year
,000 in fiscal year 1973. As of February 1971—the most
ve have been able to get—EEOC complaints required from
ths for disposition.
terpolate here that I understand that it is longer than that
t time.
ready substantial backlog one must add the impact of the
x and time consuming cease-and-desist procedure and the
verage provided by S. 2515. Included for the first time in
d coverage are approximately 6.5 million employees of
yers—that is, those employing between eight and 25 em-
million educational employees—teachers and professional
fessional staff members—and 10.1 million State and local
l employees whose disputes are to be conciliated by the
ding to a committee adopted amendment. Thus, the EEOC
onsible for an additional 21 million potential aggrieved

ay that, additionally, all Federal employees are included
system. They go through their agency and then into the
or through the Civil Service Board of Appeals and
l then through the court system, if necessary under the
There is a need to coordinate what is done in those agen-
ourt system with the actions taken by the EEOC.
forcement is adopted, the district courts will be faced with
banded caseload, but they are substantially better adapted
the increase. Under S. 2515 language, EEOC field attor-
ate and attempt to conciliate disputes, but only the Com-
Washington would be available to issue cease-and-desist
procedure would require the hiring and training of 100
miners and supportive staff. Contrast this with the exist-
district court system of 93 courts and 398 judges with
eputations for fairness, discretion, and impartiality.
t is my impression that companies and labor organizations
al counsels are much more impressed by precedents estab-
Federal court system than by precedents established of
ve agencies. Accordingly, as court precedents are estab-
my amendment, I believe the result will be a substantial
he number of respondents complying with court decisions
into meaningful conciliation agreements with the Com-
ner than appealing cases lost in Federal district court. In
nvision a much larger number of cases being settled by
ithout litigation where the alternative is a Federal court
ondents who would take their chances in draw-out admin-
ceedings, even where the precedents were clear.
he EEOC backlog is from 18 to 24 months, the median
from issue to trial in U.S. district court in 1970 according

to the annual report of the Director of the Administrative
the U.S. Courts was 10 months.

A more accurate prognosis of the impact of district court
ment can be made by comparing the backlogs of the 29 distr
having jurisdiction over the 10 highest States in terms of f
1970 recommended EEOC investigation. According to Con
John Erlenborn's study of those 29 district courts, 21 com
median time of 12 months or less for nonjury trials and eig
had a median trial completion time of 6 months or less. The
appear capable of handling the increased caseload activity
undue delay.

In addition to the other expanded responsibilities that
thrusts on an already swamped Commission, it also transfers
tract compliance activities of the Secretary of Labor under E
Order 11246—as amended by Executive Order 11375—to th
and over a 2-year period, the section 707 "pattern and practi
from the Justice Department.

The total impact of the increased procedural responsibili
panded coverage, and transfers could well create an admin
nightmare which will effectively frustrate the rights of all
The district court approach offers existing, respected, proven
network of tribunals capable of coping with the increased c

Before proceeding to the merits of the amendment, one la
of confusion should be resolved both in my mind and for the
of making a viable record. I generally understood, and Ke
john, from the AFL–CIO, among others, confirmed the fact th
nized labor was in favor of S. 2515 generally, and cease-an
enforcement powers specifically. It was, therefore, disquieting
in the November 13, 1971, National Journal that the letter o
C. Lee, president of the 350,000-member State Building an
struction Trades Council of California, urging defeat of th
version of S. 2515, the Hawkins-Reid bill, was totally ignore
AFL-CIO. Not only were President Lee's objections ignor
according to the article, John F. Hennings, president of the Ca
Labor Federation, AFL-CIO, wrote to the California House
tion endorsing the Hawkins-Reid bill. I find this incident disq
because I doubt that it represents an isolated occurrence.

I doubt that it represents an isolated occurrence, because I
interpret EEOC vested cease-and-desist enforcement powers a
contrary to the interests of the rank-and-file members of or
labor unions. It is logical to assume that the present Commis
continue to pursue its active employees' rights philosophy aft
armed with cease-and-desist powers. The consequence will m
ably be increased minority hiring requirements at the ex
many instances, of union hiring and seniority rights. I am s
confused as to why the leaders of organized labor have ch
apparently jeopardize the very important hiring and seniorit
of their members, especially when it is contrary to the expres
of the members in at least one instance. Any explanation as
apparent inconsistency would be most helpful for both my in
tion and the legislative record we are trying to establish.

Having disposed of some of the rather misleading rheto
rounding the amendment, I will now proceed to the substan

ly amendment does not affect present bill language which
ie respondent's rights of due process by requiring a 10-
ition of the filing of a commission charge or the 2-year
of back pay liability. It does not affect bill language
proximately 10.1 million State and local government em-
seek redress of their grievances through Federal district
s amendment does not change a committee-adopted amend-
ored by Senator Cranston and me creating machinery
by Clarence Mitchell, director, Washington Bureau,
The machinery provides a remedy procedure for the ap-
2.6 million civil service and postal workers whereby an
employee has the option, after exhausting his agency
f either instituting a civil suit in Federal district court
ng through the Civil Service Board of Appeals and Re-
trict court, if necessary. Curiously enough, the majority
the committee seem pleased with ultimate court enforce-
lures for 2.6 million Federal employees and 10.1 State and
nment employees, but continue to urge cease-and-desist
for private employees.
is not discriminatory in and of itself, I find hard to

dment does not affect the expanded coverage provisions
concerning small employers, State and local government
r educational institution employees. Additionally it leaves
S. 2515 language transferring Justice Department "pat-
ractice" suits and Labor Department's Office of Federal
mpliance to the EEOC. Finally, the amendment does not
ved employees to only Title VII remedies or bar class

standing is that amendments on all these points will be
at a later date for decision by the Senate, but this amend-
ot affect any of them.
amendment does do is to provide for trial in the U.S.
ts whenever the EEOC has investigated a charge, found
ause to believe that an unlawful employment practice
, and is unable to obtain voluntary compliance. The Com-
ld have complete authority to decide which cases to bring
istrict court and those cases would be litigated by Commis-
vs. Once a Federal district court had issued a decision and
ase, appeals litigation in a U.S. Court of Appeals or the
ne Court would be conducted by the Attorney General's
grieved person whould retain the right to commence his
in Federal court if the EEOC dismissed his charge.
ndment protects the rights of both respondents and ag-
providing a fair, effective, and expeditious resolution of

oint out here, Mr. President, that my amendment simply
forcement procedure down one level in the court system
ie hands of the executive agency. The enforcement proce-
bill proposes, puts adjudicatory power in the hands of the
agency with appeal to the court of appeals. What we are
oiding star chamber procedure in the executive agency
ch has not worked in the past and which we do not be-
rk in this situation.

Whereas the court approach preserves the traditional sep
of powers which we as a nation so highly cherish, the cease-an
procedure seriously threatens the respondent's due process r
a star chamber procedure which joins the prosecutory funct
the adjudicatory function. Under a cease-and-desist proceed
EEOC would investigate the charge, issue the complaint, pr
the complaint, adjudicate the merits of the case, and seek e
ment of its decisions in the U.S. Circuit Courts of Appeals. E
concepts of fairness and due process require an impartiality
adjudicatory function which could not be attained under S.
but could be under my amendment if agreed to.

This amendment provides a combination of the expertise
EEOC in investigating, processing, and conciliating unfair e
ment cases with the expertise and independence of the Federa
An expertise, which as I mentioned earlier had exhibited
understanding of the rights of minorities in areas of public a
dations, voting rights, education, housing and equal employme
equal unemployment area is one which produces strong e
among all parties— those discriminated against, those accused
criminating, and even those charged with enforcing the law. I
that these strong emotions should be tempered by restraint w
adjudication of personal rights is at issue. The Federal cour
best able to provide the tempering restraint which will allow
rational resolution of the issues of any given case.

Mr. President, to interpolate for a minute, as I reported yes
my recollection of the evidence is that approximately 30 per
the cases which are being filed now—at least in excess of 2
are related to sex discrimination. And when we get an angry
who feels she has been discriminated against in her job or in
her job, we have really got emotions running high. And we h
same situation involved when a man is being discriminated ag
thinks that he is being discriminated against because he is not a
These are matters that go on and on and on. They get muc
difficult to handle through voluntary compliance or an executive
level than if we had some totally impartial method of solvi
disputes.

In my opinion we do not get adequate impartiality with cea
desist orders or with the EEOC having the untrammeled disc
impose unreasonable employment relation requirements. Ever
is mad.

If we have an impartial court proceeding, we would have
fairer action, much more impartiality, and some ability to
the heat of the issues involved.

As I pointed out, effective protection of the rights of both
employer and the employee demands a speedy resolution of the
Facts in addition to the previously discussed backlog problem
cate that the court enforcement procedure is more expedit
involves a one-step enforcement procedure whereas the cea
desist order requires two steps. A district court order is imm
self-enforcing as it is backed by court contempt proceedings. A
cease-and-desist order must be brought to the court of
before it achieves similar sanction power. Additionally, the
definite practical advantage in having the judge who enters

be the person who will hear any subsequent enforcement
. A judge who is enforcing his own orders rather than
me commission will be determined that such orders are
forced.

ndment offers a welcome opportunity in an era of increas-
ration of executive power to strike a small, but perhaps
blow for the judicial branch of our Government. As a
our Founding Fathers and their intent to create a tripar-
f government with each branch exercising separate but
powers, I am disturbed and have been for a long time,
ily encroaching power of the administrative branch. Each
the birth or expansion of some executive agency. Such
s not only bureaucratically unwieldy, but also threatening
existence of our concept of checks and balances. If the
anch is allowed to continue this usurpation neither the
or the judicial branch will be able to exert enough power
runaway executive branch. Nowhere is executive usurpa-
ident than in S. 2515. If the Commission is given cease-and-
s, clearly a judicial function, then the legislative branch
blame but itself for the further diminution of the judici-
and the strengthening of the executive branch. Many
that this is simply one more small concession to the execu-
but I submit that it establishes precedent, either pro or
eventual destruction of one of the cornerstones of our
vernment. As such, it should not be dismissed as simply
all concession.

dent, how many times have I heard on this floor from
or another, from one side of the aisle or the other, that
agency is creating rules and regulations which have the
which Congress did not intend. To compound the situa-
ss itself now is attempting to give an agency not only
make regulations which may well affect everyone's busi-
sonal rights, but we now propose to also give them judicial
ell.

liscard the philosophy of local control and simply give into
hat the country is too big and too complicated and that we
bunch of bureaucrats run it? I for one am not willing to
concession.

dent, rather than jeopardize the aggrieved employee's
potential administrative nightmare and the respondent's
rights with a star chamber proceeding, let us turn to the
rts of the United States where an established judiciary
competent, impartial decisions. We have never been hesi-
on our Federal judicial system before, least of all in civil
and the import of equal employment opportunity makes
riate to desert such a proven and respected system at this

l sincerely plead that my colleagues see the light and give
ne chance to continue our tripartite system and avoid in-
power of these executive agencies. Let us try to do some-
will protect the rights of all parties concerned in any of
motional employment disputes by adopting the Federal
dure.

Mr. President, I yield the floor.

Mr. FANNIN. Mr. President, I commend the distinguished from Colorado and I express my support for amendment offered by the Senator from Colorado (Mr. Dominick). I do belief that adoption of this amendment is urgently required the most effective realization of the objective of S. 2515 and of T of the Civil Rights Act of 1964—the elimination of discri practices in the employment of American workers.

S. 2515 would vest the adjudicatory power and authority cease-and-desist orders in the EEOC itself and the analysis of t posal has been very adequately pointed out by the distinguish Senator from Colorado. I express my support and concu analysis that what is involved is that this would enable the E sue in Federal court for redress of employees' grievances if th ment is adopted.

We should not be confused into accepting the knee-jerk reac because the cease-and-desist approach is the more extreme r therefore, a more effective, pro-civil-rights approach than t enforcement method.

Nothing could be further from the truth. An objective co of the two approaches reveals that the court enforcement would more effectively repair injuries caused by employment ination and protect the civil rights of all Americans.

First and foremost, it is inevitable that the rights and in aggrieved employees and of respondent employers will be re if the EEOC is granted the power not only to investigate cha issue complaints, but also to adjudicate those complaints a enforcement orders. If the Commission were to adopt the attitude proper for its role as judicial arbiter, the employees wo the benefits of the Commission's present function as advocate cause and as zealots in the effort to redress employee grievan the other hand, the Commission continued its attitude of p for the employee, the respondent employers would clearly be the due process to which they are entitled in the adjudicatory ing.

Mr. President, I do not believe that the amendment adopte day by the Senate solves this problem. I voted in favor of that ment and I think it is a step forward.

There is no excuse for us to sanction new injustices in our right existing injustices—certainly not when a reasonable a effective remedy is available to us.

The Equal Employment Opportunity Commission is a p appointed body, and if it were given the cease-and-desist p exercise of that power would inevitably fluctuate with the winds.

If, as we propose, the EEOC is authorized to prosecute co in Federal district courts, then the investigative and prosecu tion will be properly separated from the adjudicatory pow fully performing that function for which it is perfectly s EEOC can remain a zealous proponent of the employee and ju court judge can perform the service for which he has distin himself in every area. The judge, having a lifetime appoi insulated from the whims of politics in approaching delic

ere encounter. The district courts are experienced in han-
ights matters, having in recent years dealt effectively with a
um of civil rights cases, including those involving employ-
mination.
dication by the Federal courts will provide the consistency
ity which is a vital element of our judicial process.
orcement, therefore, offers a more fair and equitable repre-
the interests of both employee and employer. In addition,
rement offers a more expeditious settlement, and a speedy
s vitally important both to an aggrieved employee and to a
employer.
the EEOC has an enormous backlog of cases under
n, and the disposition of a complaint requires from 18 to 24
515 adds 6.5 million nongovernmental employees and 10.1
loyees of State and local governments to the EEOC's
so obviously the backlog of investigations and the time
processing them can be expected to increase in the future.
mission is given cease-and-desist authority, the time re-
completion of the adjudicatory process will obviously be
—and it must be remembered that the cease-and-desist
e brought to a Federal court of appeals before it achieves
power similar to that of the order a district court judge
at the end of a court enforcement process.
e median time interval from issue to trial in nonjury cases
rict courts was 10 months. Clearly, this avenue offers the
ployee and the respondent employer a faster answer to
. Furthermore, it is relevant to consider that this prospect
olution in court should encourage settlement by conciliation
percentage of cases, thereby helping the Commission
remendous investigative and conciliation responsibilities
y.
olution of employee discrimination cases is fairer and faster
ourt enforcement procedure, what possible reason is there
om this traditional means of administering justice in the
es? Proponents of the cease-and-desist authority lean
n the arguments which have been advanced in granting
y to executive agencies in other areas: First, that a special
a technical field is required of the adjudicating officer;
that putting such cases in the Federal courts would clog
judiciary system. Neither argument stands up in this case.
ts is not a highly technical area. It is a matter of human
ng and common sense, qualities possessed as fully by Fed-
as by potential nominees to the EEOC.
ict court judges have shown in recent years their capacity
vil rights disputes in areas such as housing, public accom-
nd school integration. Furthermore, because of the respect
the Federal judiciary is viewed, their decisions have
ediate impact and moral sanction than would the decision
tive administrative agency.
vay that the court enforcement procedure would clog the
rts. There are 398 Federal district judges to hear those
the EEOC does not resolve by conciliation. In fiscal year
32 of 20,122 charges received by the EEOC failed a solu-

tion by voluntary compliance. As stated above, I believe t enforcement procedure would increase the number of voluntar ments. Therefore, those cases which had to go to court would distributed among the district judges. Certainly then it woul so manageable if all had to be handled by the Commission itse the cease-and-desist procedure.

Without the Dominick amendment, S. 2515 opens the door to unnecessary expansion of an already cumbersome Federal bure This will add another unnecessary cost to our Government and our taxpayers with the bill.

We must remember that when we have unnecessary costs Government, there are increased taxes and increased costs of tivity. In our country today we are facing a very serious prob problem of being competitive with other countries of the wo have an imbalance of trade that exceeds any imbalance we ha had before, increasing considerably our imbalance of payme threatening our dollar and the very economy of this Nation. W not afford to place additional burdens on our economy. We nee in the other direction to try to bring about better relations b management, labor, and government. We have a very serious p facing us. We are going to have to have jobs for the people country. However, a program that is going to further burden additional costs and that places a further burden on the co and employees involved is something that is absolutely unnece we are to continue our progress forward in facing the comp situation in the world today.

I submit that all who are truly interested in attaining the p of the Civil Rights Act of 1964 and the Equal Employment tunity Enforcement Act of 1971 will support the Dominick amen

Mr. Dominick. Mr. President, will the Senator yield?

Mr. Fannin. I yield to the distinguished Senator from Co

Mr. Dominick. I want to express my thanks to the very disting Senator from Arizona for his aid, support, and cosponsorship amendment. I think his statement was excellent. His extensive in the public service, first, as Governor and then as a Senator such comments most authoritative and informed.

It looks to me as though my amendment is being attacked b tion rather than by logic. The Federal court system, logically sp would be a far better one. As the Senator so aptly said, this dure can take care of this situation much more readily and mu efficiently than if it were enforced by an executive agency of the

I look forward to coordinating efforts with the Senator so as bring us to a winning vote on this amendment on Monday.

Mr. Fannin. I thank the Senator. The Senator from Colora be commended for taking the initiative and bringing forth wh volved. It is very vital that we have cooperation between mana labor, and government. We could give many illustrations of w have had prolonged trouble just because we did not have a settle the issues. We have cases before us today which would ha settled many months ago if we had had the same system wh distinguished Senator is recommending.

We face serious problems in this Nation. We know one of t serious, if not the most, is unemployment. We want to try t

fforts to bring about additional employment, but we must
ive with the other countries of the world. In the last few
ve seen companies move across the water, for various rea-
this field.
ne thought that this could be a factor in the future, and I
has been a factor in the past, but I think we must recog-
hen there are serious problems between management and
ney are not brought to a conclusion because there is a strike
anies are in a position where they cannot make their de-
nonths at a time, then there is a serious question of whether
pand their operations to employ more people and go for-
s country of ours, rather than look to operations overseas.
we have more involved here than meets the eye on a very
nination. The very future of our country is involved, as
etitiveness is concerned. I do not mean to infer that this
ng to threaten our economy, but I think we must realize
g up that problem does affect the economy and our ability
vorld market.

NICK. I know how completely the Senator has researched
of the economic competitiveness of our country. I have real
his judgment on that question. It seems to me the question
ent discrimination could be settled rather rapidly if we
coordinated labor-management effort on it. This logically
as an amendment such as mine seeks to improve the situ-
h groups.

IN. I certainly think the Senator is right. The people of
ve confidence in their courts. The employees have confi-
ir courts. I think they would feel far better if they knew
passing judgment on some conflict that might be involved
gotiations, even more than, as we have had in the past.
orts of the National Labor Relations Board and other
ey have done great work, but if somewhere along the line
come to an agreement, a decision has to be made. Other-
going to have to face disadvantages such as occurred in the
industry and many others. The result has been that the
nvolved in these confrontations have become less and less

o reach a settlement, the courts would decide the righteous-
claims of the parties. This is what the Senator wants to
—a process that will bring about a settlement.

NICK. Once again I want to thank the Senator for his help.

IN. Mr. President, I suggest the absence of a quorum.

DING OFFICER. Does the Senator yield the floor?

IN. I yield the floor.

. Mr. President, will the Senator yield for some questions?

IN. I am very pleased to yield.

. I have been interested in the amendment which was of-
distinguished Senator from Pennsylvania (Mr. Schweik-
Senator from Ohio (Mr. Taft) and the Senator from New
Javits) on yesterday, and I would like to see what the
he distinguished Senator from Arizona is with respect to

The Senator from North Carolina has studied it, and he thi
it is so much window dressing, which in comparable to th
that hypocrisy is the homage which evil pays to righteousnes
This amendment provides that the President is to appoint a
Counsel, but it also provides that the General Counsel shall
regional attorneys with the concurrence of the Chairman of t
mission. Just how much independence would be given by a p
that the General Counsel cannot appoint regional attorneys
him in carrying out his duty without the approval and con
of the Chairman of the Commission which is charged with the
enforcing the law?

Mr. FANNIN. I would say to the distinguished Senator fro
Carolina that his analysis is certainly correct in my mind. It d
a problem because after all, the stated intent of the amendm
to accomplish just exactly what was stated as far as appoint
counsel is concerned, but not the follow-through. I concur in th
that if we are going to have equity involved, then we must
the appointment of the people that are going to be carrying
with the adjudication of cases, with the presenting of the evid
whatever else may be involved, under the very control of th
mission that is going to hear it. So I certainly concur in the fe
the distinguished Senator from North Carolina. I am sorry th
ulation is in that amendment.

Mr. ERVIN. Does the Senator from Arizona agree with the S
from North Carolina that that amendment leaves unmodified t
and the power of the Communists to investigate charges a
to go to the General Counsel and urge him to make charges?

Mr. FANNIN. The Senator always presents his case effectiv
very righteously, and that is true. This is carrying a program t
intended to try to settle differences into an area that creat
ferences. I feel that is very unfair. I certainly do not think
be judge and jury and decide the case and then decide the p
and be fair and equitable as a commission. I think it is unfa
Commission to impose these obligations on it.

Mr. ERVIN. Is not this fundamentally comparable to what
have been the situation when the 18th amendment to the Co
was adopted to outlaw liquor if the amendment had given th
cuting attorneys the power to prosecute charges and then to de
the charges that were valid?

Mr. FANNIN. I think, when one is making an analogy, he coul
through on that basis. I agree that that would be an analogy tha
be sustained. I, of course, feel very keenly about this because
do I feel the Commission is charged with a responsibility, bu
has a burden to carry that is beyond a commission's actual
They should not have to carry through from A to Z. They
be others involved in making the decision in that regard.

Mr. ERVIN. Now, the amendment gives a little more lipservic
to the that everyone is entitled to a fair trial by saying that:

No employee or agent of the Commission may engage in the perfor
prosecutorial functions for the Commission in a case or any factual
case and also participate or advise in the decision, recommended de
Commission review of a decision, except as a witness in public proceed

e cannot give any advice unless he takes the witness stand
s on oath how his fellow board members ought to decide
ot the case?

NIN. It is rather inconsistent with what is intended under
that we rely upon so faithfully in this country of ours for
r the law.

N. Does the Senator from Arizona agree with the Senator
Carolina that under this bill, the Commission is charged
sponsibility of enforcing a law which is designed to compel
y to employ people from the minority rather than from
y?

NIN. Yes; of course, the whole intent of the legislation was
nd equitable with the minority; I do not think it was ever
at it should be unfair to the majority. But in the very op-
he Commission, where they have this dual or, one might
responsibility, it is very difficult for them to carry through
I think was originally intended by Congress.

N. In other words, the duty is placed upon the Commission
specific law, and then the Commission, in effect, are made
ecide whether the law that they are charged with enforc-
ed; is that not true?

NIN. That is true, and I think it is very unfair to impose
ion upon them.

N. Now, while this amendment designates the General
the one who can make the charges before the Commission,
s the Commission and its agents with the responsibility for
g charges, and gives them the power to make charges sub-
pproval of the General Counsel, and so they are charged,
th either assembling or supervising the evidence to sustain
that they called to the attention of the General Counsel.

NIN. That is true. It is regrettable that it is that way.

N. Then the members of the Commission, or those who are
ally allied with them in the enforcement of this statute,
s to pass on the validity of the charges which are based
estigations made by the agency itself.

NIN. Well, the problem, as I see it, that is being created, is
e a general counsel appointed by the President, but that
Counsel is not in control of his responsibilities. His respon-
ould be carrying through as a general counsel, and the
r him would be under his jurisdiction and not under the
's jurisdiction. This is what I think the distinguished Sena-
orth Carolina has brought out as a great inequity.

N. If we are going to have a system where justice is ad-
we are going to have to have a complete divorce between
re to exercise the judicial function and those who are going
tion the cases that are eventually to require judicial deci-
not?

NIN. Yes. I think that is the intent of our laws and the
ur Constitution.

N. And does not the Senator from Arizona agree with
from North Carolina that no matter how good the men
are appointed to an agency to enforce a law of this kind,
sibility placed on the agency of investigating allegations

of violations of the law and of assembling evidence on the
and then confer on that same agency, even with the interven
General Counsel between the two functions, the power to ju
cause, we inevitably have a system where the members of th
who judge the cause are psychologically disabled, in most cas
fair and impartial?

Mr. FANNIN. I think because of that fear we do have the se
of powers in this great Government of ours, and I feel that th
being carried through in this legislation.

Mr. ERVIN. In 1949, the Supreme Court of the United Sta
before it the case of Wong Yang Sung against McGrath, w
reported in volume 339, beginning at page 33, of the official
of the Supreme Court, where the Justice dealt with this subje
Court spoke of the fact that this had been a problem which,
the enactment of the EEOC bill, had given our Governmen
concern, and President Roosevelt had appointed a distinguish
mittee to study this business of uniting in one Federal age
duty of enforcing the law and determining whether that law
violated.

Justice Jackson, who wrote the opinion invalidating the pro
of the administrative board of the immigration authorities
united all these functions in the same agency, said this, on pag

President Roosevelt's Committee on Administrative Management in
ommended complete separation of adjudicating functions and person
those having to do with investigation or prosecution.

Now, the Senator will note that the decision in this case
mended not only divorcing the functions of those who jud
matter from those of the prosecuting attorney, but also from
the investigator; and this amendment leaves the investigating
and duties of the Commission untouched, does it not?

Mr. FANNIN. That is my understanding.

Mr. ERVIN. Is it conceivable to the Senator from Arizona
can expect an unbiased judgment where the agency which as
the testimony on which a prosecution is based is to judge the
of the accusation based on its investigation?

Mr. FANNIN. I agree with the Senator. I think it is very unfor
that we impose on this Commission these obligations, becaus
would have, I think, an opportunity to render a greater service
could carry through with what I think was intended by Congres
inally, and that was not to adjudicate the cases.

Mr. ERVIN. Justice Jackson wrote an opinion in the case to
I have referred which I believe every person who advocates legis
like this ought to memorize before attempting to persuade C
to enact it.

He points out that it is not sufficient merely to say that a ma
investigated or who prosecuted should not sit as a judge, but t
diverse functions should be entirely separate and put in separate
cies. He cites much learned discussion from reports of committee
have investigated this subject—that where a man one day acts
investigator or a prosecutor and the next day acts as a judge
purpose of judging the validity of charges, he gets in a ps
psychological situation in which he cannot discharge the judicial
tion fairly.

LIAMS. Mr. President, will the Senator from North Caro-
that point?
N. I yield.
LIAMS. I think the Senator is perhaps suggesting that I
hat case, but I would have to know what the case was, what
ere, and what agency Justice Jackson was talking about.
N. Well, he was talking about the procedures of the immi-
horities and the immigration authorities did exactly what
officials do. They conducted investigations, and then they
charges based on their investigations. The Court struck
as not in sufficient compliance with the Administrative
Act.
om page 43:

rovide that in particular cases different inspectors shall investigate
n insufficient guarantee of insulation and independence of the pre-
The present organization of the field staff not only gives work of
umonly to the same inspector but tends toward an identity of view-
een inspectors who are chiefly doing only one or the other kind of

ommend that the presiding inspectors be relieved of their present
senting the case against aliens and be confirmed [*sic*]—

should be "confined"—

y to the duties customary for a judge. This, of course, would require
t of another officer to perform the task of a prosecuting attorney.
ate officer for this purpose would seem to be the investigating in-
having prepared the case against the alien, is already thoroughly
it. . . .
impartial hearing, conducted with critical detachment, is psycho-
obable if not impossible, when the presiding officer has at once the
of appraising the strength of the case and of seeking to make it
ossible. Nor is complete divorce between investigation and hearing
ng as the presiding inspector has the duty himself of assembling
the result of the investigation. . . .

ckson pointed out that the Attorney General had a com-
this question. It said:

s of commingling functions of investigation or advocacy—

tention to the fact that he put the question of investigation
ne same category as advocacy.

s of commingling of functions of investigation or advocacy with the
ciding are thus plainly undesirable.

rth.
that this business of vesting quasi-judicial powers in agen-
fficers of agencies who are charged with responsibility for
particular law is plainly undesirable; and one of these
upreme Court of the United States is going to rise to the
d say that it is a denial of due process of law, in that it
air trial of the issues.
who is charged with the duty of seeing that a law is
s are the members of such an agency, can be unbiased in
when he sits as a judge. I do not care how good a man
ets a psychological handicap which prevents him from
ased.
asion, when I had the honor to serve on the Supreme Court
arolina, to try to define what is a fair trial. I came to the

conclusion that the essence of a fair trial can be defined in t
In order to have a fair trial, a litigant is entitled to have h
heard by an unbiased jury, before an impartial judge, in a
phere of judicial calm. You cannot have an unbiased factfind
the agency of which the factfinder is a member is charged w
solemn responsibility of collecting the information on which t
secution is based and of analyzing that testimony, even if he
present it to a General Counsel for prosecution. Such a syst
will not work fairly or justly.

Agencies such as this should not exist. No matter how m
law sanctioning them may try to pay lip service to impart
as did the Schweiker amendment—there is a wedding of als
discordant and irreconcilable principles which result in a de
justice.

(At this point, Mr. Metcalf assumed the chair as acting Pr
pro tempore.)

Mr. Williams. Mr. President, will the Senator yield?

Mr. Fannin. I yield.

Mr. Williams. The Senator is of the opinion, then, that any
of Government that has enforcement procedures within the
is operating at variance with the best principles in which the S
believes.

Mr. Ervin. Yes; and they ought not be permitted, if just
be done. No one should have the right to adjudicate the rights
people finally except a court of law which is vested with the
power of the United States. It is unfortunate that the Supreme
does not hold that whenever Federal judicial power is exer
has to be exercised by a third article judge. Such a judge has
for life. He is divorced from the enforcement of law. He is
with the duty of considering the facts as they are assembled a
sented by the parties.

I think it is a mockery; indeed, I think it is a prostitution
judicial process to unite in one agency the function of inves
claims of violation of law and the function of judging these
This is true even if the agency assigns different officers or ag
the discordant functions. When men work together day by da
one day a man is an investigator and the next day he is a
his relationship to his fellow officers is such that he is going
undue credence to what his fellow officers have done in co
data and bringing about the prosecution.

The distinguished Senator from Arizona has pointed out th
appointees to this Commission are political appointees. They
selected because of their judicial capacity. They are put on the
because of political reasons. It is inconsistent with reality to
to make impartial judges out of people who are, as I said yes
essentially crusaders for a cause. No man who is tried by a
is going to get a fair trial. Men who think that we can settle a
employment problems by simply arrogating to Government the
to rob men who invest their talents and resources in business ma
gravitate to positions with the EEOC.

Mr. Fannin. I say to the Senator from North Carolina that
not condemning members of the Commission. I do not think
either. It is the basis upon which they are given the respon

through as the judge, the jury, and the complainant. is very unfair.

t giving dictatorial powers—which is not the case here y of our Government is certainly improper. Our system nt is based on law and on the fact that we will have ity for a hearing before a court if a dispute is involved.

AMS. Mr. President, will the Senator yield?

IN. I yield.

AMS. This is strong language—"dictatorial power." I the Senator said it does not apply in this case, and it s not; because in the area of equal employment and the f the Commission right now, there is not enforcement Commission. This bill would bring that. The road is clear Supreme Court of the United States, within this bill, nnot be any dictatorial exercise of power while the rt sits there.

If the Senator will pardon me, the road to the Supreme against a mountain which cannot be crossed. I say that bill——

MS. That is wrong. I dislike to hear that in this Chamber. I say it. I have no hesitation in saying it, because it is the bill is a provision that the findings of the Commission n the Supreme Court and every other court if they are any substantial evidence. As I said yesterday, 5 percent ce is substantial.

AMS. The findings of the Commission would be based on nce of the evidence. I would accept it.

Especially if the court, rather than the Commission, en the power to review the decision of the Commission on of whether there is a preponderance of the evidence.

AMS. On the Court of Appeals.

Yes.

AMS. On the way to the Supreme Court. Would the Sen- h an amendment?

Yes. I will offer an amendment to that effect.

AMS. I would be happy to accept an amendment that the make its findings on a preponderance of the evidence.

Fine. Fine.

AMS. I should not interrupt here, but I appreciate the Jackson's opinion in this case. It seems to me that the utlined in this legislation before us meet the tests laid by Justice Jackson because here no individual, as an in both positions of investigator, prosecutor, and judg- ner.

But his agency is. The agency is. One day a man in- he next day he judges.

AMS. That is what I am saying does not happen under n.

Oh. Oh.

AMS. The same man?

. The same man, yes.

AMS. Literally the same man? Is that what the Senator

Mr. ERVIN. An officer or employee of the agency ought a judge in the case. The agency originates the case. It inve It causes it to be brought. But the fellows that will judge th the people the investigator works with every day and the reluctant to say, "Our brother is wrong, when he invest case and reached a conclusion. That should be prosecute recommended to the General Counsel. That was the reason did not give the Commission any enforcement powers, when the Commission but gave enforcement power to the courts, remain there, in my judgment. I am not criticizing the ne the Commission. The law puts an officer or employee of th in an impossible position——

Mr. FANNIN. That is right.

Mr. ERVIN. Where it compels the agency to investigate a restricted field of law and then compels it to decide the cas or employees of the agency are not psychologically free to act under such circumstances. The same agency ought not to exer inconsistent functions.

Mr. WILLIAMS. That was the effort of the Senator fr (Mr. Taft) in his amendment, to divorce the functions wh would be any doubt of an individual's working in the areas of tion and judgment. That is why this General Counsel am was offered. I believed that was one of the reasons why th from North Carolina voted for it.

Mr. ERVIN. I voted for the amendment because it made about one-half of 1 percent less obnoxious than it is.

Mr. WILLIAMS. One-half of 1 percent?

Mr. ERVIN. Yes. The essential vice of the whole setup still

Mr. WILLIAMS. Was that a scintilla? Is a scintilla better

Mr. ERVIN. I said the essential vice——

Mr. WILLIAMS. No. I refer to the one-half of 1 percent. That a scintilla of improvement?

Mr. ERVIN. It might be deemed a substantial part of the by a Commission which has final fact-finding power.

Mr. WILLIAMS. I thought, when the Senator from North voted "yea" on yesterday, that he made the wisest judgment in accepting the amendment and voting "yea" on it.

Mr. ERVIN. Well, it is like starting on a trip to heaven and a first stop at the first saloon. [Laughter.]

Mr. FANNIN. I thank the distinguished Senator.

Mr. President, I yield the floor.

Mr. WILLIAMS. Before the Senator yields the floor, I wonder I could ask one or two questions. The Senator was concer the employer faced with uncertainty, and the economic bu entails.

Mr. FANNIN. I would say to the Senator from New Jersey cases, he knows about, where they have been in turmoil and been able to get the cases settled. There was one in Virgini long ago, a shipbuilding company which had problems so fa tracts were concerned. The Senator remembers that very well not?

Mr. WILLIAMS. Was that not the *Bethlehem Steel* case?

Mr. FANNIN. No. The *Newport News* case.

AMS. Yes, that was the problem where the company was ree agencies—the EEOC, the Department of Justice, and

N. That is right.

AMS. That was a concern and was a concern to the com- ting the bill. That is why we have tried——

N. They could have gone to a court and presented their ould have been settled in a short time equitably for all nvolved. That is why I feel that the amendment of the Colorado is vital to this legislation.

AMS. All right. I appreciate that. That would give the uthority to go to court to have its findings prosecuted and ld the Senator agree, then, to make life more certain for that the functions of the Justice Department under practices, and the Department of Labor under the OFCC ould logically be brought to the EEOC so that companies n or Newport News, or whoever they may be——

N. This has been a matter of contention as to how it could realize that there are a multiplicity of problems here, not want to, at this time, without careful investigation, ink all those powers should be in the EEOC because I ve could make that flat statement.

MS. But they should reside in one place.

N. We realize that there is such a proliferation of author- l of active government today—yes, as a general principle, g to get the authority in one governmental agency where be made if it is necessary for court action where the ed can gain a settlement, but I do not want to say that under the EEOC at this time without careful investiga- rticular subject.

AMS. But the same subject matter logically and for the ncy and certainty should reside in one place, should it

N. It is a confusing situation today, I agree with the New Jersey; but I am not in a position to say whether in one place or in another at this time.

IS. Mr. President, I am very strongly opposed to the pro- 2515, the Equal Employment Opportunities Enforcement

ssue to be dealt with in the bill is to decide what means nt machinery shall be established to carry out the find- Equal Employment Opportunity Commission. As now ill would vest the Commission with the power to issue ist orders. In my judgment this is unsound. It violates f separation of powers because the Commission, and the lone, would have the powers of investigation, of the of the action to be taken in a case, and the implementa- decision. The Commission would be the prosecutor and is is dangerously unsound. It infringes on the freedoms an people as individuals and as groups.

f cease-and-desist orders is unnecessary and illogical as gerous precedent. The Federal court system is available n of enforcement rulings which the Commission might

seek. This is the constitutional solution to the problem, as w
logical solution. The Equal Employment Opportunity Com
not staffed or trained to carry out this additional mission an
labors under a large backlog of cases, even under its pres
limited authority. A large, additional administrative org
would have to be recruited and trained to create this new and
sary bureaucracy—an illogical action and a dangerous inno
our governmental system of judicial review of disputes
citizens.

There are other faults in this bill, as well. It would vest in a
administrative agency—the Commission—jurisdiction ove
aspects of State and local governments. The bill provides tha
particular case, cease-and-desist orders would not be used and
ment would be by Federal courts. Even so, the entrance o
trated Federal power into the operations of local goverm
wrong, and can have ultimate effects that are very distu
contemplate.

Similarly, the removal of exemptions for educational ins
has implications that are extremely undesirable.

The continual harassment of the people of our country by
Federal controls is onerous to an extreme degree. Federal re
of the daily activities of our peoples lives is growing each y
it is rapidly becoming intolerable. At the best, the thousands of
ments of all the Federal regulations are time consuming,
become expensive to an employer or an individual citizen
worst, they can leave the citizen lost in a bureaucratic maz
flicting information, or even inflicted with an inequity for w
regulations provide no recourse.

This bill establishes a regulatory morass which will be en
founder an average citizen trying to make a living under
enterprise system. For example, it applies to anyone who hi
or more persons, and as I said, that includes a State or local
ment, or a university. A charge of unlawful employment pra
be lodged by anyone, including an employee of the EEOC. Th
would no longer have to be under oath, as previously requi
EEOC then must serve the employer with notice that a c
been filed against him. The EEOC then proceeds to invest
employer. They can keep him on the hook for 4 months bef
tell him how he came out. If they do not like what he did,
issue a cease-and-desist order and award back pay to an emp
up to 2 years. If the employer does not like what the EEO
him, it is too bad. All he can do is seek refuge in the U.S.
appeals and try to obtain justice. I say again, if there is a d
be made as to whether one citizen has damaged another, it
the court in the first place, and not in the EEOC.

The recordkeeping that will be required by this bill stag
imagination. The EEOC is authorized to impose recordkee
reporting requirements on employers, employment agenc
organizations, schools, State or local governments, and others
provision in the bill is anything but sympathetic to the plight
who must keep these records. It says that persons or orga
experiencing hardship because of the recordkeeping requirem
petition the courts for relief, after having exhausted all ad

for such relief. Again, the punishment is by administra-
nd the only refuge from it is to get under the protection
he whole system established by this bill is simply incon-
our form of government and with democratic practices.
lent, the bill that is before us was reported in the other
House Education and Labor Committee, but it was re-
ht last September on the floor, in favor of judicial enforce-
d hope that a similar action can be taken on this floor.
easure similar to this bill was considered on the Senate
ber 1, 1970, I concluded my remarks with a sentence that
eat. If our concept of true liberty and freedom ever really
will record that the passage of this bill will be one of the
nes on the road to that destruction.

* * * * * *

continued with the consideration of the bill (S. 2515) a
promote equal employment opportunities for American

LPH. Mr. President, I send an amendment to the desk
t be stated.

G PRESIDENT pro tempore. The Chair is advised that
mendment pending. Is the amendment of the Senator
irginia an amendment to that amendment or is the Sen-
at the pending amendment be set aside?

CK. Mr. President, I ask unanimous consent that the
ndment, the Dominick amendment, be set aside tempo-
the Senator from West Virginia (Mr. Randolph) may
mendment, and that the Dominick amendment be taken
ly after completion of the amendment of the Senator
irginia.

G PRESIDENT pro tempore. Without objection, it is so

ment of the Senator from West Virginia will be stated.

tive clerk read as follows:

fter line 13, insert the following:
bsection (i) insert the following new subsection (j):
m 'religion' includes all aspects of religious observance and prac-
s belief, unless an employer demonstrates that he is unable to
mmodate to an employee's or prospective employee's religious
ractice without undue hardship on the conduct of the employer's

LPH. Mr. President, it is my hope that we can have a roll-
his amendment, not that there is opposition to the amend-
ut it is felt that a rollcall would serve a constructive

ful to my able colleague from Colorado for permitting me
few minutes in presenting the reasons why I have pro-
endment to the pending legislation.

lent, I ask unanimous consent to include as cosponsors
ment the Senator from New York (Mr. Javits), the Sen-
aryland (Mr. Beall), and the Senator from California
n).

G PRESIDENT pro tempore. Without objection, it is so

Mr. RANDOLPH. Mr. President, freedom from religious d tion has been considered by most Americans from the da Founding Fathers as one of the fundamental rights of the the United States. Yet our courts have on occasion determ this freedom is nebulous, at least in some way. So in presen proposal to S. 2515, it is my desire and I hope the desire o leagues, to assure that freedom from religious discriminati employment of workers is for all time guaranteed by law.

I am sure that my colleagues are well aware that there a religious bodies—we could call them religious sects; denom in nature—not large in membership, but with certain strong tions, that believe there should be a steadfast observance of bath and require that the observance of the day of worship, t the Sabbath, be other than on Sunday. On this day of wors is prohibited whether the day would fall on Friday, or Sat Sunday. There are approximately 750,000 men and women Orthodox Jews in the U.S. work force who fall in this cat persons I am discussing. There are an additional 425,00 men an in the work force who are Seventh-day Adventists.

Mr. President, I am a member of a denomination which i tively small one, the Seventh Day Baptists. Perhaps there 5,000 individuals within that denomination in the work fo think it is important for me to say that within the groups th mentioned, we think in terms of our observance of the Sabba ning at sundown Friday evening and ending at sundown S evening, following the Biblical words, "From eve unto eve s celebrate your Sabbath." I make this statement only by way nation of the groups I have just mentioned.

I think it is important for us to realize that the persons f I hope I speak—and I hope I speak for all persons in this are workers scattered throughout the United States of Ameri is no section of the country which would not be affected, we b structively, by the adoption of this amendment.

I say to the distinguished chairman of the Labor and Pub fare Committee, who manages this bill, that there has been refusal at times on the part of employers to hire or continue in ment employees whose religious practices rigidly require abstain from work in the nature of hire on particular days, has been, because of understandable pressures, such as commit a family nature and otherwise, a dwindling of the membe some of the religious organizations because of the situation I have just directed attention.

I hold my membership in our church here in this area, W the Washington Seventh Day Baptist Church. We have s those churches in my State of West Virginia. At an earlier held my membership in the Salem, W. Va., Seventh Day Church.

I invite the attention of my able colleague to the fact th State of New Jersey there are many, many Seventh Day churches. In places like Shiloh, Marlboro, and Plainfield being the headquarters of the denomination to which I belong close to New York City, but actually located in the State Jersey.

astor in this area, Rev. Delmer Van Horne, has expressed
nd distress that there are certain faiths that are having
lt time, especially with the younger people, and under-
, with reference to a possible inability of employers on
ns to adjust work schedules to fit the requirements of the
of their workers.

"religion" as used in the Civil Rights Act of 1964 encom-
understand it, the same concepts as are included in the
ent—not merely belief, but also conduct; the freedom to
lso the freedom to act.

the Civil Rights Act we thus intended to protect the same
vate employment as the Constitution protects in Federal,
l governments. Unfortunately, the courts have, in a sense,
on both sides of this issue. The Supreme Court of the
s, in a case involving the observance of the Sabbath and
ation, divided evenly on the question.

dment is intended, in good purpose, to resolve by legisla-
a way I think was originally intended by the Civil Rights
ich the courts apparently have not resolved. I think it is
nly because court decisions have clouded the matter with
inity; I think this is an appropriate time for the Senate,
y the Congress of the United States, to go back, as it were,
Founding Fathers intended. The complexity of our indus-
transition of our whole are of employment, of course
that were not always understood by those who led our
lier days.

dent, the competent chairman of the Labor and Public
mittee, who is the chief sponsor of S. 2515, and who is
ng the very bill before us, I believe understands and ap-
I hope agrees with, the arguments that I am presenting.
ome opportunity to counsel with him in reference to the
I hope he can agree that there can be at least an agree-
amendment, even though we have a roll call upon it, hope-
next few minutes. I think it is a well-intentioned
a necessary amendment, a worthwhile amendment because
rough the spirit of religious freedom under the Constitu-
nited States.

dent, I, therefore, urge most earnestly the adoption of the

ICK. Mr. President, will the Senator yield?

LPH. I yield to my colleague from Colorado.

ICK. I have listened very carefully to the Senator's pres-
I was impressed by it. Could the Senator tell me, whether
ent would also affect, for example, the Amish, or some
us sect which has a different method of conducting their
most Americans?

LPH. Yes; I envisage that it would.

ICK. Would it apply to the following situation? A young
alked to from Virginia, works 15 days on and then is off
uld the amendment require an employer to change that
loyment ratio around, so that he would have to work a
or 6-day week?

Mr. RANDOLPH. I do not believe that an undue hardship w
to such an employer. The Senator has explained a specific
not believe that there are really problems that would flow
adoption of this amendment in connection with the employ
situations that he could not properly handle with employe

Mr. DOMINICK. I thank the Senator. I think this amendm
helpful. All of these various situations keep arising becau
pluralistic method of conducting our business in this cou
hard to foresee far enough ahead so that each specific type o
be anticipated.

Am I correct in understanding that the amendment allows
both to the EEOC and to its investigators to determine whet
any particular group of religious adherents are having their
observance of their religious activities unduly interfered
other words, flexibility is provided so that someone could m
cretionary judgment on it?

Mr. RANDOLPH. The Senator from Colorado correctly follo
the thinking that I have placed in the language of the am
that there would be such flexibility, there would be this app
understanding, even perhaps of discretion, to a very real deg

I agree with the Senator's feeling, and I am sure that that
meant and would flow from the adoption of the practice
amendment.

Mr. DOMINICK. I thank the Senator from West Virginia.

Mr. WILLIAMS. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. WILLIAMS. I did not follow the last colloquy entirely,
haps this is the same question, but where the employment is
the job has to be done on a day that a person under his fai
make his religious observations, it might be an undue har
close down the operation to accommodate that person. There
that are Saturday and Sunday jobs, and that is all, serving re
other areas. Certainly the amendment would permit the em
to hire a person who could not work on one of the 2 days of
ployment; this would be an undue hardship, and the employe
tion is protected under the amendment offered by the Sena
West Virginia, is it not?

Mr. RANDOLPH. That is correct; yes. I am in agreement
Senator's statement.

Mr. WILLIAMS. It seems to me that this codifies a very wor
eral practice, but there are situations —

Mr. RANDOLPH. There are the gray areas, and I recognize th
I think the thrust of what we would have here is important at

Mr. WILLIAMS. Yes.

Mr. RANDOLPH. The purpose to be achieved.

Mr. WILLIAMS. The Senator and I are employers. As a
practice, we recognize the days of religious observations of so
staffs, even though they are regular working days, generally
Senate, its committees, and its officers.

Mr. RANDOLPH. That is correct. I know of many instance
kind. I think that usually the persons on both sides of this
the employer and the employee, are of an understanding f

art. I do not think they try to present problems. I do not ry to have abrasiveness come into these decisions. I think t building upon conviction, and, hopefully, understanding to achieve an adjustment; and if in perhaps a very, very ntage of cases this is not able to be accomplished, that eter the Senate in its action in approving this amendment.

IAMS. As I read the first amendment of the Constitution, problem here presented by the amendment in connection t clause:

all make no law respecting an establishment of religion, or pro- ee exercise thereof.

g with the free exercise thereof, really, this promotes the l demand in that regard.

agree with the objective of the amendment.

ON. I appreciate what the able chairman is saying. I resence in the Chamber of our colleague from Ohio (Mr. re are, in the Seventh Day Baptist Church, of which I am nany individual members of our faith who belong to our hin the State of Ohio. We have, usually, small churches munities in the State the Senator so ably represents.

the Senator from Colorado. I think it is not inappropriate that one of our strong churches is in Denver. Another of hurches is in Boulder, in the State of Colorado. So, al- re a small denomination, it goes across the country in and smaller communities, where people of a belief feel that ossible, the law flowing from the original Constitution of States should protect their religious freedom, and hope- pportunity to earn a livelihood within the American sys- as become, of course, as has been indicated, more plural- e industrialized through the years.

nimous consent that the cases and regulations which are this issue be printed at this point in the Record.

g no objection, the material was ordered to be printed in s follows:

DEWEY v. REYNOLDS METALS COMPANY

nited States Court of Appeals, Sixth Circuit—June 4, 1970, order July 30, 1970—Rehearing denied Aug. 11, 1970)

mployee under Civil Rights Act alleging that he had been unlaw- d on account of his religious beliefs. The United States District Western District of Michigan, 300 F.Supp. 709, Noel P. Fox, J., ent for employee, and employer appealed. The Court of Appeals, Judge, held that even if regulations adopted by Equal Employ- ity Commission subsequent to employee's discharge applied retro- of employer in permitting employee, by a replacement system, to y as his Sabbath constituted a reasonable accommodation to reli- employee and gave employer the right to discharge employee for e replacement arrangements for performance of scheduled over- Sundays. It was further held that suit on an alleged unlawful actice may not be brought in court after grievance has been finally arbitration.

l remanded with directions.

uit Judge, dissented and filed opinion.

cuit Judge, who had been appointed to take the place of Judge ed from denial of rehearing and filed opinion.

1. Civil rights—2

Statute providing that it shall be an unlawful employment pra
employer to fail or refuse to hire or to discharge any individual,
discriminate against any individual with respect to his compensatio
ditions, or privileges of employment, because of such individual's ra
gion, sex, or national origin is aimed only at discriminatory practices.
Act of 1964, § 701, 42 U.S.C.A. § 2000e.

2. Civil Rights—13

In proving an unlawful employment practice, it was incumbent
to establish by a preponderance of evidence that in discharging him
to perform scheduled overtime work on Sundays, employer had di
against him on account of his religion. Civil Rights Act of 1964, § 701,
§ 2000e.

3. Civil Rights—13; Labor Relations—350

With respect to collective bargaining agreement providing, inter al
ployer had right to set straight time and overtime schedules and tha
were obligated to work such schedules unless they had a substantia
fiable reason for not doing so, evidence established that there was
criminatory in provisions of agreement or in manner in which employ
it and that it provided a fair and equitable method of distributing h
load among employees without discriminating against any of them C
Act of 1964, § 701, 42 U.S.C.A. § 2000e.

4. Civil Rights—3

In determining whether employer, by discharging employee for refus
scheduled overtime work on Sundays, had committed an unfair employ
tice by discriminating against employee's religious beliefs, it was app
apply regulation on Equal Employment Opportunity Commission the
that, absent an intent on part of employer to discriminate on religious
job applicant or employee who accepts a job knowing or having reaso
that normal work week and foreseeable overtime requirements will co
his religious obligations is not entitled to demand any alterations in sa
ments to accommodate his religious needs. Civil Rights Act of 1964
U.S.C.A. § 2000e.

5. Civil Rights—3

Obligations contained in collective bargaining contracts, which a
under regulations of Equal Employment Opportunity Commission in e
not to be impaired by application of a subsequently passed inconsiste
tion. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

6. Civil Rights—3

Having a lawful right to discharge employee for refusal to perform
overtime work on Sundays under regulations of Equal Employment Op
Commission then in effect, employer was not required to reemploy em
a later date and pay him back salary merely because Commission
change rule by adopting new, inconsistent regulations. Civil Rights A
§ 701, 42 U.S.C.A. § 2000e.

7. Civil Rights—3

Under regulations of Equal Employment Opportunity Commissi
effect, discharge of employee for refusal to perform scheduled overtime
Sundays plus refusal to arrange for a replacement, which was a
procedure under collective bargaining agreement obligating all em
work overtime schedules set by employer, did not constitute an unl
payment practice as tending to discriminate against employee on
his religious beliefs. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 200

8. Civil Rights—3

Even if regulations adopted by Equal Employment Opportunity C
subsequent to employee's discharge applied retroactively, action of em
permitting employee, by a replacement system, to observe Sunday as h

reasonable accommodation to religious needs of employee and gave right to discharge employee for refusal to make replacement ar- for performance of scheduled overtime work on Sundays. Civil 1964, § 701, 42 U.S.C.A. § 2000e.

9. Injunction—128

iled to sustain finding that employer had intentionally engaged in employment practice by discharging an employee on account of his fs so as to require issuance of an injunction. Civil Rights Act of , 42 U.S.C.A. § 2000e—5(g).

10. Civil Rights—3

loyment grievances are based on an alleged civil rights violation, consent to arbitration by a mutually agreeable arbitrator, arbi- ight to finally determine them, and award of arbitrator is as bind- ee as it is on employer. Civil Rights Act of 1964, § 701, 42 U.S.C.A.

11. Civil Rights—13

alleged unlawful employment practice may not be brought in court e has been finally adjudicated by arbitration. Civil Rights Act, .A. § 2000e—2(a).

On rehearing

12. Civil Rights—2

ivil Rights Act inhibits discrimination against an individual be- ace, color, religion, sex or national origin, it does not coerce or rson to accede to or accommodate religious beliefs of another. Civil 1964, § 703(a), 42 U.S.C.A. § 2000e—2(a).

13. Constitutional Law—84

Civil Rights Act as authorizing adoption of regulations which or compel an employer to accede to or accommodate religious be- employees would raise grave constitutional questions of violation ent Clause of First Amendment, Civil Rights Act of 1964, § 703(a), 2000e–2(a); U.S.C.A. Const. Amend. 1.

14. Constitutional Law—84

. in its relations with religious believers and nonbelievers must be is without power to support, assist, or handicap any religion. . Amend. 1.

15. Civil Rights—2

Rights Act, religious discrimination cannot be equated with failure te. Civil Rights Act of 1964, § 703(a), 42 U.S.C.A. § 2000e–2(a).

16. Civil Rights—2

ployee was sincere in his belief that it was a sin for him to obtain for overtime work on Sunday gave him no greater rights over employees when it came to enforcement of collective bargaining uiring employees seeking relief from overtime assignment to make for a replacement. Civil Rights Act of 1964, § 703(a), 42 U.S.C.A.

Coughlin, Jr., Detroit, Mich., for defendant-appellant; Cross, & Vieson, Detroit, Mich., on the brief; Fred R. Edney, Asst. Gen. olds Metal Co., Richmond, Va., of counsel.

Oosterhouse, Grand Rapids, Mich., for plaintiff-appellee; Vander r & Cook, Peter R. Tolley, Grand Rapids, Mich., on the brief.

Darden, Washington, D.C., for Equal Employment Opportunity micus curiae; Russell Specter, Acting Gen. Counsel, Equal Em- ortunity Comm., Washington, D.C., on the brief.

Lawrence Halpern, Detroit, Mich., on brief for National Jewish C
on Law and Public Affairs, amicus curiae; Howard I. Rhine, of cou

Before Weick and Combs, Circuit Judges, and O'Sullivan, Senior Cir

Weick, Circuit Judge.

The action in the District Court was brought under the provisions of
of the Civil Rights Act of 1964. 42 U.S.C. § 2000e.

Plaintiff's (Dewey's) claim was that he was wrongfully discha
employer, the defendant, Reynolds Metals Company (Reynolds), bec
religious beliefs, and he prayed for reinstatement with back pay.

Prior to bringing the action, Dewey filed grievances with Reyn
identical claim set forth in his complaint, under the provisions of
bargaining agreement entered into by Reynolds with Local 277, Un
mobile, Aerospace and Agricultural Workers of America, AFL-C
which was the bargaining representative of Reynolds' employees. De
member of UAW. The grievances were processed and resulted in their
to a mutually agreeable arbitrator, who made an award denying
June 29, 1967.

Contemporaneously with the submission of the grievances, Dewey m
cation to the Michigan Civil Rights Commission for issuance of a
against Reynolds, alleging discrimination on account of his religious

The following is a Summary of Findings and Order of Dismissal, is
the Commission on December 13, 1966:

"The findings indicate that the claimant, despite due notice of
quirements by the company and the applicable Collective Bargaining A
provisions, continued to refuse to perform scheduled overtime work
and took the position that his right to continued employment while fo
religious belief without interference was an absolute right.

"The Commission has previously ruled that where the normal work
foreseeable overtime requirements are prescribed in a Collective B
Agreement, that absent or (sic) intent on the part of respondent to dis
on religious grounds, an employee is not entitled to demand any a
such requirement to accommodate his religious beliefs.

"The investigation did not reveal any intent on the part of the resp
discriminate on religious grounds and it is, therefore, recommended
application for the issuance of a complaint be denied for lack of prob

ORDER OF DISMISSAL

"The Commission has found insufficient grounds on which to issue a C
and, therefore, the above Application is herewith denied. This Orde
missal shall automatically become effective within 15 days from the
mailing unless the Claimant shall demand a hearing prior there
93a–94a)

Dewey requested the United States Office of Federal Contract Co
review his charges of religious discrimination, and that office found n
a charge of discrimination.

On January 4, 1967, Dewey filed a charge with Equal Employme
tunity Commission (EEOC), claiming religious discrimination. The
sion, on January 5, 1967, contrary to the recommendation of its Re
for that the Commission find no probable cause, determined that there
sonable cause to believe that Reynolds had engaged in unlawful employ
tices and authorized the bringing of the present action in the Dist
Reynolds moved for dismissal of the complaint filed in the District C
grounds that the arbitrator's award was a final adjudication of the
and that they could not be relitigated. The District Judge, in a m
opinion, denied the motion to dismiss. 291 F. Supp. 786 (W.D.Mich. 19

Reynolds then answered, denying it discriminated against Dewey
of his religion and pleaded provisions of the collective bargaining
which required employees to perform all straight time and overtime
quired of them by the company. Reynolds further alleged that Dewey
perform overtime work on Sundays or to arrange for another qualified
to replace him, basing his refusal on his religious convictions. Reyn
giving warnings and a three days' layoff, finally discharged Dewey
plant rules for his continued refusal to comply with the provisions of
tive bargaining agreement.

The parties stipulated the facts and the case was tried by the Court
a jury. In a memorandum opinion, the District Judge ruled in favor

ynolds to reinstate Dewey with back pay and enjoined Reynolds
Dewey to work on Sundays. 300 F. Supp. 709 (W. D. Mich. 1969).
ourt refused to stay execution on the reinstatement pending ap-
ired Reynolds to post a $15,000-bond to stay execution on the
7,286.92 for back pay. 304 F. Supp. 1116 (W. D. Mich. 1969). Rey-
. We reverse.

le statute is 42 U.S.C. § 2000e–2(a), which provides as follows:
ll be an unlawful employment practice for an employer—
r refuse to hire or to discharge any individual, or otherwise dis-
nst any individual with respect to his compensation, terms, condi-
eges of employment, because of such individual's race, color, reli-
tional origin; * * *."

slative history of the statute is clear that it was aimed only at
practices. Congressional Record, Vol. 110, pages 13079–13080.

to prove a violation of the Act it was incumbent on Dewey to
preponderance of the evidence that his employer discriminated
account of his religion. In 1964 U.S. Code Cong. & Adm. News,
stated:

al number of committee members, however, preferred that the
nination of discrimination rest with the Federal judiciary. * * *
believe that the employer or labor union will have a fairer forum
ocence since a trial de novo is required in district court proceed-
ith the necessity of the Commission proving discrimination by a
of the evidence."

it is stated:

anagement prerogatives, and union freedoms are to be left un-
e greatest extent possible. Internal affairs of employers and labor
nust not be interfered with except to the limited extent that cor-
red in discrimination practices."

the collective bargaining agreement indicates rather clearly that
with respect to straight time and overtime work apply to all em-
and do not discriminate against Dewey or any other employee.

rated a "job type" plant, producing, on order, aluminum extru-
ts. It was necessary therefore for production to be scheduled to
ates provided for in contracts with customers.

1960 collective bargaining agreement, overtime was performed by
voluntary basis. As a result thereof, with an increase in orders
ssible to schedule production on Saturdays and Sundays. In order
difficulty, Reynolds negotiated with UAW the 1960 and 1965 collec-
agreements which provided that the company had the right to set
and overtime schedules and the employees were obligated to
dules unless they had a substantial and justifiable reason for not

965 agreement provided:

es shall be obligated to perform all straight time and overtime
of them by the Company except when an employee has a substan-
ble reason for not working; provided, however, that no employee
ed to work more than twelve (12) continuous hours without his

nt provided time and one-half for work on Saturdays and double
n Sundays.

nt further provided that overtime work shall be divided as equally
more employees are needed they are assigned in the inverse order
ty. Reynolds also issued an interpretation that any employee as-
time could be relieved from the assignment simply by arranging
alified employee to replace him. This system was used extensively.

een employed by Reynolds in various capacities since 1951, and at
discharge, on September 12, 1966, was a die repairman. Since 1961
a member of Faith Reformed Church. He never volunteered for
on Sunday after joining the church, although he did volunteer

scheduled to work on Sunday, November 21, 1965. He refused to
f his religious beliefs. He was given a warning and informed as to
f a seven-day operation and was advised that a repetition would
nary action under Plant Rule 11, which prohibits "absence from
reasonable cause," and provides a three-offense progression of
h discharge for the third offense.

Between January and August, 1966, Dewey was scheduled to wo
Sundays. He obtained replacements as provided in the contract. On A
1966, he was scheduled again to work on Sunday, and he not only refus
but also refused to obtain a replacement on the ground of his religio
The arbitrator found:

"[Dewey, it will be recalled, accelerated his disciplinary timetable
Zagman [a fellow employee] not to serve as a replacement any more

On September 4, 1966, Dewey refused to work or to obtain a replac
was given a written warning and a disciplinary layoff of three days.
refused to work or to obtain a replacement on September 11, 1966, an
charged for violation of Plant Rule 11.

[3] We find nothing discriminatory in the provisions of the collectiv
ing agreement or in the manner in which Reynolds executed it. In our
provided a fair and equitable method of distributing the heavy workl
the employees without discrimination against any of them.

The District Judge found that the compulsory overtime provision of
tive bargaining agreement "is not discriminatory on its face." We ag
ever, he said this is only the first step. He found it was discriminatory
pact. We disagree. He relied on Sherbert v. Verner, 374 U.S. 398, 83 S.C
L. Ed. 2d 965 (1963); but this case involved state, and not private act

In reaching his decision that the collective bargaining agreement disc
against Dewey, the District Judge applied retroactively Regulati
adopted by EEOC effective July 10, 1967, which was nearly ten mo
Dewey had been discharged and after the arbitrator and the Mi
Rights Commission had rejected Dewey's charges.

[4] In our opinion, it would have been more appropriate for the Dist
to have applied the EEOC Regulation 1605.1 which was in force at t
Dewey's discharge, and which became effective June 15, 1966.

The 1966 regulation contained the following provisions which rest
obligation upon the part of the employer to accommodate to the r
religious needs of his employees:

Section 1605.1(a):

"(3) However, the Commission believes that an employer is free u
VII to establish a normal work week (including paid holidays) ge
plicable to all employees, notwithstanding that this schedule may c
with uniformity in its effect upon the religious observances of his empl
example, an employer who is closed for business on Sunday does not dis
merely because he requires that all his employees be available for
Saturday."

Section 1605.1(b):

"(3) The employer may prescribe the normal work week and foresee
time requirements, and, absent an intent on the part of the employ
criminate on religious grounds, a job applicant or employee who ac
job knowing or having reason to believe that such requirements will
with his religious obligations is not entitled to demand any alterati
requirements to accommodate his religious needs."

The 1967 regulation, retroactively applied by the District Court, d
above quoted language and other material parts of the 1966 regul
instead of providing definite guidelines for the assistance of employers
be affected, left the matter largely on an *ad hoc* basis for the deci
Commission on the particular facts of each case.

[5] It is clear that Reynolds complied with the 1966 regulation T
tions contained in the collective bargaining contract, which were
the regulations of EEOC then in effect, ought not to be impaired by
tion of a subsequently passed inconsistent regulation.

[6] The District Judge took into account his *ex post facto* applicat
1967, EEOC regulation by starting Dewey's back pay from August 1, 19
of from the date of his discharge, holding that this date was a rea
after the 1967 regulation became effective for the company to work
modation to it. The trouble with this treatment is that Dewey was n
the employ of Reynolds. Having a lawful right at the time to discha
under the 1966 regulations, Reynolds ought not to be required to re
at a later date and pay his back salary merely because EEOC decided
the rule by adopting new, inconsistent regulations. The rights of

governed by the law in effect at the time of the discharge. EEOC these rights by subsequently adopting a new regulation.

ier provides:

of the court shall require * * * the hiring, reinstatement or n individual employee, or the payment to him of any back pay, dual * * * was suspended or discharged for any reason other ation on account of race, color, religion, sex or national origin or section 2000e3(a) of this title." 42 U.S.C. § 000e5(g).

on for Dewey's discharge was not discrimination on account of his s because he violated the provisions of the collective bargaining ered into by his union with his employer, which provisions were lly to all employees. The violation consisted not only of his refus- n Sundays, but also his refusing to arrange for a replacement, alternate procedure. He did arrange for five replacements, but ven to do this, claiming that it was a sin. He apparently did not ful for him to collect wages from an employer who was compelled ertime production in order to meet its contractual commitments meet its payroll.

Dewey's demands would require Reynolds to discriminate against yees by requiring them to work on Sundays in the place of Dewey. g Dewey of his contractual obligation. This would constitute un- ation of the collective bargaining agreement among the employees, te chaotic personnel problems and lead to grievances and addi- ons. The practice of permitting the employee, rather than the em- re the replacement served to insulate the employer against any ual naming of replacements.

if the 1967 regulations are applied, we think that Reynolds com- ion 1605.1(b) thereof by making a reasonable accommodation to eeds of its employees when it permitted Dewey, by the replace- to observe Sunday as his Sabbath.[1] He stubbornly refused to rivilege. The finding of the District Court that Reynolds did not le accommodations to the religious needs of Dewey is not sup- untial evidence and is clearly erroneous. Rule 52(a) Fed. R. Civ. P. Court referred to the inalienable right of freedom of religion, is protected by the First and Fourteenth Amendments to the d the Civil Rights Act. The employer did not question Dewey's n of religion; Reynolds did question Dewey's right to practice his on it and to interfere with the operation of its plant.

l defense is provided in the first sentence of 42 U.S.C. § 2000e-5 rides:

finds that the respondent has intentionally engaged in or is inten- g in an unlawful employment practice charged in the complaint, enjoin the respondent from engaging in such unlawful employ- and order such affirmative action as may be appropriate, which instatement or hiring of employees, with or without back pay e employer, employment agency, or labor organization, as the sponsible for the unlawful employment practice)."

of the statute requires a finding that the employer has inten- l in an unlawful employment practice before the court may award v. Griffith Rubber Mills, 300 F. Supp. 388, 341 (D. Ore. 1969). rdly be said that Reynolds intentionally violated the Act when n was found by either the Michigan Civil Rights Commission, the l Contract Compliance, the arbitrator chosen by agreement of the District Regional Director of the EEOC in Cleveland. In addition, ort his finding of an unlawful employment practice, the District pply regulations adopted subsequent to the employee's discharge e in force at the time the alleged violation took place. The finding Court that there was an intentional violation of the Act is not sup- untial evidence and is clearly erroneous. Rule 52(a) Fed. R. Civ. P.

observed that it is regulation 1605.1(b) and not the statute (§ 2000e- res an employer to make reasonable accommodations to the religious loyees. As we have pointed out, the gravamen of an offense under the iscrimination. The authority of EEOC to adopt a regulation interfering affairs of an employer, absent discrimination, may well be doubted.

Effect of the arbitration

It is clear that if the arbitrator of the grievances had granted [illegible] Dewey, instead of to Reynolds, the award would have been final, [illegible] conclusive on Reynolds. Reynolds would not have been permitted to re[illegible] award in the courts. This is the teaching of the United Steelwork[illegible] which clearly defined the respective functions of the courts and the [illegible] United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 [illegible] S. Ct. 1347 to 1348, 4 L. Ed. 2d 1403 to 1408 363 U.S. 574 to 592, 80 S [illegible] to 1358, 4 L. Ed. 2d 1409 to 1423, 363 U.S. 593 to 602, 80 S. Ct. 1358 [illegible] Ed. 2d 1424 to 1431 (1960); Washington v. Aerojet-General Corp., 2[illegible] 517 (C.D. Cal., 1968).

In *Steelworkers*, the Court said:

"When the judiciary undertakes to determine the merits of a griev[illegible] the guise of interpreting the grievance procedure of collective bargai[illegible] ments, it usurps a function which under that regime is entrusted to [illegible] tion tribunal." (*id.* at 569, 80 S.Ct. at 1347)

[10] The arbitrator had jurisdiction to determine the grievances. T[illegible] tion involved an interpretation of the collective bargaining agreeme[illegible] spect to Dewey's claims that he had been laid off and discharged be[illegible] religious beliefs. In arbitration proceedings, frequently questions of la[illegible] are resolved by the arbitrator. Where the grievances are based on a [illegible] civil rights violation, and the parties consent to arbitration by a mu[illegible] able arbitrator, in our judgment the arbitrator has a right to finally [illegible] them. Any other construction would bring about the result presen[illegible] stant case, namely, that the employer, but not the employee, is bo[illegible] arbitration.

This result could sound the death knell to arbitration of labor disp[illegible] has been so usefully employed in their settlement. Employers would [illegible] clined to agree to arbitration clauses in collective bargaining agreeme[illegible] provide only a one-way street, *i.e.*, that the awards are binding on [illegible] on their employees.

The tremendous increase in civil rights litigation leads one to the belief [illegible] Act will be used more frequently in labor disputes. Such use ought not [illegible] the efficacy of arbitration.

In the supplemental brief of EEOC as amicus curiae, the case of Sa[illegible] ning News Ass'n, 371 U.S. 195, 197-198, 83 S. Ct. 267, 9 L.Ed.2d 246 (196[illegible] for the proposition that "the complainant is not required to elect betwe[illegible] tractual rights or his statutory rights but may seek to vindicate [illegible] contractual and statutory proceedings." (EEOC Supp. Brief, p. 3) [illegible] the brief neglected to state that the collective bargaining agreement [illegible] *News* contained no grievance arbitration procedure which had to be [illegible] before recourse could be had to the courts. 371 U.S. 196, fn 1, 83 S.Ct. [illegible]

[11] The question in our case is not whether arbitration and re[illegible] courts could be maintained at the same time; rather our case involves [illegible] tion whether suit may be brought in court *after* the grievance has [illegible] adjudicated by arbitration.

We see no good analogy between jurisdiction of the National Labor [illegible] Board and that of EEOC. The Labor Board has adjudicatory powers [illegible] fair labor practices, subject only to judicial review. Orders of the [illegible] be vacated on review only when they are not supported by substan[illegible] upon consideration of the record as a whole. EEOC, on the other [illegible] such power. The District Court considers EEOC cases de novo. The [illegible] history, from which we have previously quoted, indicates the reas[illegible] difference.

Nor do we find any national policy for ousting arbitrators of [illegible] finally determine grievances initiated by employees, based on alleg[illegible] of their civil rights.

The judgment of the District Court is reversed and the cause is rem[illegible] instructions to dismiss the complaint.

Combs, Circuit Judge (dissenting).

I respectfully dissent. In my opinion the District Court correctly [illegible] that the company had not complied with Title VII of the Civil [illegible] in that it failed to make reasonable accommodation to Dewey's relig[illegible]

The Equal Employment Opportunity Commission was formed to [illegible] purposes of the Act, 42 U.S.C. § 2000e-4, and was granted power to [illegible] regulations consistent with the provisions of the Act. 42 U.S.C. § 2[illegible]

n's interpretation of the Act is persuasive although not binding
It was said in Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 801,
(1965) : "[T]his Court shows great deference to the interpretation
te by the officers or agency charged with its administration," citing
Compensation Commission v. Aragon, 329 U.S. 143, 153, 67 S.Ct.
136 (1946) ; Gray v. Powell, 314 U.S. 402, 62 S.Ct. 326, 86 L.Ed.
id Universal Battery Co. v. United States, 281 U.S. 580, 50 S.Ct.
951 (1930).

its statutory authority, the Commission issued Regulation Section
July 10, 1967, which provides, inter alia :

mmission believes that the duty not to discriminate on religious
ed by section 703(a)(1) of the Civil Rights Act of 1964, includes
n the part of the employer to make reasonable accommodations
needs of employees and prospective employees where such accom-
be made without undue hardship on the conduct of the employer's

of the particularly sensitive nature of discharging or refusing to
e or applicant on account of his religious beliefs, the employer has
roving that an undue hardship renders the required accommoda
ious needs of the employee unreasonable.

rity opinion correctly points out, the 1967 Regulations were not
time of Dewey's discharge. However, the 1966 Regulations, which
t that time, also provided that "the duty not to discriminate on
ds includes an obligation on the part of the employer to accom-
sonable religious needs of employees and, in some cases, prospec
where such accommodations can be made without serious incon-
conduct of the business." It is thus apparent that the cornerstone
and 1967 Regulations is the obligation of the employer to accom-
ious needs of employees where such accommodations can be made
hardship on the conduct of the employer's business.

sonable interpretation of the Act. So, the test is whether the com-
reasonable effort to accommodate Dewey's religious beliefs. The
ation to which the company points, in addition to requesting
he privilege extended to Dewey to obtain replacement for his
e assignments. The majority views the existence of this privilege
accommodation to Dewey's religious needs, and notes that "he
sed to exercise this privilege." This "stubborn" refusal on Dewey's
led in his belief that working on Sunday is inherently wrong and
a sin for him to induce another to work in his place. The replace-
as therefore no solution to Dewey's problem. There is a signifi
the company to show that it could not have obtained a replace-
without hardship or inconvenience. There is also no showing that
to work himself or to obtain a replacement would have seriously
schedules or internal discipline. I find no support in the record
n in the majority opinion that to grant Dewey's request would
personnel problems and lead to grievances and additional arbitra-
the company has completely failed to show that Dewey's refusal
day would create undue hardship on the conduct of its business.
pressed with the argument that to grant Dewey's request would
t the company's contractual right to require overtime work. No
duced on this point. The company may not stand flatfootedly on
right to require overtime work. Provisions of the contract must
stitutional mandates and valid statutory enactments. The First
nt to freedom of religion has always been recognized as one of the
trongest mandates. Even though this right has not been extended
labor relations, section 703(a)(1) of the Civil Rights Act is a
irective that reasonable accommodation should be made by man-
religious beliefs of employees when this can be done without
on the employer. The District Judge did not apply the First and
endments to the bargaining agreement here involved, but placed
Title VII of the Act and specifically stated that he did not find it
ch the question whether plaintiff's constitutional rights had been

nable to agree that Dewey made an election of remedies by first
ievance procedure under the bargaining agreement and that he
luded from maintaining this action. Dewey's rights under the

collective bargaining agreement and those created by Title VII of
separate and distinct. The election of remedies doctrine therefore do
See Bowe v. Colgate Palmolive Company, 416 F.2d 711 (7th Cir. 196
Trust Co. v Pacific Employers Ins. Co., 282 F.2d 106, 110 (9th Cir.
Seventh Circuit held in *Bowe* that a plaintiff suing under 42 U.S.C.
"utilize dual or parallel prosecution both in court and through
long as election of remedy was made after adjudication so as to pr
cate relief which would result in an unjust enrichment or win
plaintiffs."

I would affirm the judgment.

A majority of the judges of this Court having voted against a
banc, it is ordered that the petition for rehearing be referred to
final disposition. Judges Edwards and McCree voted in favor of
en banc.

Entered by order of the Court.

Before Weick and McCree,[2] Circuit Judges and O'Sullivan, Sen
Judge.

Weick, Circuit Judge.

It is contended that we have adopted a narrow construction
Rights Act and the regulations adopted by EEOC thereunder. W
we have not. The legislative history of the Act expresses a clear
intent to inhibit only discrimination against an individual becaus
color, religion, sex or national origin. The plain language of the sta
2000e-2(a) of Title 42, is susceptible of no other meaning.

[12] Nowhere in the legislative history of the Act do we find any
intent to coerce or compel one person to accede to or accommodate
beliefs of another. The requirement of accommodation to religio
contained only in the EEOC Regulations, which in our judgment
sistent with the Act.

The collective bargaining agreement, by which *all* employees wer
to perform straight time and overtime required of them by the
equally and uniformly applied to all of the employees, and is d
against no one.

[13, 14] To construe the Act as authorizing the adoption of Regu
would coerce or compel an employer to accede to accommodate
beliefs of all of his employees would raise grave constitutional
violation of the Establishment Clause of the First Amendment. It
the Government, in its relations with religious believers and nonbe
be neutral. The Government is without power to support, assist, fa
cap any religion. See Abington, School Dist. v. Schempp, 374 U.S.
1560, 10 L.Ed. 2d 844 (1963); Engel v. Vitale, 370 U.S. 421, 82 S.Ct.
2d 601 (1962); Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6
(1961); Everson v. Board of Educ., 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed.
Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (19
In Braunfeld v. Brown, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d
the Court upheld a state Sunday Closing Law against the cont
operated to prohibit the free exercise of appellant's religion wh
Saturday as the Sabbath.

No one disputes Dewey's right to his religious beliefs. The questi
he has the right to impose his religious beliefs on his employer a
with the operation of its plant. As Mr. Justice Douglas pointed
curring opinion in Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 179
965 (1963), the religious beliefs of individuals may take on many
tioned specifically only a few, including Moslems, who attend a
day and pray five times daily; Sikh, who carry a symbolic or re
Quakers, who affirm instead of swearing; and Seventh Day Adv
observe Saturday as Sabbath and eat only certain meats.

The arbitrator in his award stated that an employee might even
gious organization which observed Wednesday as Sabbath.

It is argued that under EEOC Regulations the employer is requ
only reasonable accommodations to the religious needs of his em
employee may claim that all of his religious needs are reasonable

[2] Judge McCree was designated by the Chief Judge as the third member
take the place of Judge Combs who resigned as a member of the Court
prior to the filing of the petition for rehearing. The designation was ma
Judge McCree may file a dissent expressing his views.

on, and file charges with EEOC against his employer for failure
e them. An employer with thousands of employees could certainly
the filing of many of such claims. This would also present serious
bor organizations to cope with.
l not intend that employers or labor organizations should be
respect to claims not involving discrimination. In the legislative
ct it is stated :
irs of employers and labor organizations must not be interfered
the limited extent that correction is required in discrimination
U.S. Code Cong. & Adm. News, at p. 2516.
lamental error of Dewey and the Amici Curiae is that they equate
nination with failure to accommodate. We submit these two con-
ly different. The employer ought not to be forced to accommodate
ying religious beliefs and practices of his employees.
d the employ of Reynolds before he acquired his religious beliefs.
tive bargaining agreement was also entered into prior to that
equired his religious beliefs, his employer did endeavor to make
to the religious beliefs of its employees by interpreting the
to permit any employee assigned to overtime to be relieved from
simply by arranging for another qualified employee to replace
at this was a reasonable accommodation.
no difficulty, did arrange for replacements on five different occa-
he decided not only that it was a sin for him to obtain a replace-
arbitrator found specifically that Dewey told his replacement,
serve as a replacement any more."
was stipulated that Dewey was sincere in his beliefs, he offered
he tenets of his church forbade his designating a replacement to
ce on Sundays. The fact that he was sincere in his beliefs gave
ights.
retroactive application of the 1967 Regulations to the 1966 dis-
ed by EEOC in its amicus brief, with the assertion that its Regu-
"interpretations" and that "the timing of the Commission inter-
relevant" since the 1966 Regulation is now a "defunct Commis-
Although defunct in 1967, it was certainly in full force and
d authorized the employer to prescribe "the normal work week
overtime requirements and absent an intent to discriminate on
s, a job applicant or employee who accepted the job knowing or
le grounds to believe that such requirements would conflict with
gations is not entitled to demand any alterations in such require-
modate his religious needs."
ot acquire his religious beliefs until after his employer had
e 1960 collective bargaining agreement which required all em-
overtime. Dewey thus had actual knowledge that the require-
ollective bargaining agreement would conflict with his subse-
d religious needs. Under the regulations in force at the time,
aims are now defunct, the employer was under no obligation to
There was no claim that the employer intended to discriminate
nds. These regulations had the force and effect of law. Their sub-
after the discharge, ought not to affect the rights or obligations

nswer, however, to all of Dewey's claims is that the collective
ement was equal in its application to all employees and was uni-
discriminating against no one.

Effect of the Arbitrator's Award

ulpepper v. Reynolds Metals Co., 421 F. 2d 888 (5th Cir. 1970),
support of the proposition that an employee may utilize both
an action under Title VII of the Civil Rights Act. In Culpepper,
grievance was filed, which was never processed through arbi-
or involved racial discrimination, which a majority of the panel
erious as to impose—"* * * the duty on the courts to make sure
ks. * * *"
Coleman, who filed a concurring opinion, disagreed rather vig-
such duty was imposed on the Courts. He stated :

"Under our Constitutionally ordained form of Government, wh
works or fails is the concern of the Executive or Legislature, or
courts."

We do not regard it as our function to enlarge on the plain la
statute so as to impose on citizens obligations never intended by
order to make it work.

Great reliance is placed upon Hutchings v. United Industries, In
303 (5th Cir. 1970), which was decided after our decision in the pres
announced. In our opinion Hutchings does not comport with Boys
v. Retail Clerks Union, Local 770, 398 U.S. 235, 90 S.Ct. 1583, 26 L
(1970).

In *Boys Markets*, Mr. Justice Brennan emphasized the importan
tion in the settlement of labor disputes. He said:

"However, we have frequently noted, in such cases as *Lincol*
U.S. 448, 77 S.Ct. 912, 1 L.Ed. 2d 972] the *Steelworkers* [363 U.S.
1343, 4 L.Ed. 2d 1403] *Trilogy*, and *Lucas Flour*, [369 U.S. 95, 8
L.Ed. 2d 593] the importance which Congress has attached gene
voluntary settlement of labor disputes without resort to self-h
particularly to arbitration as a means to this end. Indeed, it has
that *Lincoln Mills*, in its exposition of § 301(a), 'went a long way
ing arbitration the central institution in the administration of collec
ing contracts.'

"The *Sinclair* [370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed. 2d 440] decis
seriously undermined the effectiveness of the arbitration techniq
peacefully to resolve industrial disputes without resort to strikes,
similar devices. Clearly employers will be wary of assuming
arbitrate specifically enforceable against them when no similar
remedy is available to enforce the concomitant undertaking of
refrain from striking." [footnote omitted].

Similarly, employers would be wary of arbitration clauses in
gaining agreements if, as in the present case, the arbitration is bin
only and not on their employees.

Our case is even stronger than *Boys Markets* because the griev
submitted to arbitration and the arbitrator made an award wh
binding and conclusive on the parties. It is as binding as a judgme
2d, Arbitration and Award § 147. It remains in full force and effect.

The amicus brief of NAACP Legal Defense Fund candidly recogni
may be true that the result of such an accommodation will be tha
but not the employee will be bound by the decision of the arbitrat
14)

We know of no good reason why an award of an arbitrator s
binding on both parties, the same as a judgment of a court.

It is difficult for us to believe that any employer would ever agr
tion of a grievance if he knew that the employee would not be bo
result.

The importance of arbitration in the resolution of all labor di
theme of the United Steel Workers Trilogy, 363 U.S. 564-602, 80 S
L. Ed. 2d 1403 (1960). The purpose of arbitration is thwarted
are held by the courts to be binding on employers only and not on

The petition for rehearing is denied.

McCREE, Circuit Judge (dissenting). I would grant the petition f
and affirm the judgment of the District Court for the reasons st
senting opinion of Judge Combs. Furthermore, I observe that in
Seventh Circuit, Bowe v. Colgate-Palmolive Co., 416 F. 2d 711 (
Circuit has held that appellee's invocation of the grievance arbi
dures did not bar him from proceeding in the District Court und
of the Civil Rights Act. Hutchings v. United States Industries, In
(5th Cir. June 19, 1970).

BOBBIE KENNETH DEWEY v. REYNOLDS METALS COMPANY, NO. 835, OCTOBER

On writ of certiorari to the United States Court of Appeals for
Circuit.

Former decision, 400 U.S. 1008, 91 S.Ct. 566, 401 U.S. 932, 91 S
S.Ct. 1365.

Facts and opinion, D.C., 300 F.Supp. 709; 6 Cir., 429 F.2d 324

Donald F. Oosterhouse, Grand Rapids, Mich., for petitioner.

Wallace, Washington, D.C., for the United States, as amicus
l leave of Court.
uglin, Jr., Detroit, Mich., for respondent.
PER CURIAM. The judgment is affirmed by an equally divided

ARLAN took part in the consideration or decision of this case.

.S. District Court for the Middle District of Florida]

CHARLES B. RILEY v. THE BENDIX CORP.

me on for trial before the Court, Honorable Richard M. Duncan,
istrict Judge, presiding, and the issues having been duly tried
aving been duly rendered.
and Adjudged that the plaintiff take nothing, that the action
the merits, and that the defendant, The Bendix Corporation,
aintiff, Charles B. Riley, its costs of action.
uly 12, 1971.

ANDUM OPINION, FINDING OF FACT AND CONCLUSION OF LAW

uted this action in this court on June 3, 1969, pursuant to Title
-5 United States Code, the Civil Rights Act of 1964, alleging
nt had violated his civil rights by terminating his employment
hat he refused to work from sun-down on Friday until sun-
ay of each week. He seeks damages, restoration to his former
injunction enjoining the defendant from further interfering
s beliefs, and attorney's fees.
ember of the Seventh Day Adventist Church and he states that
ines of his church is that its members shall not engage in any
ent between sun-down Friday and sun-down Saturday of each

mployed by the defendant in January, 1967, as a mechanical fore-
of $725.00 per month. After serving a short period of time in the
rtment, at his request he was placed in charge of a program for
echanics. His hours were 7:30 o'clock a.m. until 4:00 o'clock p.m.

67, the plaintiff was informed that he had been transferred to the
hours of labor on that shift were from 3:30 p.m. to 12:00 o'clock
ys a week, which would require the plaintiff, in the performance
work several hours after sun-down on Friday.
hat at the time of the transfer he told his general foreman, Mr.
vas a Seventh Day Adventist, and that his religious beliefs pre-
working after sun-down on each Friday. On the contrary, the
that the plaintiff did not object to the shift or tell him of his
ons at the time, but that just before going to work on the second
come to his office and tell him that he could not work after sun-
. Plaintiff also says that O'Neill told him under the company
ave to work the hours required on that shift.
e Bendix Corporation was operating under a contract with the
ities and Space Administration in connection with the building
missiles from Cape Kennedy. The particular branch of the ser-
plaintiff was assigned was engaged primarily in the mainte-
achinery and other equipment incident to the launching of mis-
four groups in the mechanical section to which the plaintiff was
the time of his employment the section consisted of about 220
nsferred from the mechanical group preparing training programs
n program to the maintenance group and subsequently to the
ntiff began work on the second shift on Monday, July 17, 1967.
nment to the second shift, plaintiff did not work after sun-down
e would report for work at 3:30 and before sun-down he would
isor and leave the job. This meant that he had worked approxi-
our hours, and would be absent for the remainder of the second
provide for any replacement during the period of his absence.
rvisor discussed the subject on several occasions, and on each
old that it would be necessary for him to continue his work.

It was the policy of the company to shift the foremen of a group ev
which, of course, necessitated those who were assigned to the sec
work from 3:30 to midnight, five days a week. The reassignment of pl
in July, 1967, was necessitated by the vacation season. When one fore
vacation it was necessary for another forman to substitute for him and
place.

On August 18, 1967, the plaintiff was discharged for insubordinatio
fusal to work the required hours on the second shift. The com
submitted to the Equal Employment Opportunity Commission, and
Commission and the Company were unable to agree upon a reinstate
plaintiff, this action was filed. The following written communications
between the plaintiff and various officers of the defendant prior to
this suit:

On July 27, 1967, following plaintiff's transfer to the second shift, h
AVO (Avoid Verbal Orders) form, addressed to A. S. O'Neill in wh

"Being a member of the Seventh Day Adventist Church for the pu
observe the seventh day sabbath from Friday at sundown to Satur
down. I would like to have this time off to attend to my religious

"(I will work this time in an emergency.)

From: Charles B

On August 1, A/S. O'Neill signed an AVO addressed to Charles B
which he stated:

"Time off for the Seventh Day Church observance.

"Any employee is allowed time off to attend church however time
ligious observance cannot be allowed if work schedules dictate a
work.

"The above does not pertain to your request to be absent from wo
day evening at sundown to Saturday evening at sundown. Your req
mission to do the above was turned down by me, and you absented y
the job irregardless.

"From: A. S

On August 3, 1967, the plaintiff signed another AVO directed to A
in which he stated:

"I believe in keeping the Sabbath day holy, for this reason I work
excused from sundown Fri. to sundown Sat. Time off will be only
regular scheduled shift."

"Signed: Charles B

On August 4, A. S. O'Neill signed an AVO addressed to the plaint
it was stated:

"Your request to be absent from the job from 9 August 1967 through
1967 has been granted, but only at a non-paid absence."

"Signed: A. S

On the same day, August 4, A. S. O'Neill signed another AVO
Charles B. Riley, in which he stated:

"Your required hours of work are from 1530 to 2400 hours."

On August 7, A. S. O'Neill addressed a communication to Riley, in
stated:

"Shift requirements.

"You are required to be present daily for your entire scheduled
second shift, whichever it may be. You are also required to res
quests for overtime, first or second shift, whichever it may be. The
no allowance for Church Holidays as such, except for an occas
service.

"In the event the above is unacceptable to you, you should seek
elsewhere. Your recent practice of working half of your scheduled
days and checking out without permission cannot be tolerated and if
to persist with this practice, you will be terminated."

On August 21, A. S. O'Neill signed an AVO addressed to Charles
which it was stated:

"Termination.

"You have been terminated from the Bendix Launch Support Divis
2030 Hrs. 18 August 1967, for insubordination. You have been insubo
least four occasions by absenting yourself from the job and going

shift after you had been informed by me, verbally and in writing
t to leave early had been denied."
plaintiff's dismissal, the controversy was submitted to the Equal
portunity Commission. After consideration by that Commission,
dressed the following communication to Riley:

. RILEY,
lsborough Avenue,
33615

"JANUARY 3, 1968.

-1.

LEY: We have again reviewed the circumstances and conditions
employment with the Launch Support Division at the request
ederal Contract Compliance with whom your complaint charging
religious discrimination was filed.
th sound management procedure, the division must accept its re-
int out the following:
clearly in violation of established division policy through insub-
ving your job prior to the end of the shift of on several occasions
being told in writing to do so.
l without apparent regard for the continuation and safety of the
Launch Support Division to maintain its contractual obliga-
since you left without notice or making preparation for some-
ur responsibilities as foreman.
of salary and expenses (Total—$4,520.00), permit me to be *re-*
ie records show that I resigned not 'Fired.'
dicates my wish to have a fair and final settlement of claim
x Launch Support Division.
lly,

"/S/ Charles B. Riley,
CHARLES B. RILEY,

replied on January 25, 1968 as follows:

JANUARY 25, 1968.

. RILEY,
orough Ave.,

-14.

LEY: We have your reply dated 8 January, 1968 to our offer
While you were unable to accept our offer, we are nonetheless
that you are employed in a position satisfactory to you.
cannot assume responsibility for any of the various claims
ter since these were incurred by you in pursuit of your personal

is possible only upon agreement at the time of rehire whenever
been terminated (voluntarily or involuntarily). Our records
ed, however, to indicate that you are eligible for rehire as you

employment was tendered in a positive effort to rehire you as
riate avenue open to both you and the division for satisfying
es. As you are unable to accept our offer we must consider the

y yours,

"/S/ George W. Knox,
GEORGE W. KNOX,
"Supervisor, Employment and Employee Relations.

foregoing series of correspondence, this suit was filed. The par-
ed that by this action "the Plaintiff seeks reinstatement to his
the defendant before his discharge, back pay for loss of interim
the date of discharge and the present date, attorneys fees and
institution and prosecution of this lawsuit."
ircumstances the division felt compelled to take action to safe-
ty of its other employees. We believe your charges of religious
be without foundation.

"Nevertheless, to make every possible effort to utilize your talent the following offer subject to the condition (applicable to all employ division) that you agree to work as assigned and abide by division

"We hereby offer you reemployment as a foreman at the rate month. We trust this arrangement will be suitable to you and that ployment will be mutually beneficial to you and the division.

May we hear from you regarding your decision. It is necessary ceive your answer by 12 January 1968, as we are holding the positi you.

"Very truly yours,

"/S/ George W. K
GEORGE W. K
"Supervisor, Employment and Employe

"GWK/kk."
"Ph. 305 267–4310."

On January 8, 1968, the plaintiff replied to the defendant's comm January 3 in five paragraphs in which he sought to justify his lea prior to sundown Friday. He then incurred in attempting to obtain ot ment, in the amount of $4,520.00. He further stated:

"I accepted an 'Industrial Engineering' position as an estimator Government contracts. The position is with the Honeywell Co., Tampa.

"I received a good salary and they hired me with the understand have the 'Sabbath' from sundown Friday evening to sundown. Satu off. I would like to point out that I'm now working 10–12 hours a crash program coming up. I will come in on Sundays too. My talents more here than at the 'Cape.'

"I will drop the charge against the Bendix Launch Support Divisio following conditions:

The defendant contends that it did not intentionally discharge t because of his religious beliefs contrary to Section 706(a) of the C Act of 1964, but rather for the reason that plaintiff was insubordina ing to accept his shift assignment under the circumstances of this as with his failure to perform his duties as a foreman in the position was assigned.

The parties have stipulated and the court is in agreement, that the it tion which must be resolved is "did the defendant discharge the pla lation of Section 706 of the Civil Rights Act of 1964?"

The defendant contends that it was not its intention to violate the did it discharge the plaintiff because of his religious belief, but solely his failing to work the hours assigned to him.

Section 2000e-2 Title 42 U.S.C. provides:

(a) It shall be an unlawful employment practice for an employe

"(1) to fail or refuse to hire or to discharge any individual, or discriminate against any individual with respect to his compensa conditions, or privileges of employment, because of such individual's religion, sex, or national origin * * *."

Under Section 713(a) of the Civil Rights Act of 1964, the Equal Opportunity Commission is clothed with authority from time to amend or rescind procedural regulations to carry out the provisions Such regulations must be in conformity with the standards and the Administrative Procedure Act, Title 5 § 500 *et seq.* U.S.C. In acc such provision the Commission issued and published two sets of "Discrimination Guidelines" one effective on June 15, 1966, and the July 10, 1967, which are set out in their entirety in appendices A are made a part hereof. These guidelines were in effect at the time tiff's transfer to the second shift, and at the time of his discharge.

The plaintiff relies heavily upon the regulations promulgated by Employment Opportunity Commission, and he cites numerous cases that the regulations issued by an agency charged with the admin statute should be given great weight by the courts in their interpre statute. *Udall v. Tallman, et al.*, 380 U.S. 1 (1965). We do not disagree recognized principle of law. Such regulations to be valid must be in conformity with the Act which authorizes their issuance and with and limitations set forth in the Administrative Procedure Act, Tit *et seq.* 42 U.S.C. § 2000e–12.

Paragraph (e) of the Commission's July 10, 1967, guidelines states:

f the particularly sensitive nature of discharging or refusing to
yee or applicant on account of his religious beliefs, *the employer has*
proving that undue hardship renders the required accommodation
is needs of the employee unreasonable." [Emphasis supplied]
believe that the Commission is vested with the authority of deter-
rocedural question of burden of proof. All hearings and investiga-
e conducted in accordance with the Administrative Procedure Act,
the Commission has no right to say to this court that it shall shift
proof from the plaintiff to the defendant. Aside from that fact we
be unreasonable and impractical to require the complex American
cture to prove why it cannot gear itself to the "varied religious
e American people." See Appendix B paragraph (d).
June 15, 1966 and the July 10, 1967, guidelines, the Commission
view that it is the duty of employers not to discriminate on reli-
and that employers should accommodate the reasonable religious
loyees where such accommodation can be made without serious in-
the conduct of the business. We note that the Commission in the
e July 10, 1967 guidelines, did not expressly repeal paragraph (a)
e 15, 1966 guidelines which states that under Title VII of the 1964
Act an employer is free "to establish a normal work week * * * gen-
ble to all employees," not withstanding that such a schedule "may
rith uniformity in its effect upon the religious observances of his

the plaintiff cites the case of *Jackson* v. *Veri Fresh Poultry, Inc.*,
276 (E.D. La. 1969). The plaintiff in that action was employed by
as a chicken picker at a wage of $1.25 per hour. She began work
1966, and in November, 1966 she informed her foreman that she
ble to work between approximately 5:00 p.m. Friday and 5:00 p.m.
use in her religion that was considered the Sabbath. She was sub-
by another of her supervisors that if she could not work after
n Saturday, the company could not use her services. The plaintiff's
as terminated on November 16, 1966. The court determined that the
harge was in violation of 42 U.S.C. § 2000e.
at its conclusion the court was "impressed by the opinion * * *
Dewey v. *Reynolds Metals Co.*, 300 F. Supp. 709" which the court
"case strikingly similar" to the case then under consideration.
se was subsequently reversed in *Dewey* v. *Reynolds Metals Co.*,
(6th Cir. 1970, *cert. granted*, 400 U.S. 1008 (March 1, 1971)). [Not

hat the facts in *Dewey* and *Jackson* are substantially similar, but
ulty in following the reasoning of the court in arriving at the con-
he plaintiff in *Jackson* was discharged because of her religious
view her religion was simply an incident, and if it prevented her
ing the duties required of her by her employer, he had a right to
rom the job. The rules of Bendix requiring work on Saturday ap-
ally to all employees no matter what their religious affiliation hap-

f also cites *Sherbert* v. *Verner*, 374 U.S. 398, 10 L.ed 2d 965, 83 S.Ct.
In that case the plaintiff was a Seventh Day Adventist whose reli-
ons prevented her from working on Saturday. She was denied un-
ompensation under the South Carolina Compensation Act for fail-
good cause, to accept available suitable work when it was offered
Supreme Court held that it was a violation of her constitutional
se her workmen's compensation for failing to work on her Sabbath.
Sherbert case is clearly distinguishable from the case now be-
om the *Jackson* case.
ant denies that plaintiff was discharged because of his religious
t it had any intention to violate the statute in discharging the
believe that the defendant had a right to make rules and working
be imposed upon its employees for the conduct of its business, if
not in conflict with the law, and any one accepting employment
cept such rules and working conditions.
testimony clearly reveals that its rules and working conditions
rmly with respect to all of its employees and at no time did it
ate against any person because of race, creed, or color. The record
idence to the contrary.

The guarantee of religious freedom in the United States has resulted
forms of religion, religious philosophies and sects, and it is the absolu
every person that these beliefs shall not be infringed upon. An employer
refuse to employ or discharge any person because of his religious be
surely the great and diversified types of American business cannot be
to accede to the wishes of every doctrine or religious belief. If one
position knowing that it may in some way impinge upon his religious
must conform to the working conditions of his employer or seek other
ment.

When plaintiff accepted employment with the defendant, he signed a c
tion agreement which provided for compensation for "overtime or ni
work."

He was a salaried employee and his pay was not based upon an hourly
he was an essential employee it is not difficult to understand how leaving
in the middle of the shift would have its effect upon the work he was per

As we have heretofore stated, the second shift was from 3:30 in t
noon to midnight. After plaintiff's assignment to the second shift he
for work at 3:30 but quit about 7:30 Eastern daylight saving time t
to call another foreman to report for duty at 7:30 for the purpose of
until 1:00 in the evening, would not only be impractical but likely in
under existing labor agreements.

Although the plaintiff contends that *Dewey* v. *Reynolds Metals Co.*, 42
(6th Cir. 1970), is to be distinguished both factually and legally from
now before us, we must respectfully disagree. Dewey, because of his
beliefs, refused to perform overtime labor when, under the rules of his
he was required to do so. He was discharged because of his refusal to
Sunday. At the time of his discharge there was a contract in force bet
labor organization to which Dewey belonged and Reynolds. This ag
provided:

"All employees shall be obligated to perform all straight time and overti
required of them by the Company except when an employee has a s
and justifiable reason for not working * * *."

Following his discharge Dewey filed grievances which were subsequ
mitted to arbitration. The arbitrator ruled adversely to Dewey holding
his duty to perform the work required. After obtaining a like ruling
Michigan Civil Rights Commission Dewey filed a charge with the Equal
ment Opportunity Commission alleging religious discrimination. The
sion then authorized the bringing of suit under Title VII of the Civil R
of 1964. The Court of Appeals for the Sixth Circuit found nothing disc
in the provision of the collective bargaining contract or in the manner
Reynolds executed it. The Court stated at page 330:

"The reason for Dewey's discharge was not discrimination on acc
religion; it was because he violated the provisions of the collective
agreement entered into by his union with his employer, which provis
applicable equally to all employees. The violation consisted not only of
ing to work on Sundays but also his refusing to arrange for a re
which was an alternate procedure."

We are unable to draw a distinction between the *Dewey* case and the
case, so far as the legal principles involved are concerned, because the
fact required a member to work overtime or on Sunday, if necessary.
if it is a violation of an employee's constitutional rights for the em
pare him to work overtime or to work on Sunday, it would equally be a
of his constitutional rights for the union to attempt to enforce such
agreement.

The most recent expression on the subject is found in *Dawson* v.
Supp. 511 (E.D. Va. 1971). Dawson was a mail carrier and a Seventh
gentist. He was discharged by the postmaster for failure to work
Dawson did not have enough seniority to obtain a position which
quire Saturday work, and his assignment to another shift would
violation of the bargaining contract between the Post Office Departme
Union because of his lack of seniority. Dawson found himself assigned
which required that he work on Saturday. Judge Merhige held that
The Court took no infringement of plaintiff's rights concerning
beliefs. Religious discrimination should not be equated with failure
associate."

The testimony reveals that it was the policy of the defendant to
fourteen on the second shift every 90 days, and in the regular course

ice plaintiff was assigned to that shift on July 17, 1967. This was season and when a foreman was on vacation, it became necessary foreman to take his place.

ding that the defendant did not in any respect discriminate against ecause of his religious beliefs. The assignment to the second shift sual and normal conduct of the defendant's business and was in no minatory against any foreman because of his religion. All of the treated equally.

re our conclusion that the plaintiff was discharged solely because to work the hours assigned to him and not as a result of any reli- nation against him on the part of the defendant.

rdered in chambers in Kansas City, Missouri, this 7th day of July,

RICHARD M. DUNCAN,
U.S. Sr. District Judge.

ed to:
puter, Esq., 1210 Citizens Bank Building, Orlando, Fla. 32801.
Burke, Esq., van den Berg, Gay Burke & Dyer, 16 South Magnolia, da 32801.
ethel, 1800 G Street NW., Washington, D.C. 20506.

APPENDIX A

loyment Opportunity Commission, Religious Discrimination Guidelines (Effective June 15, 1966))

05.1 Observance of Sabbath and religious holidays.—(a)(1) Sev- ts filed with the Commission have raised the question whether nation on account of religion to discharge or to refuse to hire a religious observances require that he take time off during the gular work week. These complaints arise in a variety of contexts, nvolve employees who regularly observe Saturdays as the Sabbath e certain special holidays during the year.

ommission believes that the duty not to discriminate on religious des an obligation on the part of the employer to accommodate e religious needs, of employees and, in some cases, prospective ere such accommodation can be made without serious inconvenience of the business.

ver, the Commission believes that an employer is free under Title sh a normal work week (including paid holidays) generally ap- employees, notwithstanding that this schedule may not operate ty in its effect upon the religious observances of his employees. an employer who is closed for business on Sunday does not dis- rely because he requires that all his employees be available for rday.

an employer who closes his business on Christmas or Good Friday obligated to give time off with pay to Jewish employees for Rosh Yom Kippur.

the question of what accommodation by the employer may reason- red must be decided on the peculiar facts of each case, the follow- may prove helpful.

ployer may permit absences from work on religious holidays, ut pay, but must treat all religions with substantial uniformity in However, the closing of a business on one religious holiday igation to permit time off from work on another.

ployer, to the extent he can do so without serious inconvenience to f his business, should make a reasonable accommodation to the nployees and applicants for employment in connection with special ay observances.

mployer may prescribe the normal work week and foreseeable irements, and absent an intent on the part of the employer to n religious grounds, a job applicant or employee who accepted the or having reason to believe that such requirements would conflict ious obligations is not entitled to demand any alterations in such to accommodate his religious needs.

an employee has previously been employed on a schedule which lict with his religious obligations, and it becomes necessary to

alter his work schedule, the employer should attempt to achieve an ac
tion so as to avoid a conflict However, an employer is not compelle
such an accommodation at the expense of serious inconvenience to th
of his business or disproportionate allocation of unfavorable work a
to other employees."

APPENDIX B

(Equal Employment Opportunity Commission, Religious Discriminat
lines (Effective July 10, 1967))

"Section 1605.1 Observance of Sabbath and other religious holid
Several complaints filed with the Commission have raised the questio
it is discrimination on account of religion to discharge or refuse to
ployees who regularly observe Friday evening and Saturday, or some
of the week, as the Sabbath or who observe certain special religious
during the year and, as a consequence, do not work on such days.

"(b) The Commission believes that the duty not to discriminate o
grounds, required by section 703(a)(1) of the Civil Rights Act of 1964
an obligation on the part of the employer to make reasonable accom
to the religious needs of employees and prospective employees where
commodations can be made without undue hardship on the conduc
employer's business. Such undue hardship, for example, may exist w
employee's needed work cannot be performed by another employee
stantially similar qualifications during the period of absence of the
observer.

"(c) Because of the particularly sensitive nature of discharging o
to hire an employee or applicant on account of his religious beliefs, th
has the burden of proving that an undue hardship renders the requir
modations to the religious needs of the employee unreasonable.

"(d) The Commission will review each case on an individual ba
effort to seek an equitable application of these guidelines to the variet
tions which arise due to the varied religious practices of the America

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[Equal Employment Opportunity Commission Release, July 12, 1

EEOC ADOPTS NEW GUIDELINES ON RELIGIOUS DISCRIMINATION

The Equal Employment Opportunity Commission today announced it
lines concerning the observance of the Sabbath and other religious h
they relate to discrimination in employment.

The Guidelines, effective immediately, state:

The duty not to discriminate on religious grounds, required under T
includes an obligation on the part of the employer to make reas
modations to the religious needs of employees when such obligation
place undue hardship on the employer's business.

To illustrate, the Guidelines say that an undue hardship may exis
employee's needed work cannot be performed by another employee d
absence of the Sabbath observer.

The Commission recognizes the sensitive nature of discharging or
to hire an employee or applicant on account of his religious beliefs. U
new Guidelines, the employer has the burden of proving that an und
ship prevents him from making reasonable accommodations to the
needs of the employee.

In an effort to equitably apply the Guidelines the Commission will
case on an individual basis since a variety of situations arise out of
religious practices.

The Guidelines apply to cases before the Commission as well as to
in the future. They substitute for those issued June 14, 1966.

The Commission undertook a review of the 1966 guidelines after
charges were filed raising the question whether it is religious discri
to discharge or refuse to hire employees who regularly observe a d
than Sunday as the Sabbath and certain religious holidays and do
on such days.

The new Guidelines were proposed and publicly announced on May
Text of new Guidelines attached.

29—Labor—Equal Employment Opportunity Commission

N DISCRIMINATION BECAUSE OF RELIGION—OBSERVANCE OF THE SABBATH AND OTHER RELIGIOUS HOLIDAYS

of its authority under Section 713 of the Civil Rights Act of 1964, 00e–12(b), the Equal Employment Opportunity Commission hereby ou 1605.1, Guidelines on Discrimination Because of Religion. This ecomes effective immediately and shall be applicable with respect ently before or hereafter filed with the Commission. Section 1605.1 nall read as follows:

rvation of the Sabbath and other religious holidays.

l complaints filed with the Commission have raised the question discrimination on account of religion to discharge or refuse to hire o regularly observe Friday evening and Saturday, or some other ek, as the Sabbath or who observe certain special religious holidays r and, as a consequence, do not work on such days.

ommission believes that the duty not to discriminate on religious red by Section 703(a)(1) of the Civil Rights Act of 1964, includes on the part of the employer to make reasonable accommodations us needs of employees and prospective employees where such ac- can be made without undue hardship on the conduct of the em- ess. Such undue hardship, for example, may exist where the em- d work cannot be performed by another employee of substantially ications during the period of absence of the Sabbath observer. e of the particularly sensitive nature of discharging or refusing to oyee or applicant on account of his religious beliefs, the employer n of proving that an undue hardship renders the required accom- he religious needs of the employee unreasonable.

ommission will review each case on an individual basis in an effort uitable application of these guidelines to the variety of situations ue to the varied religious practices of the American people.

Washington, D.C., this tenth day of July 1967.

Luther Holcomb,
Acting Chairman.

Rules and Regulations

TER XIV—Equal Employment Opportunity Commission

ee responsibilities and conduct.
ural regulations.
s and reports.
nes on discrimination because of sex.
nes on discrimination because of religion.
nes on discrimination because of national origin.
nes on employee selection procedures.
ility of records.

PART 1600—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General

Purpose and policy.
Definitions.
Interpretations and counseling.
Disciplinary and other remedial action.
Appeal.

B—Limitations on conduct and responsibilities of employees

Proscribed actions.
Gifts, entertainment, and favors.
Outside employment and other activity.
Financial interests.
Other standards of conduct.

Conduct and responsibilities of special government employees

Limitations.

Subpart D—Statement of employment and financial interests

1600.735–401 Employees required to submit statements.
1600.735–402 Time and place for submission of employee statement.
1600.735–403 Reviews of statement of employment and financial interests.
1600.735–404 Supplementary statements.
1600.735–405 Interests of employees' relatives.
1600.735–406 Information not known by employees.
1600.735–407 Information not required.
1600.735–408 Confidentiality of employees' statements.
1600.735–409 Effect of employees' statements on other requirements.

AUTHORITY: The provision of this Part 1600 issued under E.O. 11222, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.

SOURCE: The provisions of this Part 1600 appear at 33 F.R. 4329, Mar. unless otherwise noted.

Subpart A—General

§ 1600.735–101 Purpose and policy.

(a) *Purpose.* The purpose of this part is to implement Executive Or May 8, 1965 (30 CFR 6469) and Part 735 of the Civil Service Commis lations adopted pursuant thereto (5 CFR Part 735) by defining s conduct and related procedures for employees and special Governm ees of the EEOC.

(b) *Policy.* The maintenance of high standards of ethical conduct ment employees and special Government employees is essential to proper performance of the Government's business and the maintena fidence and respect of the citizens in their Government. No publi lawfully engage in business activities which are incompatible with his office.

§ 1600.735–102 Definitions.

(a) "Agency" means the Equal Employment Opportunity Commiss

(b) "Employee" means an officer or employee of the Equal Emp portunity Commission, but does not include a special Government em

(c) "Executive order" means Executive Order 11222 of May 8, 1965.

(d) "Person" means an individual, corporation, company, asso partnership, society, joint stock company, or any other organizatio tion.

(e) "Special Government employee" means a temporary employe without compensation, appointed to perform for not to exceed 130 d any period of 365 consecutive days duties on either a full-time or i basis. Such employees are generally consultants or experts.

§ 1600.735–103 Interpretations and counseling.

The General Counsel shall provide any needed counsel and assist EEOC employees concerning the policy and procedures contained Field Office Directors shall serve as deputy counselors in their jurisd ferring any controversial problems of interpretation to the Genera

§ 1600.735–104 Disciplinary and other remedial action.

An employee or special Government employee of the agency who v of the regulations in this part may be disciplined. The disciplinary be in addition to any penalty prescribed by law for the violation. to or in lieu of disciplinary action, remedial action to end conflicts ance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee flicting interest; or

(c) Disqualification for a particular assignment.

§ 1600.735–105 Appeal.

Any employee or group of employees who disagree with the provisi part may have the right to request a review of their complaint through Grievance Procedure, Administrative Order 11 12.

Subpart B—Limitations on conduct and responsibilities of em

§ 1600.735–201 Proscribed actions.

An employee shall avoid any action, whether or not specifically pro this part which might result in, or create the appearance of:

public office for private gain;
preferential treatment to any person;
ing Government efficiency or economy;
complete independence or impartiality;
a Government decision outside official channels; or
ng adversely the confidence of the public in the integrity of the

2 Gifts, entertainment, and favors.

l limitations. Employees shall not solicit or accept, directly or
y gift, gratuity, favor, entertainment, loan, or any other thing of
ue, from a person who:
r is seeking to obtain, contractual or other business or financial
this agency;
ts operations or activities that are regulated by this agency;
terests that may be substantially affected by the performance or
ce of his official duty.
ions. Section 1600.735–202(a) does not preclude:
ance of a gift, gratuity, favor, entertainment, loan, payment of ex-
mpensation, or other things of monetary value incident to obvious
rsonal relationships (such as those between the employee and
hildren, or spouse of the employee when the circumstances make
is the family relationship rather than the business of the persons
ch are the motivating factors;
ance of food and refreshments of nominal value on infrequent
he ordinary course of a luncheon or dinner meeting or other meet-
nspection tour where an employee may properly be in attendance;
ance of loans from banks or other financial institutions or custom-
finance proper and usual activities of employees such as home
ns;
ance of unsolicited advertising or promotional material, such as
note pads, calendars, and other items of nominal intrinsic value.

of bona fide reimbursement, unless prohibited by law, for ex-
vel and such other necessary subsistence as is compatible with
which no Government payment or reimbursement is made. How-
oyee may not be reimbursed, and payment may not be made on
excessive personal living expenses, gifts, entertainment, or other
efits, or for travel on official business proscribed by Decision
e Comptroller General dated March 7, 1967.
superiors. An employee shall not solicit contributions from an-
e for a gift to an employee in a superior official position. An
superior official position shall not accept a gift presented as a
from employees receiving less salary than himself. An employee
e a donation as a gift to an employee in a superior official position
1). However, this does not prohibit a voluntary gift of nominal
tion in a nominal amount made on a special occasion; i.e., mar-
or retirement.
from foreign governments. An employee shall not accept a gift,
ation, or other thing from a foreign government unless authorized
s provided by the Constitution and in Public Law 89-673, 5 U.S.C.

Outside employment and other activity.

l limitations. An employee shall not engage in outside employment
ity not compatible with the full and proper discharge of the duties
ilities of his Government employment. Incompatible activities in-
not limited to:
ance of a fee, compensation, gift, payment of expense, or any other
etary value in circumstances in which acceptance may result in,
ppearance of, conflicts of interest; or
employment which tends to impair the mental or physical capacity
s Government duties and responsibilities in an acceptable manner.
by an employee of any salary or anything of monetary value from
ce as compensation for his services to the Government (18 U.S.C.

(b) Employees are encouraged to engage in teaching, lecturing
that is not prohibited by law, the Executive order, this part, or
regulations. However, an employee shall not, either for or without co
engage in teaching, lecturing, or writing, including teaching, lecturing
for the purpose of the special preparation of a person or class of pe
examination of the Commission or Board of Examiners for the Fore
that depends on information obtained as a result of his Governme
ment, except when that information has been made available to
public or will be made available on request, or when the agency
written authorization for use of nonpublic information on the basis
is in the public interest. In addition, an employee who is a Presidentia
covered by section 401(a) of the order shall not receive compensa
thing of monetary value for any consultation, lecture, discussion,
appearance the subject matter of which is devoted substantially
sibilities, programs, or operations of his agency, or which draws
on official data or ideas which have not become part of the body
information.

(c) [Reserved]

(d) *Exceptions.* Section 1600.735–203 does not preclude:

(1) Participation in the activities of national or state political
prescribed by law.

(2) Participation in the affairs of, or acceptance of an
meritorious public contribution or achievement given by a charit
professional, social, fraternal, nonprofit educational and recreati
service, or civil organization.

(3) Outside employment permitted under this part, including
reimbursements under § 1600.735–202(b)(5).

(e) *Procedure.* An employee who engages in outside employment
his supervisor's approval in advance and shall inform the Personnel
memorandum.

[33 F.R. 4329, Mar. 8, 1968, as amended at 33 F.R. 9610, July 2,

§ 1600.735–204 Financial interests.

An Employee shall not:

(a) Have a direct or indirect financial interest that conflicts
or appears to conflict substantially, with his Government
responsibilities; or

(b) Engage in, directly or indirectly, a financial transaction as
or primarily relying on, information obtained through his
employment.

This does not preclude an employee from having a financial interest
ing in financial transactions to the same extent as a private citi
ployed by the Government so long as it is not prohibited by law, the
order, or these regulations.

§ 1600.735–205 Other standards of conduct.

(a) *Use of Government property.* An employee shall not directly or
use, or allow the use of, Government property of any kind, including
leased to the Government, for other than officially approved activi
ployee has a positive duty to protect and conserve Government proper
equipment, supplies, and other property entrusted or issued to him.

(b) *Misuse of information.* For the purpose of furthering a priva
an employee shall not, except as provided in § 1600.735–203(b),
indirectly use, or allow the use of, official information obtained
connection with his Government employment which has not been mad
to the general public.

(c) *Indebtedness.* An employee shall pay each just financial ob
proper and timely manner, especially one imposed by law such as Fe
or local taxes. A "just financial obligation" means one acknowled
employee, or reduced to judgment by a court, and "in a proper and
ner" means in a manner which the agency determines does not, under
stances, reflect adversely on the Government as his employer. In
dispute between an employee and an alleged creditor, the agency is n
to determine the validity or amount of his disputed debt.

(d) *Gambling, betting, and lotteries.* An employee shall not partici
on Government owned or leased property or while on duty for the
in any gambling activity including the operation of a gambling de

y or pool, in a game for money or property, or in selling or pur-
rs slip or ticket.
onduct prejudicial to the Government. An employee shall not
inal, infamous, dishonest, immoral, or notoriously disgraceful
r conduct prejudicial to the Government.
eous statutory provisions. Each employee shall acquaint himself
te that relates to his ethical and other conduct as an employee
ent. Attention is specifically directed to the following statutory

ncurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12,
ics for Government Service".
1 of Title 18, United States Code, relating to bribery, graft, and
est, as appropriate to the employees concerned.
ibition against lobbying with appropriate funds (18 U.S.C. 1913).
ibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C.

ibition against the employment of a member of a Communist
U.S.C. 784).
bitions against (1) the disclosure of classified information (18
S.C. 783); and (2) the disclosure of confidential information (18

ision relating to the habitual use of intoxicants to excess (5

ibition against the misuse of a Government vehicle (31 U.S.C.

bition against the misuse of the franking privilege (18 U.S.C.

ibition against the use of deceit in an examination or personnel
tion with Government employment (18 U.S.C. 1719).
ibition against fraud or false statements in a Government mat-
)1).
ibition against mutilating or destroying a public record (18

ibition against counterfeiting and forging transportation re-
. 508).
ibitions against (1) embezzlement of Government money or
.C. 641), (2) failing to account for public money (18 U.S.C. 643),
ement of the money or property of another person in the posses-
oyee by reason of his employment (18 U.S.C. 654).
ibition against unauthorized use of documents relating to claims
overnment (18 U.S.C. 285).
ibitions against political activities—in subchapter III of chapter
ited States Code, and 18 U.S.C. 602, 603, 607, and 608.
ibition against an employee acting as an agent of a foreign prin-
under the Foreign Agents Registration Act (18 U.S.C. 219).

Conduct and responsibilities of special Government employees

Limitations.

ment employees shall be subject to the same standards of con-
in Subpart B above for other employees, except § 1600.735–203
following:
overnment employment. A special Government employee shall
rnment employment for a purpose that is, or give the appearance
ted by the desire for private gain for himself or another person,
with whom he has family, business or financial ties.
side information. A special Government employee shall not use
on obtained as a result of his Government employment for
himself or another person either by direct action on his part or
mmendation, or suggestion to another person, particularly one
as family, business, or financial ties. For the purpose of this
information" means information obtained under Government
has not become part of the body of public information. Such
teach, lecture, or write in a manner not inconsistent with
) above.
A special Government employee shall not use his Government
coerce, or give the appearance of coercing, a person to provide
to himself or to another person, particularly one with whom he
ess, or financial ties.

(d) *Gifts, entertainment, and favor.* A special Government employ... employed or in connection with his employment, shall not receive or s... a person having business with his agency anything of value as a gi... loan, entertainment, or favor for himself or another person, partic... with whom he has family, business, or financial ties.

(e) *Miscellaneous statutory provisions.* Special Government emplo... sponsibile for a knowledge of statutory obligations as outlined in ... 205(f).

Subpart D—Statement of employment and financial inter...

§ 1600.735–401 Employees required to submit statements.

(a) The following categories of employees are determined by ... subject to the right of appeal under § 1600.735–105, to be within the ... CFR 735–403, 735–404, and therefore they shall submit Statements o... ment and Financial Interests:

(1) Employees paid at a level of the Executive Schedule in Subch... Chapter 53 of Title 5, United States Code, except the members of th... sion who report under section 401 of Executive Order 11222.

(2) Employees in Grade GS–16 or above of the General Schedule ... 5332.

(3) Employees in the Office of Liaison engaged in grant or rein... activities classified at GS–13 or above of the General Schedule.

(4) Employees in the Office of Administration engaged in co... procurement activities who are classified at GS–13 or above of the Ge... ule unless otherwise indicated, i.e., Director of Administration, Chief ... istrative Services, Contract Specialists, and Contract Specialist GS–...

(b) Each special Government employee shall submit a Statement ... ment and Financial Interests showing all other employment and s... interests as the agency determines are relevant in the light of the du... perform, except when this requirement is waived under 5 CFR 735–4...

§ 1600.735–402. Time and place for submission of employee statement...

Statement of Employment and Financial Interests shall be subm... ployees covered by § 1600.735–401 within 60 days after issuance of t... employees on the rolls at that time and for new employees within ... their entrance on duty. Special Government employees will comple... copies of the forms in appendix A at the time of entrance on duty ... employees required to file Statements of Employment and Financ... will complete duplicate copies of the form in appendix B. The comple... of these forms will be sent to the Director of Personnel in a s... marked on the outside "Confidential Statement Enclosed." The du... will be retained by the employee. The Personnel Division shall re... the Statements of Employment and Financial Interests.

§ 1600.735–403 Review of statement of employment and financial inte...

The Director of Personnel shall review these statements for the ... disclosing any conflict of interest or apparent conflict of interest. I... flict between the interests of an employee or special Government ... the performance of his services for the Government are found, the ... brought to the attention of the employee or special Government emplo... shall be granted the opportunity to explain the conflict and attempt ... it. If the indicated conflict cannot be resolved, the Director of Per... submit a written report with the recommendation for appropriate re... to the Chairman through the General Counsel.

§ 1600.735–404 Supplementary statements.

Changes in or additions to the information contained in an employ... ment and Financial Interests shall be reported ... ... of June 30 each year. If no changes or additi... report is required. Notwithstanding the filing of the annual ... quired by this section, each employee shall at all times avoid acquiring ... that could result, or taking an action that would result, in a ... of the conflict of interest provisions of 18 U.S.C. 208 or this part.

§ 1600.735–405 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an emp... ... household is considered to be an interest of the employee ...

tion. "member of an employee's immediate household" means tions who are residents of the employee's household.

Information not known by employees.

ation required to be included interests or supplementary state- holdings placed in trust, is not known to the employee but is r person, the employee shall request that other person to submit is behalf.

Information not required.

loes not require an employee to submit on a statement of employ- ial interests or supplementary statement any information relat- yee's connection with, or interest in a professional society or a ious, social, fraternal, recreational public service, civil, or poli- n or a similar organization not conducted as a business enter- urpose of this section, educational and other institutions doing velopment or related work involving grants of money from or he Government are deemed "business enterprises" and are re- luded in an employee's statement of employment and financial

Confidentiality of employees' statements.

all hold each Statement of Employment and Financial Interests, mentary statement, in confidence. The Director of Personnel or authorized to review or retain a statement are responsible for n in confidence and shall not allow access to, or allow informa- sed from, a statement except to carry out the purpose of this may not disclose information from a statement except as the ommission or the Chairman, EEOC, may determine for good

Effect of employees' statements on other requirements.

ts of Employment and Financial Interests and supplementary n addition to, and not in substitution for, or in derogation of, uirement imposed by law, order, or regulation. The submission r supplementary statement by an employee does not permit him son to participate in a matter in which his or the other person's prohibited by law, order, or regulation.

PART 1601—PROCEDURAL REGULATIONS

Subpart A—Definitions

efined in Title VII of the Civil Rights Act of 1964.
I: Commission.
subregion.

rocedure for the Prevention of Unlawful Employment Practices

ion of information.
by aggrieved persons.
o file.
jurat.
wal of charge by an aggrieved person.
s by members of the Commission.
ts; amendment.
ls to State and local authorities.
of charge.

Investigation of a Charge

m made.
entary evidence to be produced by a respondent.
ses.
t of witness fees and mileage.
o inspect or copy data.

Procedure Following Filing of Charge

1601.19 Dismissal of charge.
1601.19a Field Directors' findings of fact.
1601.19b Exceptions to Field Directors' findings of fact.
1601.19c Predecision procedure.
1601.19d Determination as to reasonable cause.
1601.20 Confidentiality.

Procedure To Rectify Unlawful Employment Practices

1601.22 Conciliation; settlements.
1601.23 Refusal of respondent to cooperate.
1601.24 Confidentiality of endeavors.

Procedure After Failure of Conciliation

1601.25 Notice to respondent and aggrieved person.
1601.25a Processing of cases: when notice issues under § 1601.25.
1601.25b Issuance of notice in cases involving Commissioner Charges
1601.26 Referral to the Attorney General.

Subpart C—Notices to employees, applicants for employment and

1601.27 Notices to be posted.

Subpart D—Interpretations and opinions by the Commissio

1601.28 Request for interpretation or opinion: who may file.
1601.29 Contents of request; where to file.
1601.30 Issuance of interpretation or opinion.

Subpart E—Construction of rules

1601.31 Rules to be liberally construed.

Subpart F—Issuance, amendment, or repeal of rules

1601.32 Petitions.
1601.33 Action on Petition.

AUTHORITY: The provisions of this Part 1601 are issued under 78 Stat. 265; 42 U.S.C. 2000e–12.

SOURCE: The provisions of this Part 1601 appear at 30 F.R. 8401, J unless otherwise noted.

§ 1601.1 Purpose.

The regulations set forth in this Part 1601 contain the procedures by the Equal Employment Opportunity Commission for carrying out its bilities in the administration and enforcement of Title VII of the Act of 1964. Based upon its experience in the administration of the its evaluation of suggestions and petitions for amendments submitted persons in accordance with § 1601.32, the Commission may from time amend and revise these procedures.

Subpart A—Definitions

§ 1601.2 Terms defined in Title VII of the Civil Rights Act of 1964

The terms "persons," "employer," "employment agency," "labor or "employee," "commerce," "industry affecting commerce," and "State herein shall have the meanings set forth in section 701 of Title VII Rights Act of 1964.

§ 1601.3 Title VII; Commission.

The term "Title VII" as used herein shall mean Title VII of the Act of 1964. The term "Commission" shall mean the Equal Employ tunity Commission or any of its designated representatives.

; subregion.

gion" as used herein shall mean that part of the United States thereof fixed by the Commission as a particular region. The " shall mean that area within a region fixed by the Commission ubregion.

ocedure for the Prevention of Unlawful Employment Practices

ssion of information.

on will receive information concerning alleged violations of this erson. Where the information discloses that a person is entitled with the Commission, the appropriate office will render him e filing of a charge. In the alternative, a member of the Com- e a charge based upon the information, in accordance with

s by aggrieved persons.

any person has engaged in or is engaging in an unlawful employ- ithin the meaning of Title VII may be made by any person ggrieved.

to file.

ay be filed at the offices of the Commission in Washington, D.C., s field offices or with any designated representative of the

Mar. 25, 1969]

: jurat.

hall be in writing and signed, and shall be sworn to before a lesignated representative of the Commission, or other person by law to administer oaths and take acknowledgments. Charge ble to all persons from all offices of the Commission. Appropri- n filling out forms will be rendered to aggrieved persons by Commission.

awal of charge by an aggrieved person.

by an aggrieved person may be withdrawn only with the con- nission.

es by members of the Commission.

f the Commission who has reasonable cause to believe that an ment practice within the meaning of Title VII has occurred or file a charge in writing with the Commission. If section 706(c) ld be applicable, the Commission, before taking any action with arge, shall notify the appropriate State or local authority and e charge to it. The Commission will allow the State or local ay period to request an opportunity to act under its law except ifies the appropriate authority in writing of a different time

Dec. 9, 1970]

nts; amendment.

ge should contain the following:

me and address of the person making the charge.

name and address of the person against whom the charge is r referred to as the respondent).

nd concise statement of the facts, including pertinent dates. lleged unlawful employment practice.

the approximate number of employees of the respondent employer te number of members of the respondent labor organization, as

nt disclosing whether proceedings involving the alleged unlaw- practice have been commenced before a State or local authority enforcement of fair employment practice laws, and, if so, the nencement and the name of the authority.

nding the provisions of paragraph (a) of this section, a charge when the Commission receives from the persons aggrieved a t sufficiently precise to identify the parties and to describe gen- or practices complained of. A charge may be amended to cure

technical defects or omissions, including failure to swear to the c
clarify and amplify allegations made therein, and such amendment
to the original filing date. However, an amendment alleging additio
stituting unlawful employment practices not directly related to or g
the subject matter of the original charge will be permitted only w
date of the amendment the allegation could have been timely filed a
charge.

[31 F.R. 10269, July 29, 1966]

§ 1601.12 Referrals to State and local authorities.

(a) In order to give full weight to the policy of section 706 (
which affords State and local fair employment practice agencies the
the provisions of that section an opportunity to resolve disputes
leged discrimination concurrently regulated by Title VII of the Civ
of 1964 and State or local law, the Equal Employment Opportunity
adopts the following procedures with respect to allegations of d
filed with the Commission where there is no evidence that such a
earlier presented to the State or local agency. It is the intent of the
to thereby encourage the maximum degree of effectiveness in the S
agencies. The Commission shall endeavor to maintain close cont
the State and local agencies with respect to all matters forwarded
cies and shall provide such assistance to the State or local agen
mitted by law and is practicable. It is the experience of the C
because of the complexities of the present procedures, persons w
of the Commission are often confused and even risk loss of the p
Act. Accordingly, it is the intent of the Commission to simplify
for parties in deferral States and localities, and thereby avoid
forfeiture of important Federal rights.

(b) The following procedures shall be followed with respect to
in the localities to which the Commission defers:

(i) Any document, whether or not verified, filed at any field o
Employment Opportunity Commission or at Washington, D.C., wh
stitute a charge cognizable under Title VII, shall be deferred to the
State or local agency pursuant to the procedures set forth below.

(ii) All such documents shall be dated and time stamped on re

(iii) A copy of the original document shall be transmitted by
mail, return receipt requested, to the appropriate State or local age

(iii) The aggrieved party shall be notified, in writing, that the d
he sent to the Commission has been forwarded to the State or l
suant to the provisions of section 706(c), and that unless the C
notified to the contrary, on the termination of State or local proce
60 days have passed, whichever comes first, the Commission will
charge to be filed with the Commission and commence processing th
the State or local agency terminates its proceedings within 60 days
receipt of the document without notification to the Commission of s
date on which the aggrieved party is notified of the termination of
local action shall be deemed to be the date that the document wa
charge with the Commission.

(iv) The 60 day period shall be deemed to have commenced on the
the document by the State or local agency as evidenced by the da
on the return receipt. On notification of termination of State pro
expiration of 60 days, whichever comes first, the Commission will
charge to be filed with the Commission and commence processing

(v) In cases where the document is filed with the Commission
days following the alleged act of discrimination but less than 2
time, the case shall be deferred pursuant to procedures set forth
(iv). Provided, however, That unless the Commission is earlier notified of t
of the State or local proceeding, the Commission will consider the
filed with the Commission on the 200th day following the alleged
and will commence processing the case. Where the State or local
deemed to be the date that the document was filed as a charge w
mission.

[33 F.R. 16408, Nov. 8, 1968]

§ 1601.13 Service of charge.

Upon the filing of a charge or the amendment of a charge, the
shall furnish the respondent with a copy thereof by certified mail

[31 F.R. 10269, July 29, 1966]

Investigation of a Charge

no made.

tion of a charge shall be made by the Commission. During the investigation, the Commission may utilize the services of State ies which are charged with the administration of fair employ- ws or appropriate Federal agencies. As a part of each investiga- ng party and the respondent shall each be offered an oppor- a statement of its position or evidence with respect to the alle-

Feb. 19, 1970; 35 F.R. 10110, June 19, 1970]

nentary evidence to be produced by a respondent.

he purposes of Title VII, the Commission may demand in writing ent produce or permit access to, for the purpose of examination dence described in the demand. Such demand shall (a) disclose to the Commission of the person before whom such production r to whom access shall be permitted, and (b) fix the time and oduction or access within the State wherein the evidence is kept. ompliance with any such demand, the Commission may utilize f section 710 of Title VII to compel compliance.

sses.

he purposes of Title VII, the Commission may demand in writing pear at a stated time and place within the State in which such ransacts business, or is served with the demand, for the purpose ler oath before the Commission or its representative. If there e with any such demand, the Commission may utilize the pro- n 710(b) of Title VII to compel such person to testify. A tran- ay may be made a part of the record of each investigation. testify as provided above shall be paid the same fees and mile- witnesses in the courts of the United States.

to inspect or copy data.

submits data or evidence to the Commission may retain or, on fully prescribed costs, procure a copy or transcript thereof, ex- ess may for good cause be limited to inspection of the official testimony.

Procedure Following Filing of Charge[1]

nents made 35 F.R. 3163, February 19, 1970 re charges shall be respect to charges presently pending in which the investigation mpleted by February 19, 1970; 35 F.R. 10110, June 19, 1970.

ssal of charge.

gations of a charge on its face, or as amplified by the statements party to the Commission, disclose that the charge is not timely se fails to state a valid claim for relief under Title VII, the ough the Director of the Field Office where the charge is lodged, charge without further action. Charging party and respondent e has been served, shall be notified in writing of the disposition ether with the reasons therefor. Objections to such dismissal will the Commission, when filed in writing at its headquarters in C., within twenty (20) days of receipt of the Field Director's al.

Feb. 19, 1970]

l Director's findings of fact.

on of an investigation, the Field Director will cause to be pre- d upon the parties his findings of fact in the case, which shall of fact and a summary of the evidence upon which such findings

Feb. 19, 1970, as amended at 35 F.R. 10110, June 19, 1970]

ptions to Field Director's findings of fact.

fteen (15) days, or within such further period as the Field Di- r, from the date of service of the Field Director's findings of

fact, the parties may file such exceptions to the Field Director's find
objections, briefs and evidence in support thereof as they desire. Wh
by a person not represented by counsel, assistance in the preparat
tions to the Field Director's findings of fact will be provided by pers
Field Office as deemed practicable by the Field Director.

(b) Each exception shall:

(1) Set forth the specific procedure, finding, policy, or interpretat
fact to which objection is taken;

(2) Identify any and all parts of the Field Director's findings of f
exception is taken by reference to the precise page and paragraph
mination;

(3) State the grounds for the exception, including the citation
ity relied upon, and a description of any factual circumstance or i
of facts upon which reliance is placed.

(c) Any exception to findings which is not specifically urged
waived. Any exception which fails to comply with the requirements
paragraph (b) of this section may be disregarded.

(d) Within five (5) days from the date of this filing of excepti
such further period as the Field Director allows, cross exceptions
in the manner set forth in paragraph (b) of this section.

(e) All such exceptions and cross exceptions shall be accompan
service on all parties. The Field Director may perfect service as
ticable.

[35 F.R. 3163, Feb. 19, 1970]

§ 1601.19c Predecision procedure.

Following the issuance of the Field Director's findings of fact a
of exceptions if any, the Field Director may invite the parties t
tlement discussions. Should settlement be reached, the terms th
reduced to writing and shall be signed by the parties and, if
Field Director, forwarded to the Commission for approval and
tion as may be appropriate. In the event no settlement is atta
the field Director shall, upon consideration of exceptions, objection
evidence submitted under § 1601.19b, either cause the charges
gated, issue his redetermination of fact based thereon, or forward
vestigation file to the Commission for determination as to reasonab

[35 F.R. 3163, Feb. 19, 1970]

§ 1601.19d Determination as to reasonable cause.

(a) Following receipts of the full investigative file, the C
consider and decide the issues presented and serve a copy of its
the parties. If the Commission determines that the charge fails t
claim for relief under Title VII, or that there is not reasonable
that a charge is true, the Commission shall dismiss the charge. Wh
the Commission determines that there is reasonable cause to
unlawful employment practice has occurred or is occurring, it sh
to eliminate such practice by informal methods of conference, co
persuasion.

(b) The Commission shall promptly notify the charging party, th
and, in the case of a charge filed under § 1601.10, the person aggrieve
of its determination under paragraph (a) of this section. The C
termination is final when issued; therefore, requests for reconsider
be granted. The Commission may, however, on its own motion
determination at any time and, when it does so, the Commission s
notify the charging party, the respondent and, in the case of a C
§ 1601.10, the person aggrieved, if known, of its intention to reconsi
mination, and of its subsequent decision on reconsideration.

(c) Where a member of the Commission has filed a charge under
shall not participate in the determination in that case.

(d) Notwithstanding any other provision in this part, where
of a charge on its face, or as amplified by the statements of the c
to the Commission, disclose that the charge is not timely filed or
to state a valid claim for relief under Title VII, the Commission
the case without further action, but it shall notify the charging
respondent of the charge has been served, in writing of its dis
case and the reasons therefor. The Commission's dismissal of a

ed; therefore, requests for reconsideration will not be granted. n may, however, on its own motion, reconsider such dismissal l, if it does so, the Commission shall promptly notify the charging respondent if the charge has been served, of its decision.

. Feb. 19, 1970]

dentiality.

arge, nor information obtained pursuant to section 709(a) of nformation obtained from records required to be kept or reports iled pursuant to sections 709 (c) and (d) of said Title, shall be of public information by the Commission prior to the institution of a court proceeding involving such charge or information. This not apply to such earlier disclosures to the charging party, the nesses, and representatives of interested Federal, State, and as may be appropriate or necessary to the carrying out of the unctions under the title, nor to the publication of data derived rmation in a form which does not reveal the identity of the respondent, or person supplying the information.

ocedure to Rectify Unlawful Employment Practices

liation; settlements.

g a case in which a determination of reasonable cause has been nission shall attempt to achieve a just resolution and to obtain the respondent will eliminate the unlawful employment practice priate affirmative action. Disposition of a case pursuant to this in writing, and notice thereof shall be sent to the parties. Proof ith Title VII will be obtained by the Commission before the case

, July 29, 1966]

sal of respondent to cooperate.

ondent fail or refuse to confer with the Commission or its repre- il or refuse to make a good faith effort to resolve any dispute, may terminate its efforts to conciliate the dispute. In such event, shall be notified promptly, in writing, that such efforts have been d will not be resumed except upon the respondent's written he time specified in such notice.

dentiality of endeavors.

is said or done during and as a part of the endeavors of the eliminate unlawful employment practices by informal methods onciliation, and persuasion may be made a matter of public in- e Commission without the written consent of the parties, or used subsequent proceeding.

Procedure After Failure of Conciliation

e to respondent and aggrieved person.

ce in which the Commission is unable to obtain voluntary com- ided by Title VII it shall so notify the respondent and the n or persons. Notification to an aggrieved person shall include: the charge.

the Commission's determination of reasonable cause.

ncerning his right to proceed in court under section 706(e) of

cessing of cases; when notice issues under § 1601.25.

for processing all cases is extended to sixty (60) days except edings may be earlier terminated pursuant to § 1601.19d.

anding the provisions of paragraph (a) of this section, the Com- ot issue a notice pursuant to § 1601.25 prior to a determination d, or where reasonable cause has been found, prior to efforts at respondent, except as provided in paragraph (c) of this section. me after the expiration of sixty (60) days from the date of the ge, or upon dismissal of the charge at any stage of the proceed-

ings, or upon the expiration of the time for filing objections to dismi
Field Director pursuant to § 1601.19, the charging party or the respo
demand in writing that a notice issue pursuant to § 1601.25, and the C
shall promptly issue such notice, with copies to all parties.

(d) Issuance of notice pursuant to paragraph (c) of this section sh
further Commission proceedings unless the Field Director determin
is in the public interest to continue such proceedings, or unless, wit
(20) days after receipt of such notice, a party requests the Field D
writing, to continue to process the case.

[35 F.R. 3164, Feb. 19, 1970; 35 F.R. 1011, June 19, 1970]

§ 1601.25b Issuance of notice in cases involving Commissioner Cha

(a) Section 706(e) of the Civil Rights Act of 1964, provides tha
involving Commissioner Charges when the Commission has been unab
voluntary compliance with the Act, the Commission shall notify a
whom the charges alleged was aggrieved by the alleged unlawful e
practices of his right to sue in a Federal District Court. To come
purview of this section an individual may either be specifically des
name or be among the class of persons aggrieved by the practices
of in the charge. Accordingly, in cases involving Commissioner Ch
Commission will follow the procedures outlined in paragraphs (b), (c
(e) of this section.

(b) The Commission shall not issue any Notice-of-Right-to-Sue p
determination on the merits, except as provided in paragraph (d) of
tion. Furthermore, where the Commission has found reasonable caus
mission shall not issue such notice prior to failure of the Commission's
tion efforts, except as provided in paragraph (d) of this section.

(c) Where the Commission has found reasonable cause but has be
to obtain voluntary compliance with Title VII, the Commission shall s
respondent and all identifiable members of the class aggrieved by the
complained of in the charge. Notification to aggrieved members of the
include the following:

(1) A copy of the charge;

(2) A copy of the Commission decision;

(3) Advice concerning his right to proceed in court under section
Title VII.

(d) At any time after 60 days have expired since the charge was
member of the class aggrieved by the practices alleged in the charg
respondent named in the charge, may demand in writing that a Notice
to-Sue Issue, and the Commission shall promptly issue such Notice
to-Sue, pursuant to paragraph (c) of this section.

(e) Issuance of a notice pursuant to paragraph (d) of this sectio
terminate the Commission's jurisdiction of the proceeding and the
continue to be processed.

[35 F.R. 10006, June 18, 1970]

§ 1601.26 Referral to the Attorney General.

If the Commission is unable to obtain voluntary compliance, it m
the Attorney General of appropriate facts in the case with recommend
intervention by him in a civil action previously instituted by an aggr
under section 706 of Title VII, and the Commission may make publ
that it has so recommended to the Attorney General. The Commissi
ther recommend to the Attorney General that he institute a civil a
section 707 of said title involving a pattern or practice of resistance
enjoyment of any of the rights secured by said title.

Subpart C—Notices to Employees, Applicants for Employment and
Members

§ 1601.27 Notices to be posted.

(a) Every employer, employment agency, labor organization, and j
management committee controlling an apprenticeship or other training
as the case may be, shall post and keep posted in conspicuous places
premises where notices to employees, applicants for employment, mem
trainees are customarily posted the following notice:

Equal Employment Opportunity is the Law.

on is prohibited by the Civil Rights Act of 1964 and by Executive
11246.

The Civil Rights Act of 1964—*Administered by* the Equal Employ-
ity Commission prohibits discrimination because of race, color,
national origin by employers with 75 or more employees, by labor
ith a hiring hall of 75 or more members, by employment agencies,
abor Management Committees for Apprenticeship or Training.
1967, employers and labor organizations with 50 or more em-
bers will be covered; after July 1, 1968, those with 25 or more will

who believes he or she has been discriminated against should
ual Employment Opportunity Commission, 1800 G Street NW.,
C. 20506.

rder Number 11246—*Administered by* the Office of Federal Con-
ce prohibits discrimination because of race, color, creed or na-
nd requires affirmative action to ensure equality of opportunity
employment.

l Government contractors and subcontractors, and by contractors
rk under a federally assisted construction contract, regardless
f employees in either case.

who believes he or she has been discriminated against should
ice of Federal Contract Compliance, U.S. Department of Labor,
C. 20210.

f such notice may be obtained on request from the Commission.
711(b) of Title VII makes failure to comply with this section
fine of not more than $100 for each separate offense.

June 30, 1966]

t D—Interpretations and Opinions by the Commission

est for interpretation or opinion; who may file.

d person desiring a written interpretation or opinion from the
y make a request therefor.

ents of request; where to file.

r an "opinion letter" shall be in writing, signed by the person
quest, addressed to the Chairman, Equal Employment Oppor-
ion, Washington, D.C., and shall contain:

es and addresses of the person making the request and of other
ns.

ent of all known relevant facts.

ent of reasons why the interpretation or opinion should be issued.

nce of interpretation or opinion.

tter entitled "opinion letter" and signed by the General Counsel
e Commission or (b) matter published and so designated in the
ER may be considered a "written interpretation or opinion of the
thin the meaning of section 713 of Title VII.

Subpart E—Construction of Rules

s to be liberally construed.

l regulations in this part shall be liberally construed to effectuate
provisions of Title VII.

part F—Issuance, Amendment, or Repeal of Rules

ions.

d person may petition the Commission, in writing, for the issu-
nt, or repeal of a rule or regulation. An original and 12 legibly
carbon) copies of such petition shall be filed with the Commis-
gton, D.C., and shall state the rule or regulation proposed to be
, or repealed, together with a statement of grounds in support of

§ 1601.33 Action on petition.

Upon the filing of such petition, the Commission shall consider th
may thereupon either grant or deny the petition in whole in or pa
an appropriate proceeding thereon, or make other disposition of t
Should the petition be denied in whole or in part, prompt notice sh
to the denial, accompanied by a simple statement of the grounds unles
be self-explanatory.

PART 1602—RECORDS AND REPORTS

Sec.
1602.1 General.

Subpart A—Procedure

1602.2 Initiating a proceeding.
1602.3 Notice of a proceeding.
1602.4 Procedure governing public hearings.
1602.5 Decision.
1602.6 Effective date of record keeping and reporting rules.

Subpart B—Employer Information Report

1602.7 Requirement for filing of report.
1602.8 Penalty for making of willfully false statements on report.
1602.9 Commission's remedy for employer's failure to file report.
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1602.13 Records as to racial or ethnic identity of employees.
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Subpart E—Apprenticeship Recordkeeping

1602.20 Records to be made or kept.
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Subpart F—Local Union Equal Employment Opportunity Re

1602.22 Requirements for filing and preserving copy of report.
1602.23 Penalty for making of willfully false statements on reports.
1602.24 Commission's remedy for failure to file report.
1602.25 Exemption from reporting requirements.
1602.26 Additional reporting requirements.

Subpart G—Recordkeeping by Labor Organizations

1602.27 Records to be made or kept.
1602.28 Preservation of records made or kept.

Subpart H—Records and Inquiries as to Race, Color, National Or

1602.29 Applicability of State or local law.

AUTHORITY: The provisions of this Part 1602 issued under sections
78 Stat. 263, 265; 42 U.S.C. 2000e–8, 2000e–12.

§ 1602.1 General.

(a) Section 709 of Title VII require the Commission to establish
pursuant to which employers, labor organizations, joint labor-manage
mittees and employment agencies subject to said Title shall make

: and shall furnish specified information to aid in the administra-
ement of the Title.
rt 1602 sets forth the procedure to be used by the Commission
, amending and revoking such regulations, and by future amend-
forth regulations so established.
, July 1, 1965]

Subpart A—Procedure

e provisions of this Subpart A appear at 30 F.R. 8409, July 1,
832, Feb. 17, 1966, unless otherwise noted.

ating a proceeding.

sion, on its own motion, or upon the petition of an interested
ed as provided in § 1601.32 of this chapter, may initiate a pro-
ke, amend, or revoke regulations requiring persons subject to
make or keep records or to provide information in accordance
9.

e of a proceeding.

f the institution of a proceeding shall be published in the FEDERAL
notice shall (1) refer to section 709 as authority for the pro-
ns and direct attention to this Part 1602 governing the procedure;
e terms of substance of the proposed regulations; and (3) invite
ons (i) to participate in a public hearing to be held with respect
d regulations, specifying the time and place that such hearing
e and information that must be submitted earlier by persons
rticipate, and (ii) to submit pertinent written data, views, and
neans other than participation in a hearing, specifying the time
uch submission.
nmission may also give additional notice of the initiation of a
t may deem necessary or appropriate.

dure governing public hearings.

nder § 1602.3 shall be conducted by a member of the Commission
ed representative who shall have authority to administer oaths
ns. Such hearing shall be stenographically reported, and tran-
e made available to interested persons upon such terms as the
ay provide. Matter which the Commission may wish to be made
ecord shall be presented at the hearing by an attorney designated
ssion who may call and examine witnesses, and cross-examine
d by other persons. Subject to such limitations as the presid-
impose to limit the record to pertinent matter, every interested
e afforded the opportunity to offer evidence through witnesses,
ie witnesses called by others, and to present argument. The pre-
shall regulate the course of the hearing and shall dispose of
uests, objections and comparable matter. The presiding officer
power to call and examine witnesses, to govern the control of
exclude persons from the hearing room for good cause, and, upon
of the testimony, to keep the hearing open for a stated reasonable
o receive written proposals and supporting reasons.

ion.

se of the hearing and the receipt of materials under § 1602.3(a)
ommission shall carefully consider all matters presented to it and
ter available, and shall thereafter make a final decision adopting,
odifying the proposed regulation. The decision shall be expressed
signed by the Chairman of the Commission on behalf of the
d shall be published in the Federal Register as an amendment
02.

tive date of record keeping and reporting rules.

e extent that such decision of the Commission relieves a restric-
rovide an effective date for the change of not less than 30 days
of its publication in the Federal Register unless a shorter time
good cause found and expressed in the document.

Subpart—Employer information report

SOURCE: The provisions of this Subpart B appear at 31 F.R. 283 1966, unless otherwise noted.

§ 1602.7 Requirement for filing of report.

On or before March 31, 1967, and annually thereafter, every empl to Title VII of the Civil Rights Act of 1964 which meets the 100-e set forth in section 701(b) thereof shall file with the Commission or executed copies of Standard Form 100, as revised (otherwise kn ployer Information Report EEO–1") in conformity with the directio in the form and accompanying instructions. Notwithstanding the pr § 1602.14, every such employer shall retain at all times at each rep or at company or divisional headquarters, a copy of the most re filed for each such unit and shall make the same available if re an officer, agent, or employee of the Commission under the authority 701(a) of Title VII. Appropriate copies of Standard Form 100 is be supplied to every employer known to the Commission to be su reporting requirements, but it is the responsibility of all such e obtain necessary supplies of same prior to the filing date from the Jo ing Committee, Federal Depot, 1201 East 10th Street, Jeffersonville, I

[31 F.R. 16780, Dec. 31, 1966]

§ 1602.8 Penalty for making of willfully false statements on report

The making of willfully false statements on Report EEO–1 is a c the United States Code, Title 18, section 1001, and is punishable imprisonment as set forth therein.

§ 1602.9 Commission's remedy for employer's failure to file report

Any employer failing or refusing to file Report EEO–1 when req so may be compelled to file by order of a U.S. District Court, upon of the Commission.

§ 1602.10 Employer's exemption from reporting requirements.

If an employer is engaged in activities for which the reporting described in section 4(c) of the Instructions are not readily adapta procedures may be required. In such case, the employer should s submitting to the Commission or its delegate a specific proposal for tive reporting system prior to the date on which the report is d claimed the preparation or filing of the report would create undue the employer may apply to the Commission for an exemption from ments set forth in this part.

§ 1602.11 Additional reporting requirements.

The Commission reserves the right to require reports, other than nated as the Employer Information Report EEO–1, about the practices of individual employers or groups of employers whenever ment, special or supplemental reports are necessary to accomplish of Title VII. Any system for the requirement of such reports will be in accordance with the procedures referred to in section 709(c) of and as otherwise prescribed by law.

Subpart C—Recordkeeping by employers

SOURCE: The provisions of this Subpart C appear at 31 F.R. 283 1966, unless otherwise noted.

§ 1602.12 Records to be made or kept.

The Commission has not adopted any requirement, generally a employers, that records be made or kept. It reserves the right to keeping requirements upon individual employers or groups of empl to its jurisdiction whenever, in its judgement, such records are for the effective operation of the EEO–1 reporting system or of any supplemental reporting system as described above; or (b) are nec to accomplish the purposes of Title VII. Such record keeping requ be adopted in accordance with the procedures referred to in section as otherwise prescribed by law.

ords as to racial or ethnic identity of employees.

nay acquire the information necessary for completion of Items ort EEO-1 either by visual surveys of the work force, or at their maintenance of post-employment records as to the identity of re the same is permitted by State law. In the latter case, how- nission recommends the maintenance of a permanent record as r ethnic identity of an individual for purpose of completing the ly where the employers keep such records separately from the ic personnel form or other records available to those responsible decision, e.g., as part of an automatic data processing system department.

servation of records made or kept.

he employer is subject to a State or local fair employment prac- egulation governing the preservation of records and containing nconsistent with those stated in this part, any personnel or employ- ade or kept by an employer (including but not necessarily limited forms submitted by applicants and other records having to do romotion, demotion, transfer, layoff or termination, rates of pay of compensation, and selection for training or apprenticeship) ved by the employer for a period of 6 months from the date of the record or the personnel action involved, whichever occurs later. involuntary termination of an employee, the personnel records of erminated shall be kept for a period of 6 months from the date of Where a charge of discrimination has been filed, or an action Attorney General, against an employer under Title VII, the re- oyer shall preserve all personnel records relevant to the charge or al disposition of the charge or the action. The term "personnel t to the charge," for example, would include personnel or employ- elating to the charging party and to all other employees holding ir to that held or sought by the charging party; and application papers completed by an unsuccessful applicant and by all other the same position as that for which the charging party applied ed. The date of "final disposition of the charge or the action" - of expiration of the statutory period within which a charging g an action in a U.S. District Court or, where an action is brought ployer either by a charging party or by the Attorney General, the uch litigation is terminated.

uirements of this section shall not apply to application forms and yment records of applicants for positions known to applicants to or seasonal nature.

reporting and/or recordkeeping requirements contained herein oved by the Bureau of the Budget in accordance with the Federal 1942.

Subpart D—Apprenticeship information report

provisions of this Subpart D appear at 32 F.R. 10650, July 20, 1967. se noted.

uirement for filing and preserving copy of report.

September 30, 1967, and annually thereafter, certain joint labor- ommittees subject to Title VII of the Civil Rights Act of 1964 pprenticeship programs shall file with the Commission, or its dele- opies of Apprenticeship Information Report EEO-2 in conformity ions set forth in the form and accompanying instructions. The ered by this regulation are those which (a) have five or more olled in the program at any time during August and September of ear and (b) represent at least one employer sponsor and at least ization sponsor which are themselves subject to Title VII. Every e shall retain at all times among the records maintained in the of its affairs a copy of the most recent report filed, and shall make ble if requested by an officer, agent or employee of the Commis- authority of section 710(a) of Title VII. It is the responsibility mittees to obtain from the Commission or its delegate necessary orm.

§ 1602.16 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO 2 is a v... the U.S. Code, Title 18, section 1001, and is punishable by fine or imp... as set forth therein.

§ 1602.17 Commission's remedy for failure to file report.

Any person failing or refusing to file Report EEO 2 when requir... may be compelled to file by order of a U.S. District Court, upon app... the Commission, under authority of section 710(b) of Title VII.

§ 1602.18 Exemption from reporting requirements.

If it is claimed the preparation or filing of Report EEO-2 would cre... hardship, the committee may apply to the Commission for an exemp... the requirements set forth in this part.

§ 1602.19 Additional reporting requirements.

The Commission reserves the right to require reports, other than ... nated as Report EEO-2, about apprenticeship procedures of joint la... ment committees, employers, and labor organizations whenever, in its ... special or supplemental reports are necessary to accomplish the purp... VII. Any system for the requirement of such reports will be establish... ance with the procedures referred to in section 709(c) of Title VII and ... wise prescribed by law.

Subpart E—Apprenticeship recordkeeping

SOURCE: The provisions of this Subpart E appear at 32 F.R. 10650, July ... unless otherwise noted.

§ 1602.20 Records to be made or kept.

(a) Every person required to file Report EEO 2 shall make or k... records as are necessary for its completion under the conditions and ... stances set forth in the instructions accompanying the report, which ... cally incorporated herein by reference and have the same force and ... other sections of this part.

(b) Every employer, labor organization, and joint labor-management ... tee subject to Title VII which controls an apprenticeship program (re... any joint or individual obligation to file a report) shall, beginning Augu... maintain a list in chronological order containing the names and addres... persons who have applied to participate in the apprenticeship program, ... the dates on which such applications were received. (See section 709(c) ... Civil Rights Act of 1964). Such list shall contain a notation of the s... applicant and of the applicant's identification as "Negro," "Spanish ... American," "Oriental," "American Indian," or "Other." The methods ... such identification are set forth in the instructions accompanying Re... section 7. The words "applied," "applicant" and "application" as us... section refer to situations involving actual applications only. An appli... sidered to be a person who files a formal application, or in some inf... indicates a specific intention to be considered for admission to the ap... program. A person who casually appears to make an informal inquiry ... program, or about apprenticeship in general, is not considered to be ... The term "apprenticeship program" as used herein refers to progra... in section 8 of the instructions accompanying Report EEO-2.

(c) In lieu of maintaining the chronological list referred to in § ... persons required to compile the list may maintain on file written ... for participation in the apprenticeship program, provided that the ... form, contains a notation of the date the form was received, the nam... applicant, and a notation of the sex, and the race, color, or national ... applicant as described above.

[32 F.R. 10650, July 20, 1967 as amended by 33 F.R. 282, Jan. 9, 196...

§ 1602.21 Preservation of records made or kept.

(a) Notwithstanding the provisions of section 1602.14, every person ... § 1602.20 (b) or (c) shall preserve the list of applicants or applic... as the case may be, for a period of 2 years from the date the appli... received, except that in those instances where an annual report is req... Commission calling for statistics as to the sex, and the race, color ...

tices, the person required to file the report shall preserve the
or a period of 2 years or the period of a successful applicant's
whichever is longer. Persons required to file Report EEO 2, or
lling for information about the operation of an apprenticeship
to that required on Report EEO 2, shall preserve any other
ly for the purpose of completing such reports for a period of 1
e date thereof.

ords: Except to the extent inconsistent with the law or regula-
e or local fair employment practices agency, or of any other
agency involved in the enforcement of an antidiscrimination
enticeship, other records relating to apprenticeship made or kept
ired to file Report EEO 2, including but not necessarily limited
mpleted by applicants for apprenticeship and records of inter-
icants, shall be kept for a period of 2 years from the date of
e record. Where a charge of discrimination has been filed, or an
y the Attorney General under Title VII, the respondent shall
ords relevant to the charge or action until final disposition of
action. The term "records relevant to the charge," for example,
plications, forms or test papers completed by an unsuccessful
all other candidates for the same position as that for which the
pplied and was rejected. The date of "final disposition of the
ion" means the date of expiration of the statutory period within
g party may bring an action in a U.S. District Court or, where
ght either by a charging party or by the Attorney General, the
ch litigation is terminated.

F—Local union equal employment opportunity report

provisions of this Subpart F appear at 32 F.R. 10651, July 20,
rwise noted.

rements for filing and preserving copy of report.

ovember 30, 1967, and annually thereafter, every labor organiza-
itle VII of the Civil Rights Act of 1964 shall file with the Com-
elegate an executed copy of Local Union Equal Employment
ort EEO 3 in conformity with the directions set forth in the
anying instructions, provided that the labor organization has
bers at any time during the 12 months preceding the due date
l is a "local union" (as that term is commonly understood) or
r unaffiliated union. Labor organizations required to report are
form, in a specific jurisdiction, the functions ordinarily per-
al union, whether or not they are so designated. Every local
r organization acting in its behalf, shall retain at all times
s maintained in the ordinary course of its affairs a copy of the
rt filed, and shall make the same available if requested by an
employee of the Commission under the authority of section
VII. It is the responsibility of all persons required to file to
Commission or its delegate necessary supplies of the form.

y for making of willfully false statements on reports.

willfully false statements on Report EEO–3 is a violation of
s Code, Title 18, section 1001, and is punishable by fine or im-
forth herein.

ission's remedy for failure to file report.

ling or refusing to file Report EEO 3 when required to do so
l to file by order of a U.S. District Court, upon application of
under authority of section 710(b) of Title VII.

ption from reporting requirements.

that the preparation or filing of Report EEO–3 would create
the labor organization may apply to the Commission for an
he requirements set forth in this part.

onal reporting requirements.

n reserves the right to require reports, other than that desig-
EEO 3, about the membership or referral practices or other
or organizations, whenever, in its judgment, special or supple-

mental reports are necessary to accomplish the purposes of Title VII for requirement of such reports will be established in accordance procedures referred to in section 709(c), and as otherwise prescr

Subpart G—Recordkeeping by labor organizations

SOURCE: The provisions of this Subpart G appear at 32 F.R. 10 1967, unless otherwise noted.

§ 1602.27 Records to be made or kept.

Those portions of Report EEO–3 calling for information about and practices and for the compilation of statistics on the race, origin, and sex of members, persons referred, and apprentices, be "records" within the meaning of section 709(c), Title VII, of 1964. Every local, independent, or unaffiliated union with 100 bers (or any agent acting in its behalf, if the agent has responsibility of persons for employment) shall make these records or such are necessary for the completion of Report EEO–3 under the conditions set forth in the instructions accompanying it, which incorporated herein by reference and have the same force and sections of this part.

§ 1602.28 Preservation of records made or kept.

(a) All records made by a labor organization or its agent solely pose of completing Report EEO–3 shall be preserved for a period the due date of the report for which they were compiled. Unless State or local fair employment practices law or regulation governing vation of records inconsistent with those requirements stated in labor organization identified as a "referral union" in the instructions panying Report EEO–3, or agent thereof, shall preserve other referral records (including applications for same) made or kept period of 6 months from the date of the making of the record. Where of discrimination has been filed, or an action brought by the Attorney against a labor organization under Title VII, the respondent labor shall preserve all records relevant to the charge or acting until final of the charge or the action. The date of "final disposition of the charge tion" means the date of expiration of the statutory period within which party may bring an action in a U.S. District Court, or, where an brought against a labor organization either by a charging party or torney General, the date on which such litigation is terminated.

(b) Nothing herein shall relieve any labor organization covered of the obligations set forth in Subpart E, §§ 1602.20 and 1602.21, establishment and maintenance of a list of applicants wishing in an apprenticeship program controlled by it.

Subpart H—Records and inquiries as to race, color, national or

§ 1602.29 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity in these regulations, Subparts D through G, supersede any provision or local law which may conflict with them. Any State or local laws inquiries and recordkeeping with respect to race, color, national do not apply to inquiries required to be made under these regulations the instructions accompanying Reports EEO–2 and EEO–3.

[32 F.R. 10652, July 20, 1967]

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.

1604.1 Sex as a bona fide occupational qualification.
1604.2 Separate lines of progression and seniority systems.
1604.3 Discrimination against married women.
1604.4 Job opportunities advertising.
1604.5 Employment agencies.
1604.6 Pre-employment inquiries as to sex.
1604.7 Relationship of Title VII to the Equal Pay Act.
1604.31 Pension and retirement plans.

he provisions of this Part 1604 are issued pursuant to Sec. 713
; 42 U.S.C. 2000e–12.
rovisions of this Part 1604 appear at 30 F.R. 14927, Dec. 2, 1965,
noted.

a bona fide occupational qualification.

nission believes that the bona fide occupational qualification
sex should be interpreted narrowly. Labels—"Men's jobs" and
—tend to deny employment opportunities unnecessarily to one

nission will find that the following situations do not warrant
f the bona fide occupational qualification exception:
l to hire a woman because of her sex, based on assumptions of
employment characteristics of women in general. For example,
hat the turnover rate among women is higher than among men.
l to hire an individual based on stereotyped characterizations
h stereotypes include, for example, that men are less capable of
ate equipment; that women are less capable of aggressive sales-
inciple of non-discrimination requires that individuals be con-
is of individual capacities and not on the basis of any character-
ctributed to the group.
al to hire an individual because of the prefences of co-workers,
nts or customers except as covered specifically in subparagraph
raph.
hat the employer may have to provide separate facilities for a
osite sex will not justify discrimination under the bona fide oc-
cation exception unless the expense would be clearly unreason-

s necessary for the purpose of authenticity or genuineness, the
consider sex to be a bona fide occupational qualification, e.g., an

States have enacted laws or promulgated administrative regula-
t to the employment of females. Among these laws are those
limit the employment of females, e.g., the employment of fe-
ccupations, in jobs requiring the lifting or carrying of weights
prescribed limits, during certain hours of the night, or for more
umber of hours per day or per week.
ission believes that such State laws and regulations, although
lgated for the purpose of protecting females, have ceased
our technology or to the expanding role of the female worker in
Commission has found that such laws and regulations do not
the capacities, preferences, and abilities of individual females
iminate rather than protect. Accordingly, the Commission has
ch laws and regulations conflict with Title VII of the Civil
4 and will not be considered a defense to an otherwise estab-
nployment practice or as a basis for the application of the bona
qualification exception.

Dec. 2, 1965, as amended at 34 F.R. 13368, Aug. 19, 1969]

e lines of progression and seniority systems.

lawful employment practice to classify a job as "male" or "fe-
tain separate lines of progression or separate seniority lists
e this would adversely affect any employee unless sex is a bona
qualification for that job. Accordingly, employment practices
ch arbitrarily classify jobs so that:
prohibited from applying for a job labeled "male," or for a job
progression; and vice versa.
eduled for layoff is prohibited from displacing a less senior fe-
" seniority list; and vice versa.
system or line of progression which distinguishes between
y" jobs constitutes an unlawful employment practice if it op-
sed form of classification by sex, or creates unreasonable ob-
ancement by members of either sex into jobs which members
reasonably be expected to perform.

nation against married women.

ssion has determined that an employer's rule which forbids or
oyment of married women and which is not applicable to mar-

ried men is a discrimination based on sex prohibited by Title VII Rights Act. It does not seem to us relevant that the rule is not dir all females, but only against married females, for so long as sex is a application of the rule, such application involves a discrimination b

(b) It may be that under certain circumstances, such a rule con within the meaning of section 703(e)(1) of Title VII. We express this question at this time except to point out that sex as a bona fide qualification must be justified in terms of the peculiar requirement ticular job and not on the basis of a general principle such as the d spreading work.

§ 1604.4 Job opportunities advertising.

It is a violation of Title VII for a help-wanted advertisement to ind erence, limitation, specification, or discrimination based on sex u bona fide occupational qualification for the particular job involved. Th of an advertisement in columns classified by publishers on the basis as columns headed "Male" or "Female," will be considered an exp preference, limitation, specification, or discrimination based on sex.

[33 F.R. 11539, Aug. 14, 1968]

§ 1604.5 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states tha unlawful for an employment agency to discriminate against any i cause of sex. The Commission has determined that private employm which deal exclusively with one sex are engaged in an unlawful practice, except to the extent that such agencies limit their servic ing employees for particular jobs for which sex is a bona fide occupa fication.

(b) An employment agency that receives a job order containing sex specification will share responsibility with the employer placing if the agency fills the order knowing that the sex specification is no bona fide occupational qualification. However, an employment agenc deemed to be in violation of the law, regardless of the determination ployer, if the agency does not have reason to believe that the exi of bona fide occupations qualification is without substance and makes and maintains a written record available to the Commission job order. Such record shall include the name of the employer, the d the job and the basis for the employer's claim of bona fide qualification.

(c) It is the responsibility of employment agencies to keep informed and decisions of the Commission on sex discrimination.

§ 1604.6 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male_____, Female_____"; or Miss," provided that the inquiry is made in good faith for a non-di purpose. Any pre-employment inquiry in connection with prospective which expresses directly or indirectly any limitation, specification nation as to sex shall be unlawful unless based upon a bona fide qualification.

§ 1604.7 Relationship of Title VII to the Equal Pay Act.

(a) Title VII requires that its provisions be harmonized with the Act (section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S. order to avoid conflicting interpretations or requirements with res tions to which both statutes are applicable. Accordingly, the Com prefix section 703(h) to mean that the standards of "equal pay for set forth in the Equal Pay Act for determining what is unlawful d compensation are applicable to Title VII. However, it is the jud Commission that the employee coverage of the prohibition against d in compensation because of sex is co-extensive with that of the other in section 703, and is not limited by section 703(h) to those employ by the Fair Labor Standards Act.

(b) Accordingly, the Commission will make applicable to equal pay fied under Title VII the relevant interpretations of the Administra and Hour Division, Department of Labor. These interpretations are Code of Federal Regulations, Part 800.119–800.163. Relevant opinion

erpreting "the equal pay for equal work standard" will also be Commission.

mission will consult with the Administrator before issuing an matter covered by both Title VII and the Equal Pay Act.

ion and retirement plans.

nce in optional or compulsory retirement ages based on sex vio-

ferences based on sex, such as differences in benefits for survivors, by the Commission by the issuance of Commission decisions in ch issues.

Feb. 24, 1968]

05—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

vation of the Sabbath and other religious holidays.

complaints filed with the Commission have raised the question scrimination on account of religion to discharge or refuse to hire regularly observe Friday evening and Saturday, or some other , as the Sabbath or who observe certain special religious holidays and, as a consequence, do not work on such days.

mission believes that the duty not to discriminate on religious d by section 703(a)(1) of the Civil Rights Act of 1964, includes the part of the employer to make reasonable accommodations needs of employees and prospective employees where such ac- an be made without undue hardship on the conduct of the em- s. Such undue hardship, for example, may exist where the em- work cannot be performed by another employee of substantially tions during the period of absence of the Sabbath observer. of the particularly sensitive nature of discharging or refusing to e or applicant on account of his religious beliefs, the employer of proving that an undue hardship renders the required accom- e religious needs of the employee unreasonable.

mission will review each case on an individual basis in an effort able application of these guidelines to the variety of situations to the varied religious practices of the American people.

Stat. 265; 42 U.S.C. 2000–12)

, July 13, 1967]

GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN

ines on discrimination because of national origin.

mission is aware of the widespread practices of discrimination ational origin, and intends to apply the full force of law to elimi- nination. The bona fide occupational qualification exception as ional origin cases shall be strictly construed.

is intended to eliminate covert as well as the overt practices of nd the Commission will, therefore, examine with particular con- e persons within the jurisdiction of the Commission have been ployment opportunity for reasons which are grounded in national tions. Examples of cases of this character which have come to he Commission include: The use of tests in the English language idual tested came from circumstances where English was not st language or mother tongue, and where English language skill ment of the work to be performed; denial of equal opportunity ied to or associated with persons of a specific national origin; pportunity because of membership in lawful organizations iden- eeking to promote the interests of national groups; denial of y because of attendance at schools or churches commonly utilized given national origin; denial of equal opportunity because their their spouse reflects a certain national origin, and denial of equal persons who as a class of persons tend to fall outside national t and weight where such height and weight specifications are the performance of the work involved.

(c) Title VII of the Civil Rights Act of 1964 protects all indiv citizen and noncitizens, domiciled or residing in the United State crimination on the basis of race, color, religion, sex, or national

(d) Because of discrimination on the basis of citizenship has t criminating on the basis of national origin, a lawfully immigrat domiciled or residing in this country may not be discriminated basis of his citizenship, except that it is not an unlawful empl for an employer, pursuant to section 703(g), to refuse to employ does not fulfill the requirements imposed in the interests of nationa suant to any statute of the United States or any Executive order dent respecting the particular position or the particular premises

(e) In addition, some States have enacted laws prohibiting of noncitizens. For the reasons stated above such laws are in are, therefore, superseded by Title VII of the Civil Rights Act of 19

(Sec. 713, 78 Stat. 265; 42 U.S.C. 2000e–12)

[35 F.R. 421, Jan. 13, 1970]

PART 1607—GUIDELINES ON EMPLOYEE SELECTION PROCEDU

Sec.

1607.1 Statement of purpose.
1607.2 "Test"defined.
1607.3 Discrimination defined.
1607.4 Evidence of validity.
1607.5 Minimum standards for validation.
1607.6 Presentation of validity evidence.
1607.7 Use of other validity studies.
1607.8 Assumption of validity.
1607.9 Continued use of tests.
1607.10 Employment agencies and employment services.
1607.11 Disparate treatment.
1607.12 Retesting.
1607.13 Other selection techniques.
1607.14 Affirmative action.

AUTHORITY: The provisions of this Part 1607 issued under sec. 7 265; 42 U.S.C. 2000e–12.

SOURCE: The provisions of this Part 1607 appear at 35 F.R. 12333 unless otherwise noted.

§ 1607.1 Statement of purpose.

(a) The guidelines in this part are based on the belief that prop and standardized employee selection procedures can significantly the implementation of nondiscriminatory personnel policies, as requ VII. It is also recognized that professionally developed tests, whe junction with other tools of personnel assessment and compliance programs of job design, may significantly aid in the development nance of an efficient work force and, indeed, aid in the utilization an tion of human resources generally.

(b) An examination of charges of discrimination filed with the and an evaluation of the results of the Commission's compliance revealed a decided increase in total test usage and a marked increase testing practices which, based on our experience, tend to have effects. In many cases, persons have come to rely almost exclusively the basis for making the decision to hire, transfer, promote, grant train, refer or retain, with the result that candidates are selected the basis of a single test score. Where tests are so used, minority c quently experience disproportionately high rates of rejection by fa score levels that have been established as minimum standards for

It has also become clear that in many instances persons are using basis for employment decisions without evidence that they are va of employee job performance. Where evidence in support of pres lips between test performance and job behavior is lacking, the pos crimination in the application of test results must be recognized A demonstrated validity (i.e., having no known significant relationship between) and yielding lower scores for classes protected by Title VII

of many who have necessary qualifications for successful work

elines in this part are designed to serve as a workable set of employers, unions and employment agencies in determining ection procedures conform with the obligations contained in Title Rights Act of 1964. Section 703 of Title VII places an affirmative employers, labor unions, and employment agencies, as defined the Act, not to discriminate because of race, color, religion, sex, n. Subsection (h) of section 703 allows such persons "* * * to upon the results of any professionally developed ability test pro- est, its administration or action upon the results is not designed, to discriminate because of race, color, religion, sex or national

defined.

se of the guidelines in this part, the term "test" is defined as any or performance measure used as a basis for any employment delines in this part apply, for example, to ability tests which are sure eligibility for hire, transfer, promotion, membership, train- retention. This definition includes, but is not restricted to, meas- intelligence, mental ability and learning ability; specific intel- mechanical, clerical and other aptitudes; dexterity and coordi- ge and proficiency; occupational and other interests; and atti- y or temperament. The term "test" includes all formal, scored, ndardized techniques of assessing job suitability including, in above, specific qualifying or disqualifying personal history or irements, specific educational or work history requirements, s, biographical information blanks, interviewers' rating scales, n forms, etc.

ination defined.

test which adversely affects hiring, promotion, transfer or any t or membership opportunity of classes protected by Title VII mination unless: (a) the test has been validated and evidences utility as hereinafter described, and (b) the person giving or results of the particular test can demonstrate that alternative ransfer or promotion procedures are unavailable for his use.

ce of validity.

on using tests to select from among candidates for a position or shall have available for inspection evidence that the tests are manner which does not violate § 1607.3. Such evidence shall be lications of possible discrimination, such as instances of higher or minority candidates than nonminority candidates. Further- nically feasible, a test should be validated for each minority h it is used; that is, any differential rejection rates that may test, must be relevant to performance on the jobs in question. "technically feasible" as used in these guidelines means having fficient number of minority individuals to achieve findings of ractical significance, the opportunity to obtain unbiased job eria, etc. It is the responsibility of the person claiming absence bility to positively demonstrate evidence of this absence. f a test's validity should consist of empirical data demonstrat- is predictive of or significantly correlated with important ele- ehavior which comprise or are relevant to the job or jobs for are being evaluated.

gression structures and seniority provisions are so established ees will probably, within a reasonable period of time and in a f cases, progress to a higher level, it may be considered that ing evaluated for jobs at that higher level. However, where job so nearly automatic, or the time span is such that higher level s' potential may be expected to change in significant ways, it d that candidates are being evaluated for a job at or near the point is made to underscore the principle that attainment of a higher level job is a relevant criterion in validating employ when there is a high probability that persons employed will in higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit o and no significant differences exist between units, jobs, and applicant evidence obtained in one unit may suffice for the others. Similarly validation process requires the collection of data throughout a multi zation, evidence of validity specific to each unit may not be required also be instances where evidence of validity is appropriately obtained than one company in the same industry. Both in this instance and data collected throughout a multiunit organization, evidence of val to each unit may not be required: *Provided*, That no significant diffe between units, jobs, and applicant populations.

§ 1607.5 Minimum standards for validation.

(a) For the purpose of satisfying the requirements of this par evidence in support of a test's validity must be based on studies e erally accepted procedures for determining criterion-related valid those described in "Standards for Educational and Psychologica Manuals" published by American Psychological Association, 120 NW., Washington, D.C. 20036. Evidence of content or construct validi in that publication, may also be appropriate where criterion-relate not feasible. However, evidence for content or construct validity s companied by sufficient information from job analyses to demonstra vance of the content (in the case of job knowledge or proficiency t construct (in the case of trait measures). Evidence of content va may be acceptable for well-developed tests that consist of suitable sa essential knowledge, skills or behaviors composing the job in questi of knowledge, skills or behaviors contemplated here do not include can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to d empirical evidence, the following minimum standards, as applicable, in the research approach and in the presentation of results which evidence of validity.

(1) Where a validity study is conducted in which tests are adm applicants, with criterion data collected later, the sample of subje representative of the normal or typical candidate group for the jo question. This further assumes that the applicant sample is represe minority population available for the job or jobs in question in the market. Where a validity study is conducted in which tests are adm present employees, the sample must be representative of the minority rently included in the applicant population. If it is not technically to clude minority employees in validation studies conducted on the p force, the conduct of a validation study without minority candida relieve any person of his subsequent obligation for validation when minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and s conditions, with proper safeguards to protect the security of test s insure that scores do not enter into any judgments of employee ad are to be used as criterion measures. Copies of tests and test manuals instructions for administration, scoring, and interpretation of test are privately developed and or are not available through normal channels must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy test is intended to predict or identify must be fully described; and in the case of rating techniques, the appraisal form(s) and instr rater(s) must be included as a part of the validation evidence. S may include measures other than actual work proficiency, such as supervisory ratings, regularity of attendance and tenure. Wha are used they must represent major or critical work behaviors as careful job analyses.

(4) In view of the possibility of bias inherent in subjective supervisory rating techniques should be carefully developed, and should be closely examined for evidence of bias. In addition, min obtain unfairly low performance criterion scores for reasons other users' prejudice, as, when as new employees, they have had less o learn job skills. The general point is that all criteria need to be e insure freedom from factors which would unfairly depress the scores groups.

tial validity. Data must be generated and results separately re-
nority and nonminority groups wherever technically feasible.
ity group is sufficiently large to constitute an identifiable factor
or market, but validation data have not been developed and pre-
ely for that group, evidence of satisfactory validity based on
ill be regarded as only provisional compliance with these guide-
eparate validation of the test for the minority group in question.
A test which is differentially valid may be used in groups for
d but not for those in which it is not valid. In this regard, where
or two groups but one group characteristically obtains higher test
e other without a corresponding difference in job performance,
ust be set so as to predict the same probability of job success in

sing the utility of a test the following considerations will be

tionship between the test and at least one relevant criterion must
significant. This ordinarily means that the relationship should
high as to have a probability of no more than 1 to 20 to have
ance. However, the use of a single test as the sole selection device
zed closely when that test is valid against only one component of
e.

ion to statistical significance, the relationship between the test
ould have practical significance. The magnitude of the relation-
practical significance or usefulness is affected by several factors,

er the proportion of applicants who are hired for or placed on
her the relationship needs to be in order to be practically useful.
elatively low relationship may prove useful when proportionately
es are available;

ger the proportion of applicants who become satisfactory em-
ot selected on the basis of the test, the higher the relationship
ween the test and a criterion of job success for the test to be
ful. Conversely, a relatively low relationship may prove useful
nately few applicants turn out to be satisfactory.

aller the economic and human risks involved in hiring an un-
ant relative to the risks entailed in rejecting a qualified applicant,
relationship needs to be in order to be practically useful. Con-
ively low relationship may prove useful when the former risks
igh.

ntation of validity evidence.

tion of the results of a validation study must include graphical
representations of the relationships between the test and the
ing judgments of the test's utility in making predictions of future
(See § 1607.5(c) concerning assessing utility of a test.) Average
sts and criteria must be reported for all relevant subgroups, in-
y and nonminority groups where differential validation is re-
er statistical adjustments are made in validity results for less
liability or for restriction of score range in the test or the cri-
the supporting evidence from the validation study must be pre-
Furthermore, for each test that is to be established or continued
al employee selection instrument, as a result of the validation
mum acceptable cutoff (passing) score on the test must be re-
pected that each operational cutoff score will be reasonable and
normal expectations of proficiency within the work force or
the study was conducted.

f other validity studies.

e the validity of a test cannot be determined pursuant to § 1607.4
g., the number of subjects is less than that required for a tech-
e validation study, or an appropriate criterion measure cannot
evidence from validity studies conducted in other organizations,
ported in test manuals and professional literature, may be con-
ble when: (a) The studies pertain to jobs which are comparable
ally the same task elements), and (b) there are no major differ-
tual variable or sample composition which are likely to signifi-

cantly affect validity. Any person citing evidence from other validity ... evidence of test validity for his own jobs must substantiate in deta... parability and must demonstrate the absence of contextual or sample... cited in paragraphs (a) and (b) of this section.

§ 1607.8 Assumption of validity.

(a) Under no circumstances will the general reputation of a test... or its publisher, or casual reports of test utility be accepted in lieu ... of validity. Specifically ruled out are: assumptions of validity ba... names or descriptive labels; all forms of promotional literature; da... on the frequency of a test's usage; testimonial statements of sellers... consultants; and other nonempirical or anecdotal accounts of testing ... or testing outcomes.

(b) Although professional supervision of testing activities may he... to insure technically sound and nondiscriminatory test usage, such ... alone shall not be regarded as constituting satisfactory evidence of tes...

§ 1607.9 Continued use of tests.

Under certain conditions, a person may be permitted to continue ... a test which is not at the moment fully supported by the required ... validity. If, for example, determination of criterion-related validity ... setting is practicable and required but not yet obtained, the use of the... continue: *Provided:* (a) The person can cite substantial evidence of ... described in § 1607.7 (a) and (b); and (b) he has in progress valid... cedures which are designed to produce, within a reasonable time, the ... data required. It is expected also that the person may have to alter ... test cutoff scores so that score ranges broad enough to permit the ide... of criterion-related validity will be obtained.

§ 1607.10 Employment agencies and employment services.

(a) An employment service, including private employment agenc... employment agencies, and the U.S. Training and Employment Servi... fined in section 701(c), shall not make applicant or employee appra... ferrals based on the results obtained from any psychological test or other... standard not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an ... union to devise a testing program is required to follow the standard... validation as set forth in these guidelines. An employment service is ... of its obligation herein because the test user did not request such val... has requested the use of some lesser standard than is provided in these ...

(c) Where an employment agency or service is requested only to ad... testing program which has been elsewhere devised, the employment ... service shall request evidence of validation, as described in the guideli... part, before it administers the testing program and/or makes referra... to the test results. The employment agency must furnish on request su... of validation. An employment agency or service will be expected to ref... minister a test where the employer or union does not supply satisfactory... of validation. Reliance by the test user on the reputation of the test ... or the name of the test shall not be deemed sufficient evidence of val... § 1607.8(a)). An employment agency or service may administer a ... gram where the evidence of validity comports with the standards of ... § 1607.7.

§ 1607.11 Disparate treatment.

The principle of disparate or unequal treatment must be distingu... the concepts of test validation. A test or other employee selection ... even though validated against job performance in accordance with the ... by this part, cannot be imposed upon any individual or class protec... VII where other employees, applicants or members have not been ... the standard. Disparate treatment, for example, occurs where mem... race, or sex group have been denied the same employment, promotio... or membership opportunities as have been made available to other ... applicants. Those employees or applicants who have been denied equal ... because of prior discriminatory practices or policies, must at least be ... same opportunities as had existed for other employees or applicants ... period of discrimination. Thus, no new test or other employee selection ...

l upon a class of individuals protected by Title VII who, but for
ation, would have been granted the opportunity to qualify under
selection standards previously in force.

esting.

unions, and employment agencies should provide an opportunity
ad reconsideration to earlier "failure" candidates who have availed
more training or experience. In particular, if any applicant or em-
the course of an interview or other employment procedure claims
a or experience, that individual should be retested.

er selection techniques

chniques other than tests, as defined in § 1607.2, may be improp-
to have the effect of discriminating against minority groups. Such
ude, but are not restricted to, unscored or casual interviews and
cation forms. Where there are data suggesting employment dis-
e person may be called upon to present evidence concerning the
unscored procedures as well as of any tests which may be used, the
lidity being of the same types referred to in §§ 1607.4 and 1607.5.
g the possibility of discrimination exist, for example, when there
l rates of applicant rejection from various minority and nonmi-
roups for the same job or group of jobs or when there are dispro-
resentations of minority and nonminority or sex groups among
ees in different types of jobs. If the person is unable or unwilling
h validation studies, he has the option of adjusting employment
as to eliminate the conditions suggestive of employment discrimi-

rmative action.

hese guidelines shall be interpreted as diminishing a person's ob-
both Title VII and Executive Order 11246 as amended by Execu-
75 to undertake affirmative action to ensure that applicants or
treated without regard to race, color, religion, sex, or national
ally, the use of tests which have been validated pursuant to those
not relieve employers, unions or employment agencies of their
ake positive action in affording employment and training to mem-
protected by Title VII.

PART 1610—AVAILABILITY OF RECORDS

art A—Production or disclosure under 5 U.S.C. 552(a)

tions.
tory requirements.
se and scope.
reference facilities and current index.
on of identifying details.
nal offices.
sts for identifiable records and copies.
ls of other Agencies.
ule of fees and method of payment for services rendered.
ptions.
istrative decision and review.

3—Production in response to subpenas or demands of courts or other authorities

se and scope.
ction prohibited unless approved by the General Counsel.
lure in the event of a demand for production or disclosure.
dure in the event of an adverse ruling.

The provisions of this Part 1610 issued under sec. 713(b), 78 Stat.
000e–12, 5 U.S.C. 552.
provisions of this Part 1610 appear at 32 F.R. 16261, Nov. 29, 1967.
e noted.

Subpart A—Production or disclosure under 5 U.S.C. 552(a)

§ 1610.1 Definitions.

As used in this part:

(a) "Act" refers to Title VII of the Civil Rights Act of 1964, 42 U.S. 2000e et seq.

(b) "Commission" refers to the Equal Employment Opportunity C

§ 1610.2 Statutory requirements.

5 U.S.C. 552(a)(3) requires each Agency, upon request for identifi made in accordance with published rules stating the time, place, fee tent authorized by statute, and procedure to be followed, to make promptly available to any person. 5 U.S.C. 552(b) exempts specific records from all of the public access requirements of 5 U.S.C. 552 a them to be withheld.

§ 1610.4 Purpose and scope.

(a) This subpart contains the regulations of the Equal Employ tunity Commission implementing 5 U.S.C. 552. The regulations of provide information concerning the procedures by which records may from all organizational units within the Commission. Official record mission made available pursuant to the requirements of 5 U.S.C. 552 nished to members of the public only as prescribed by this subpart. employees of the Commission may continue to furnish to the public and without compliance with the procedures prescribed herein, inf records which prior to the enactment of 5 U.S.C. 552 were furnished in the regular performance of their duties. To the extent permitted the Commission also will make available records which it is auth hold under 5 U.S.C. 552 whenever it determines that such disclos public interest.

(b) The Attorney General's memorandum on the Public Infor of the Administrative Procedure Act, which was published in June available from the Superintendent of Documents, should be consi sidering questions arising under 5 U.S.C. 552.

§ 1610.5 Public reference facilities and current index.

The Commission will maintain in a public reading area located in sion's library at 1800 G Street NW., Washington, D.C. 20506, the are required by 5 U.S.C. 552(a)(2) and 552(a)(4) to be made ava lic inspection and copying. The Commission will maintain and for public inspection and copying in this public reading area providing identifying information for the public as to any matter adopted, or promulgated after July 4, 1967, and which is required by 5 U.S.C. 552(a)(2). The Commission in its discretion may, ho precedential materials issued, adopted, or promulgated prior to Commission will also maintain on file in this public reading a published by the Commission in the FEDERAL REGISTER and currently

§ 1610.7 Deletion of identifying details.

When making available any records pursuant to § 1610.5, the C delete identifying details to the extent required to prevent a clear invasion of personal privacy. To each record from which identifying have been deleted when the record is made available for public copying, the Commission will attach a written justification for s Ordinarily one justification shall suffice for deletions made in or related records. Subject to necessary or appropriate variations instances, the justification will be in substantially the following fo

"This record is (These records are) made available for public copying pursuant to 5 U.S.C. sec. 552(a)(2). As authorized there clearly unwarranted invasion of personal privacy, identifying de deleted.

§ 1610.9 Regional offices.

Each office listed below will maintain in a public reading room or public materials dealing with the Act and the Commission:

Federal Office Building, Room 7515, 500 Gold Street SW., Albuquerque, N. Mex. 87101. Telephone No.: Area Code 505, 247-0311 Ext. 2051

ee Street NW., Room 417, Atlanta, Ga. 30309. Telephone No.: Area
5941.
hth Street, Room G 115, Austin, Tex. 78701. Telephone No.: Area
411 Ext. 6845.
use and Federal Building, Room 1832, 219 South Dearborn Street,
604. Telephone No.: 312, 353–7550.
uilding, Room 402, 1365 Ontario Street, Cleveland, Ohio 44113.
216, 522–4784.
Street, Room 305, Kansas City, Mo. 64106. Telephone No.: Area
773.
e Building, Room 7730, 300 North Los Angeles Street, Los Angeles,
lephone No.: Area Code 213, 688–3400.
ple Building, 333 St. Charles Avenue, New Orleans, La. 70130.
Area Code 504, 527–2721.
y, Suite 701, New York, N.Y. 10013. Telephone No.: 212, 264-3642.
Building, Room 126, 630 Sansome Street, San Francisco, Calif.
ne No.: Area Code 415, 556–0260.
reet NW., Room 104, Washington, D.C. 20036. Telephone No.: Area
914.

uests for identifiable records and copies.

st for inspection or copying of a record of the Commission which
shed in the FEDERAL REGISER nor customarily made available and
ailable in the public reading area as described in § 1610.5, may be
or by mail to the Office of the General Counsel, 1800 G Street
on, D.C. 20506. Requests may be presented from 9 a.m. to 5:30
through Fridays, with the exception of holidays. Telephone in-
sts may be made by calling Washington, D.C. telephone number:
343–7693. Collect calls will not be accepted.
for processing requests will be made in accordance with the
rth in § 1610.17. Such charges are payable in advance.
uest shall contain a description of the record requested which is
ific with respect to names, dates, subject matter, and location, to
rd to be identified and located. A separate request must be sub-
record requested.
where circumstances require special processing, requests will be
e order in which they are received. Efforts will be made to make
available as promptly as is reasonable under the particular

ation is undertaken by the Commission to compile or create infor-
ds not already in existence at the time of the request.
requested record cannot be located from the information sub-
own to have been destroyed or otherwise disposed of, the person
uest will be appropriately notified.
requested record has been identified and is available, the person
request will be notified as to where and when the record will be
spection. Upon payment of the necessary fees, a copy of an avail-
y be furnished to the requester in person or by mail.

ds of other Agencies.

records that originated in another Agency and are in the custody
sion, will be referred to that Agency for processing, and the per-
the request shall be so notified. The decision made by that Agency
such records will be honored by the Commission.

dule of fees and method of payment for services rendered.

owing specific fees shall be applicable with respect to services
nbers of the public under this subpart:

for records, per hour or fraction thereof	$3.60
itative services and index assistance-minimum charge, per action thereof	3.60
le by Xerox or otherwise (per page)	.25
n of each record as a true copy	.75
n of each record as a true copy, under the seal of the	1.00
igned statement of negative result of search for record	1.00

(b) When no specific fee has been established for a service, e.g. search assistance, or the request for a service does not fall under one categories due to the amount, size, or type thereof, the Director of tion is authorized to establish an appropriate fee pursuant to the lished in Bureau of the Budget Circular No. A 25, entitled "User C

(c) When a request for identifiable records is made by mail, it companied by remittance of the total fee chargeable, as well as a se stamped envelope if special mail services are desired.

(d) Fees must be paid in full prior to issuance of requested copie If uncertainty as to the existence of a record, or as to the number copied or certified precludes remitting the exact fee chargeable with the Agency will inform the interested party of the exact amount re

(e) Payment shall be in the form of a check, bank draft, money personally delivered, may be made in cash. Remittances shall be to the order of the Equal Employment Opportunity Commission. will assume no responsibility for cash which is lost in the mail.

(f) A receipt for fees paid will be given only upon request. Refund for services actually rendered will not be made.

(g) No charge will be made for services performed at the requ governmental agencies or officers thereof acting in their official capa

§ 1610.20 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclos ments nine categories of records which are described in subsecti categories include such matters as national defense and foreign po tion, investigatory files, internal procedures and communications exempted from disclosure by other statutes, information given i and matters involving personal privacy. The scope of the exemptions in the Attorney General's memorandum referred to in § 1610.4(b).

(b) Section 706(a) of the Act provides that the Commission sha public charges which have been filed. It also provides that (subse filing of a charge, an investigation, and a finding that there is rea to believe that the charge is true) nothing said or done during and the Commission's endeavors to eliminate any alleged unlawful empl tice by informal methods of conference, conciliation, and persua made public by the Commission without the written consent of the p may it be used as evidence in a subsequent proceeding. Any officer of the Commission, who shall make public in any manner whatever tion in violation of section 706(a) shall be deemed guilty of a misde upon conviction thereof shall be fined not more than $1,000 or im more than 1 year.

(c) Section 709 of the Act authorizes the Commission to conduct i of charges filed under section 706, engage in cooperative efforts wi local agencies charged with the administration of State fair empl tices laws, and issue regulations concerning reports and record-k section (e) of section 709 provides that it shall be unlawful for a employee of the Commission to make public in any manner whatever mation obtained by the Commission pursuant to its authority under prior to the institution of any proceeding under the Act involving tion. Any officer or employee of the Commission who shall make p manner whatever any information in violation of section 709(e) sh of a misdemeanor and upon conviction thereof shall be fined not or imprisoned not more than 1 year. The Commission will, however able for inspection and copying some tabulations of aggregate indust other statistics derived from the Commission's reporting program by section 709 (c) of the Act, where such tabulations have been p ared by the Commission and are available in documentary form. Other such tabulations do not consist of aggregate data from less respondents, and do not reveal the identity of an individual or respondent in a particular industry or area in any manner.

§ 1610.23 Administrative decision and review.

(a) The General Counsel shall grant or deny each request made of each request shall be in writing and shall contain a simple state

denial. The decision of the General Counsel shall be final, subject as provided in paragraph (b) of this section.

of the decision of the General Counsel may be requested by the ing the request within 30 days after the date of the notice advising ision. The 30-day limitation may be waived for good cause. The uest for review by the Commission may be accomplished by mailing an, Equal Employment Opportunity Commission, 1800 G Street gton, D.C. 20506, by certified mail, a copy of the written denial aragraph (a) of this section and a statement of the circumstances, uments advanced for insistence upon disclosure of the originally rd. The decision of the Commission upon review shall be in writ- contain a simple statement of the reasons for the decision. The review will be promptly communicated to the person requesting ll constitute the final action of the Commission.

onal appearance, oral argument or hearing will ordinarily be per- ection with an initial request made to the General Counsel or on nial by him. Upon request and a showing of special circumstances, limitation may be waived and an informal conference or appear- with or before the General Counsel or the Commission, as the r any employee designated by him or it for this purpose.

Nov. 29, 1967, as amended at 32 F.R. 16491, Dec. 1, 1967.]

roduction in response to subpenas or demands of courts or other authorities

pose and scope.

t contains the regulations of the Commission concerning proce- llowed when a subpena, order, or other demand (hereinafter in eferred to as a "demand") of a court or other authority is issued etion or disclosure of (a) any material contained in the files of n; (b) any information relating to material contained in the files of n; or (c) any information or material acquired by any person son was an employee of the Commission as a part of the perform- cial duties or because of his official status.

duction prohibited unless approved by the General Counsel.

or former employee of the Commission shall, in response to a court or other authority, produce any material contained in the mission or disclose any information or produce any material ac- of the performance of his official duties or because of his official the prior approval of the General Counsel.

edure in the event of a demand for production or disclosure.

er a demand is made upon an employee or former employee of the the production of material or the disclosure of information de- 0.30, he shall immediately notify the General Counsel. If possible, unsel shall be notified before the employee or former employee con- to or appears before the court or other authority.

nse to the demand is required before instructions from the Gen- e received, an attorney designated for that purpose by the Commis- ir with the employee or former employee under whom the demand and shall furnish the court or other authority with a copy of the tained in this part and inform the court or other authority that s been or is being, as the case may be, referred for prompt consid- General Counsel. The court or other authority shall be requested stay the demand pending receipt of the requested instructions al Counsel.

edure in the event of an adverse ruling.

or other authority declines to stay the effect of the demand in request made in accordance with § 1610.34(b) pending receipt of om the General Counsel, or if the court or other authority rules d must be complied with irrespective of the instructions from the l not to produce the material or disclose the information sought, r former employee upon whom the demand has been made shall fuse to comply with the demand (United States ex rel. Touhy v. 462 (1951)).

[From the Federal Register, Oct. 27, 1971]

TITLE 29—LABOR: CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY C

PART 1601—PROCEDURAL REGULATIONS

Subpart B—Procedure for the prevention of unlawful employment

Confidentiality

By virtue of the authority vested in it by section 713(a) of Title Civil Rights Act of 1964, 42 U.S.C. section 2000e-12(a), 78 Stat. 26 Employment Opportunity Commission hereby amends Title 29, Ch Subpart B, § 1601.20 of the Code of Federal Regulations.

Because the amendments herein adopted are procedural in natur sions of section 4 of the Administrative Procedure Act, 5 U.S.C. sec public notice and delay in effective date are inapplicable. This amen become effective upon publication in the FEDERAL REGISTER.

Section 1601.20 is revised to read as follows:

§ 1610.20 Confidentiality.

Neither a charge, nor information obtained pursuant to section 70 VII, nor information obtained from records required to be kept or rep to be filed pursuant to sections 709(c) and (d) of said title, shall ters of public information by the Commission prior to the institutio ceedings under this title involving such charge or information. Th does not apply to such earlier disclosures to the charging party, the witnesses, and representatives of interested Federal, State, and lo as may be appropriate or necessary to the carrying out of the C functions under the title, nor to the publication of data derived fr mation in a form which does not reveal the identity of the char respondent, or person supplying the informtaion.

(Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e-12(a))

This amendment is effective upon publication in the FEDERAL RE 27-71).

Signed at Washington, D.C., this 18th day of October 1971.

[SEAL] WILLIAM H. BROWN, C

[F.R. Doc. 71-15527 Filed 10-26-71; 8:46 a.m.]

PART 1610—AVAILABILITY OF RECORDS

Subpart A—Production or disclosure under 5 U.S.C. 552(a)

Fees, Charges, and Methods of Payment

By virtue of the authority vested in it by section 713(a) of Title VII Rights Act of 1964, 42 U.S.C. section 2000e-12(a), 78 Stat. 265, the ployment Opportunity Commission hereby amends Title 29, Chapter X 1610, Subpart A, by adding § 1610.16, and by amending § 1610.17, of Federal Regulations.

Because the amendments herein adopted are procedural in nature sions of section 4 of the Administrative Procedure Act, 5 U.S.C. sec public notice and delay in effective date are inapplicable. These amend be effective upon publication in the FEDERAL REGISTER.

§ 1610.16 User charges, waiver.

It is the policy of the Equal Employment Opportunity Commission and charging parties, their counsel, and private agencies working employment discrimination. To the extent practicable that policy will under this part so as to permit requests for inspection or copies of r information to be met without cost to the charging party, attorney, or the request. Fees will be charged, however, in the case of requests determined by the General Counsel to involve a burden on staff or d quality in excess of that normally accepted by the agency in hand requests for information. While the fees charged for services and co amount exceed those as specified in § 1610.17, the Commission reserv to limit the number of copies that will be provided of any document r

ngements for copying be made in the case of records or requests
al problems of reproduction or handling.

8 Stat. 265, 42 U.S.C. 2000e–12(a).)

ule of fees and method of payment for services rendered.

provided for in § 1610.16 the following specific fees shall be
especi to services rendered to members of the public under this

r records, per hour or fraction thereof	$3. 60
ies services and index assistance minimum charge	3. 60
by Xerox or other (per page)	0. 05
of each record as a true copy	0. 75
of each record as a true copy, under the seal of the	1. 00
ned statement of negative result of search for record	1. 00

specific fee has been established for a service, e.g., legal or re-
, or the request for a service does not fall under one of the above
the amount, size, or type thereof, the Director of Administra-
l to establish an appropriate fee pursuant to the criteria estab-
of the Budget Circular No. A-25, entitled "User Charges."
quest for identifiable records is made by mail, it should be ac-
nittance of the total fee chargeable, as well as a self-addressed
, if special mail services are desired.
be paid in full prior to issuance of requested copies of records.
to the existence of a record, or as to the number of sheets to be
l precludes remitting the exact fee chargeable with the request,
nform the interested part of the exact amount required.
nall be in the form of a check, bank draft, money order. Remit-
ade payable to the order of the Equal Employment Opportunity

for fees paid will be given only upon request. Refund of fees
ctually rendered will not be made.
will be made for services performed at the request of other
ncies or officers thereof, acting in their official capacities.
8 Stat. 265, 42 U.S.C. 2000e–12(a)).
nt is effective upon publication in the FEDERAL REGISTER

ington, D.C., this 18th day of October 1971.

WILLIAM H. BROWN, III,
Chairman.

[FR Doc. 71–15526 Filed 10–26–71; 8:46 am.]

[From the Federal Register, Feb. 5, 1971]

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

Procedure after failure of conciliation

e authority vested in it by section 713(a) of Title VII of the
of 1964, 42 U.S.C. section 2000e–12(a), 78 Stat. 265, the Equal
ortunity Commission (hereinafter referred to as the Commis-
ends paragraph (c) of § 1601.25a issued February 19, 1970 (36
ragraph (d) of § 1601.25b issued June 18, 1970 (35 F.R. 10005),
eral Regulations.
(c) states in its pertinent part that, "* * * the charging party
may demand in writing that a notice issue pursuant to 1601.25."
(d) states in its pertinent part that, "* * * any member of
l by the practices alleged in the charge or any respondent named
demand in writing that a Notice-of-Right-to-Sue issue."
experience of the Commission that the privileges granted to
ese provisions have adversely affected the implementation of
Policy embodied in Title VII, that disputes be settled volun-
failure of voluntary settlement that such disputes should be
Federal Courts. In most instances in which respondents have

requested notice of right to sue, respondents have refused to enter i... settlement negotiation, maintaining that such disputes shall be res... However, except where the charging parties request a notice, o... sion's investigatory procedures have culminated in a decision, it i... sion's experience that they are frequently unable to locate and se... legal representation within the 30-day period provided by statute f... of filing a timely complaint. Thus such requests for issuance of no... effectively used by some respondents to prevent both administrativ... resolution of the issues in dispute. Since, therefore, the privile... §§ 1601.25a(c) and 1601.25b(d) has been exercised by respondents... which subverts the remedial scheme provided by Title VII, the Com... it necessary to withdraw the privilege so granted.

Because the amendments herein adopted are procedural in natu... sions of section 4 of the Administrative Procedure Act, 5 U.S.C. 5... notice and delay in effective date are inapplicable. This amendment... effective upon publication in the FEDERAL REGISTER, and shall be ap... respect to all requests for notices of right to sue made after such...

Accordingly the Commission hereby amends § 1601.25a(c) by... phrase, "or the respondent" and amends § 1601.25b(d) by deleting... "or any respondent named in the charge." As amended, the sec... follows:

§ 1601.25a Processing of cases; when notice issues under § 1601.25

* * * * * *

(c) At any time after the expiration of sixty (60) days from the... filing of a charge, or upon dismissal of the charge at any stage of... ings, or upon the expiration of the time for filing objections to dis... Field Director pursuant to § 1601.19, the charging party may dema... that a notice issue pursuant to § 1601.25, and the Commission shall p... such notice, with copies to all parties.

* * * * * *

§ 1601.25b Issuance of notice in cases involving Commissioner Charg...

* * * * * *

(d) At any time after 60 days have expired since the charge w... member of the class aggrieved by the practices alleged in the charge... in writing that a notice-of-right-to-sue issue, and the Commissio... issue such notice of right to sue, pursuant to paragraph (c) of this...

* * * * * *

(Sec. 718(a), 78 Stat. 265, 42 U.S.C. 2000e-12(a))

This amendment is effective upon publication in the FEDERA... (2-5-71).

Signed at Washington, D.C., this 29th day of January 1971.

WILLIAM H. BROWN...

[FR Doc. 71-1518 Filed 2-4-71; 8:52 a.m.]

[From the Federal Register, May 19, 1971]

TITLE 29—LABOR; CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY...

PART 1601—PROCEDURAL REGULATIONS

Subpart C—Notices to employees, applicants for employment and...

Notices To Be Posted

By virtue of the authority vested in it by section 713(a) of Title... Civil Rights Act of 1964, 42 U.S.C. section 2000e-12(a), 78 Stat. ... Employment Opportunity Commission hereby amends Title 29, ... Subpart C, § 1601.27 of the Code of Federal Regulations.

Because the amendments herein adopted are procedural in n... visions of section 4 of the Administrative Procedure Act, 5 U.S.C. ... for public notice and delay in effective date are inapplicable. T... shall become effective immediately and shall be applicable with res...

g before or hereafter filed with the Equal Employment Opportunity
on.
(a) is revised to read as follows:

s to be posted.

ployer, employment agency, labor organization, and joint labor-
mittee controlling an apprenticeship or other training program,
be, shall post and keep posted in conspicuous places upon its
notices to employees, applicants for employment, members, and
marily posted the following notice:

Equal Employment Opportunity Is the Law

Discrimination is prohibited

Rights Act of 1964 and by Executive Order Number 11246

e Civil Rights Act of 1964—Administered by the Equal Employ-
y Commission prohibits discrimination because of race, color,
national origin by employers with 25 or more employees, by
ns with a hiring hall of 25 or more members, by employment
joint labor-management committees for apprenticeship or

elieves he or she has been discriminated against should contact

Employment Opportunity Commission, 1800 G Street, NW.,
Washington, D.C. 20506.

Or any of its field offices

er Number 11246[1]—Administered by the Office of Federal
nce prohibits discrimination because of race, color, religion,
origin, and requires affirmative action to ensure equality of
aspects of employment. By all Federal Government contractors
rs, and by contractors and subcontractors performing work
assisted construction contract, regardless of the number of
er case—

elieves he or she has been discriminated against should contact

Federal Contract Compliance, U.S. Department of Labor,
Washington, D.C. 20210.

* * * * *

(Sec. 713, 78 Stat. 265, 42 U.S.C. sec, 2000e–12)

ate of publication (5–19–71).
hington, D.C., this 13th day of May 1971.

WILLIAM H. BROWN III,
Chairman.

[F.R. Doc. 71–6950 Filed 5–18–71; 8:49 a.m.]

[From the Federal Register, May 29, 1970]

T OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE

OMPLAINTS OF EMPLOYMENT DISCRIMINATION AS BETWEEN TWO AGENCIES

Memorandum of understanding

to reduce duplication of compliance activities and to facilitate
nge, the Equal Employment Opportunity Commission (EEOC)
Federal Contract Compliance (OFCC) agree to the following:

xecutive Order 11375.

Prior to investigation of charges filed against Government contra
to Executive Order 11246 (30 F.R. 12319), as amended by Exe
11375 (32 F.R. 14303), EEOC will contact OFCC to (a) determine
contractor has been subjected to a compliance review within the
(90) days, and (b) obtain and review copies of any documents
EEOC's investigation which have been secured by the contracting
previous compliance reviews.

Prior to conducting compliance reviews or investigations of compl
Government contractors, OFCC will contact EEOC to (a) deter
EEOC has processed similar or identical charges against the
determine whether EEOC has information from prior investig
which may have a bearing on the contractor's compliance with Exe
11246, as amended, and (c) obtain and review any pertinent docum

It is anticipated that these contracts will be made routinely b
regional offices and regional offices of OFCC. In order to f
information exchange:

OFCC will provide EEOC with:

(a) Copies of reports from Compliance Agencies outlining contra
ance reviews proposed for the next quarter.

(b) Current lists of Compliance Agencies with an associated lis
establishments located in each region of each Compliance Agen

(c) A listing of compliance reviews actually completed each qua
ing the results of such reviews.

EEOC will provide OFCC with:

(a) A monthly printout listing of all current charges under inve
region.

(b) A quarterly listing of all cases in which settlement or c
been completed and the results, by region.

(c) A copy of each conciliation agreement prepared in EEOC
a result of conciliation efforts.

Part II. The following procedure shall be applicable to all
Government contractors subject to the provisions of Executive
amended.

(a) OFCC shall promptly transmit complaints filed with it
Order 11246, as amended, to EEOC, which shall treat such compl
filed under Title VII of the Civil Rights Act of 1964. EEOC
such complaints, if practicable within sixty (60) days or, in the
relating to practices occurring in a state or subdivision there
is required to refer to an appropriate state or local agency under
of Title VII, if practicable, within one hundred and twenty (1
the date on which such charge is received by it. In investigating
EEOC will act both on behalf of OFCC under Executive Or
amended, and on its own behalf under Title VII. EEOC shall
its decision and findings of fact in all such cases to OFCC, w
take action in accordance with paragraph (b) of this part.

(b) Whenever EEOC determines that reasonable cause exists
a Government contractor subject to Executive Order 11246,
violated Title VII, it shall transmit its decision and findings of
The Director of OFCC then shall cause to be served upon suc
notice that reasonable cause exists to believe that such contractor
of Executive Order 11246, as amended, and that should conciliat
EEOC fail, said contractor shall have thirty (30) days to show
forcement proceedings should not be commenced against it u
Order 11246, as amended. In order to develop effective working
implement this paragraph, the following procedure shall apply
ninety (90) days of the operation of this Memorandum:

(1) EEOC shall determine which cases in which reasonable
found against Government contractors will be referred to OFCC
of thirty (30) day show cause notices under this paragraph.

(2) EEOC and OFCC will agree on the total number of cases t

(3) At the end of ninety (90) days, EEOC and OFCC will re
tion of this Memorandum, and adopt such adjustments to proc
appropriate in the light of experience.

by EEOC as to reasonable cause shall not be conclusive as to
ractor has violated Executive Order 11246, as amended, nor is
ed herein intended to limit the authority of OFCC in conducting
estigations or from instituting such further efforts to obtain
the provisions of Executive Order 11246, as amended, including
nt of show cause proceedings earlier than the period specified
) above, as it deems appropriate: *Provided*, That in further
solve questions of noncompliance, OFCC shall give appropriate
the fact that voluntary conciliation efforts of EEOC have failed
uch contractor.

d OFCC shall conduct periodic reviews of the implementation
nt, and shall, on an ongoing basis, continue their efforts to
nt systems, procedures, and standards in furtherance of the
agreement.

hington, D.C., this 20th day of May 1970.

WILLIAM H. BROWN III,
Chairman, Equal Employment Opportunity Commission.
GEORGE P. SHULTZ,
Secretary of Labor.
JOHN L. WILKS,
Director, Office of Federal Contract Compliance.

[F.R. Doc. 70-6665; Filed May 28, 1970; 8:45 a.m.]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

COMPLAINTS OF EMPLOYMENT DISCRIMINATION AS BETWEEN TWO AGENCIES

Memorandum of understanding

e: For a document regarding memorandum of understanding
ssing complaints of employment discrimination as between
e F.R. Doc. 70-6665, Department of Labor, Office of Federal
nce, *infra*.

[From the Federal Register, Dec. 9, 1970]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

INTERPRETATIONS AND OPINIONS OF THE COMMISSION

ployment Opportunity Commission (hereinafter referred to as
, in order to dispel an apparent misunderstanding, on the part
espondents, with respect to the materials constituting a "writ-
n or opinion of the Commission" within the meaning of section
vil Rights Act of 1964, 42 U.S.C. section 2000e-12(b), invites
to the provisions of § 1601.30 of the Commission's Procedural
FR 1601.30. The provision referred to has, since July 1, 1965,
icted the meaning of the phrase "written interpretation or
Commission" to correspondence entitled "opinion letter" and
eneral Counsel on behalf of the Commission (29 CFR 1601.30
sued pursuant to 29 CFR 1601.30(a) is issued to a specific
d has no effect upon situations other than that of the
e(s).

atter appearing in the Quarterly and Annual Digests of Legal
formerly issued by the Office of the General Counsel and dis-
uent to July 1, 1966, neither met nor were intended to meet
quired of a "written interpretation or opinion of the Commis-
meaning of the Commission's procedural regulation, 29 CFR
or section 713(b), 42 U.S.C. section 2000e-12(b). Similarly,
in the commercial reporting services erroneously entitled

"opinion letter" or "General Counsel Opinion" do not meet the stan
of a "written interpretation or opinion of the Commission" with
of the Commission's procedural regulations, 29 CFR 1601.28 1604.
713(b), 42 U.S.C. section 2000e–12(b).

This notice shall be effective upon publication in the FEDERAL R

Signed at Washington, D.C., this 1st day of December 1970

WILLIAM H. E
Ch

[F.R. Doc. 70–16503; Filed Dec. 8, 1970; 8:46 a.m.]

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF R

§ 1605.1 Observation of the Sabbath and other religious holidays.

(a) Several complaints filed with the Commission have raise
whether it is discrimination on account of religion to discharge
hire employees who regularly observe Friday evening and Sat
other day of the week, as the Sabbath or who observe certain spe
holidays during the year and, as a consequence, do not work on

(b) The Commission believes that the duty not to discrimina
grounds, required by section 703(a)(1) of the Civil Rights Act of
an obligation on the part of the employer to make reasonable a
to the religious needs of employees and prospective employees w
commodations can be made without undue hardship on the
employer's business. Such undue hardship for example, may ex
employee's needed work cannot be performed by another employe
tially similar qualifications during the period of absence of the

(c) Because of the particularly sensitive nature of discharg
to hire an employee or applicant on account of his religious
ployer has the burden of proving that an undue hardship renders
accommodations to the religious needs of the employee unreasonable

(d) The Commission will review each case on an individual
effort to seek an equitable application of these guidelines to
situations which arise due to the varied religious practices of
people.

(Sec. 713(b), 78 Stat. 265; 42 U.S.C. 2000–12) [32 F.R. 10298, Ju

The ACTING PRESIDENT pro tempore. What is the plea
Senate?

Mr. RANDOLPH. Mr. President, I suggest the absence of

The ACTING PRESIDENT pro tempore. The clerk will ca

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unan
sent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objecti
ordered.

Mr. RANDOLPH. Mr. President, religious liberty is a
liberty.

Without this thought Mr. President, I ask for the yeas a
the amendment.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The question is
to the amendment of the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I suggest
of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call t

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unan
sent that the order for the quorum call be rescinded.

: PRESIDENT pro tempore. Without objection, it is so

n is on agreeing to the amendment of the Senator from
. On this question, the yeas and the nays have been
ne clerk will call the roll.
t legislative clerk called the roll.
f West Virginia. I announce that the Senator from
Sentsen), the Senator from Nevada (Mr. Bible), the
Florida (Mr. Chiles), the Senator from Idaho (Mr.
Senator from California (Mr. Cranston), the Senator
Mr. Gravel), the Senator from Oklahoma (Mr. Harris),
rom Indiana (Mr. Hartke), the Senator from Minne-
mphrey), the Senator from Washington (Mr. Jackson),
rom North Carolina (Mr. Jordan), the Senator from
Mr. Magnuson), the Senator from Arkansas (Mr. Mc-
enator from South Dakota (Mr. McGovern), the Sena-
Hampshire (Mr. McIntyre), the Senator from Minne-
dale), the Senator from Maine (Mr Muskie), the Sena-
de Island (Mr. Pastore), the Senator from Rhode
ell), the Senator from Alabama (Mr. Sparkman), the
Mississippi (Mr. Stennis), the Senator from Illinois
n) are necessarily absent.
nce that the Senator from California (Mr. Tunney), the
Georgia (Mr. Talmadge), the Senator from Utah (Mr.
e Senator from Hawaii (Mr. Inouye) are absent on

nounce that, if present and voting, the Senator from
Mr. Jackson), the Senator from Rhode Island (Mr. Pas-
tor from California (Mr. Cranston), the Senator from
. Humphrey) and the Senator from South Dakota (Mr.
uld each vote "yea."
announce that the Senator from Colorado (Mr. Allott),
m Delaware (Mr. Boggs), the Senator from Kentucky
the Senator from New Hampshire (Mr. Cotton), the
Nebraska (Mr. Curtis), the Senator from Michigan (Mr.
nator from Oregon (Mr. Hatfield), the Senator from
. Javits), the Senator from Maryland (Mr. Mathias),
m Iowa (Mr. Miller), the Senator from Illinois (Mr.
nator from Delaware (Mr. Roth), the Senator from
tevens), the Senator from Ohio (Mr. Taft), the Sena-
(Mr. Tower), and the Senator from Connecticut (Mr.
ecessarily absent.
from New York (Mr. Buckley) and the Senator from
(Mr. Thurmond) are absent on official business.
from South Dakota (Mr. Mundt) is absent because of

l voting, the Senator from Oregon (Mr. Hatfield), the
Maryland (Mr. Mathias), the Senator from Iowa (Mr.
nator from Illinois (Mr. Percy), the Senator from
(Mr. Thurmond), and the Senator from Texas (Mr.
ach vote "yea."
s announced—yeas 55, nays 0, as follows:

[No. 3 Leg.]

YEAS—55

Aiken	Eastland	Metcalf
Allen	Ellender	Montoya
Anderson	Ervin	Nelson
Baker	Fannin	Packwood
Bayh	Fong	Pearson
Beall	Fulbright	Proxmire
Bellmon	Gambrell	Randolph
Bennett	Goldwater	Ribicoff
Brock	Gurney	Saxbe
Brooke	Hansen	Schweiker
Burdick	Hart	Scott
Byrd, Va.	Hollings	Smith
Byrd, W. Va.	Hruska	Spong
Cannon	Hughes	Stafford
Case	Jordan, Idaho	Symington
Cook	Kennedy	Williams
Dole	Long	Young
Dominick	Mansfield	
Eagleton	McGee	

NAYS—0

NOT VOTING—45

Allott	Hatfield	Muskie
Bentsen	Humphrey	Pastore
Bible	Inouye	Pell
Boggs	Jackson	Percy
Buckley	Javits	Roth
Chiles	Jordan, N.C.	Sparkman
Church	Magnuson	Stennis
Cooper	Mathias	Stevens
Cotton	McClellan	Stevenson
Cranston	McGovern	Taft
Curtis	McIntyre	Talmadge
Gravel	Miller	Thurmond
Griffin	Mondale	Tower
Harris	Moss	Tunney
Hartke	Mundt	Weicker

So Mr. Randolph's amendment was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will now resume the consideration of the Dominick amendment No. 611.

QUORUM CALL

Mr. DOMINICK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SAXBE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SAXBE. Mr. President, I believe the pending business is the Dominick amendment.

NG OFFICER. The Senator is correct.

Mr. President, I support the pending amendment, and I
ackground of having worked closely with civil rights en-
he State level. I am in accord with the concept that the
rment Opportunity Commission should have enforce-
lowever, I am not satisfied that the enforcement power
n in this manner. Therefore, I am in support of the
ndment so that the matter might go through the courts.
erday for the Taft amendment which I think goes a long
suring due process in its basic form. However, I still
be better protected in the courts, even with the Taft

ed throughout the discussion that there has been a com-
EEOC with the National Labor Relations Board. I do
is a just comparison. It has been said that it was neces-
ease-and-desist powers be given to the NLRB to get the
and to protect the unions in their infancy. I do not think
r situation. The persistence and the staying power of the
t has been much greater, and it had significantly greater
ng.

s one of speed, the EEOC should go to the courts in the
er than having a cease-and-desist order and then going
urts, as most of them will do.

final results will be much more comprehensive and much
ory if we have this as a court action, which will establish
will keep the overzealous advocates and enforcers of the
oing overboard.

I want to talk about specifically because of my personal
Ohio, the Civil Rights Commission was established, as it
tates, and the Governors of Ohio over the years have ap-
Commission people who were vitally interested in civil
people tend to have an ax to grind. They are people
ealous. They then in turn hire investigators and enforc-
visit the offices, plants, and business institutions. They
o are also very much wrapped up in the civil rights
s is all right. This is fine. However, too often we would
eak as a former attorney general who handled the legal
matter—that in their zealousness to try to protect the
some people, they were also eager to violate the civil
s.

one specific instance in which they went into a factory
want a list of your black employees and your white

d, "It is illegal for me to keep such a list. It is illegal for
ecord as to whether a man is black or white. It is illegal
provide you with the list if I had such a list. It is also
o stand down at the door and head count them as they

d, "If you don't, we will cite you for a violation."

o me as attorney general and asked me to bring an
em for this violation. I said, "You can't force a man
g that the Federal statutes and our own State statutes

say he is not permitted to do. That would be a discrimination even be a discrimination to ask them to identify themselves."

In another particular case, in their zealousness, they work against an employee of a small company that finished pl They had perhaps a dozen or 15 girls working on these pl These girls belonged to a union. I believe it was called Tinters, or something of that nature. That union was affi a larger group. They had some office personnel, and the Negro man who was a janitor. They said that he was dis against because he did not belong to the Photo Finishers U was not causing any trouble, but the civil rights investig these people in for a hearing and forced the union to admit as a member of the Photo Finishers Union.

The company, in an effort to solve the problems, did awa services of the janitor and hired a janitorial service to ta building.

I know these are instances that indicated a genuine co genuine concern is there, but I do not believe that a board a tendency to be biased by political appointment, by interest on such a board, should be the ones that would issue cease orders, or be the ones that would act as prosecutors in the cases.

In my experience in working closely with this matter at level I know it is not an undue hardship to cite these people and I think they should be cited into court if they are not the legalities of the statute. I think it was a mistake that have enforcement powers in the law prior to this time, and I want to see it enforced, but I think it will work to the ge faction of all concerned, not only the employee and the em also the board itself if the Commission is permitted to go di court to file, as lawyers have filed for centuries, their comp ing this person the right to be in court, to be heard, to be the accuser, and to be given the opportunity to have a co made which is appealable, and not a trial de novo, which co in the other instance.

I cannot help but feel that in a campaign year there will be who will vote here because they think they are doing labo favor or minority groups a great favor by saying, "You and issue your own orders." I do not believe they are doi favor. I think they are doing them a disservice. If this work and be effective, it has to be clothed with all the legal which we can clothe it; and that is the Federal court, which ord of speed and a record of following up in such cases whi

I have before me a comparison of cases with the NLRB agencies, which are particularly limited to a certain set of circumstances. It does not apply to every type business w employed, but a very limited group. Perhaps in that kind community such as licenses, where they go in and discuss among themselves, it could operate; but I do not believe it ca where they can do this every time that any of the investig what they believe to be a violation.

Mr. President, this is my statement on the amendment and I have brought some personal experience in regard to this

ck. Mr. President, will the Senator yield?
I yield.
ick. I was extremely interested in listening to the Sena-
experiences with these problems in Ohio. They are not
problems we experience in Colorado.
ple. I had a gentleman call me up and say he was being
against because he was not being given a better job on
project requiring substantial work on scaffolds. He was
aking man. I looked into the matter to find out if there
nation involved. In the meantime the man carried the
way up to the president of the company. I found out
was rejected was not because he was Spanish-speaking,
e job required that he climb to the top of high scaffolds;
eled arm and a shriveled leg and they did not think he
here with all the equipment necessary to perform the job.
ained to him that there was no discrimination but rather,
lity, he was perfectly satisfied. But it took the president
y and a variety of other officials to satisfy him that he
discriminated against.
point I made earlier. These matters become quite sub-
notional. The more we can utilize an impartial judicial
e less chance we will have of emotional influence and
e will be.
statement of the Senator from Ohio along these lines
elpful. I wish to express my appreciation to the Senator
t.
I thank the Senator. I yield the floor.
Mr. President, I rise to associate myself with the re-
Senator from Ohio and the Senator from Colorado in
h this amendment.
examples that were cited by the Senator from Ohio and
rom Colorado, but I think more than any particular
e concern over the way Congress is delegating authority
officials in this country today. There are too many in-
s free society in which we have authorized regulatory
e Federal Government to be judge and jury, policeman
r at one and the same time. This is a terribly dangerous
hose of us who believe in the Constitution and in due
y as the ultimate safeguard and protection for every
most fundamental civil right of all.
e are elected by no one. In too many instances they are
no one. The Dominick amendment, in my opinion, is
s particular problem and it is an effort to address it to
instance of the Equal Employment Opportunity Com-
port the amendment and I support it because I think
ernative if we are to preserve due process of law in this

nt, I am delighted to support amendment No. 611 offered
uished Senator from Colorado (Mr. Dominick) to pro-
nt and fair method for enforcing the rights of those
afair employment practices.
Civil Rights Act of 1964 the Equal Employment Oppor-
ssion was given authority to investigate complaints of

discrimination in employment and to try to resolve grievances through conciliation procedures. The Commission had no mandate to enforce fair employment practices and I believe that deficiency should be remedied.

In restructuring the functions of the Commission, I feel that we should have two goals in mind—the establishment of a procedure which is both fair and efficient.

The public is entitled to have its business handled by Government in an efficient manner. One of the criticisms most often aimed at administrative agencies is that they are notorious in their inefficiency in handling the caseload before them. For example, it has been estimated that the median time in days elapsed in processing NLRB unfair labor practice cases, from filing to decision, amounted to 32[illegible] days in 1970. The present EEOC complaint disposition requires from 18 to 24 months. I do not feel that it is fair for the Government agencies to keep either respondents or complainants waiting years before matters in which they are vitally interested are disposed. In restructuring Government agencies such as the EEOC it is incumbent upon Congress to show some imagination to fashion procedure that will provide for a speedy resolution of pending business.

Equally important is that the procedures be equitable. Fundamental to our system of justice is fairness. In our desire to achieve equal employment opportunity we must be fair to both the respondent and complainant. We cannot forsake the principle that anyone charged with violating the law is presumed innocent until proven guilty. He is entitled to be tried by an impartial tribunal. This calls for a disinterested party sitting as the judge of the case. The policeman and the prosecutor cannot sit as judge. If fairness is to be achieved, we must divide the function of prosecution from the function of adjudication.

My objection to S. 2515 as written is not with its objective but with its proposed means for achieving the stated end. Under S. 2515 the EEOC would be able to issue a complaint, to conduct hearings, to issue cease-and-desist orders, and to include in an order such things as demands for reinstatement for back pay, or for the company to report regularly to EEOC on how it is complying with the order. This approach is not fair in that it gives the EEOC czar-like powers of policeman, prosecutor, judge and jury. It violates the fundamental demand for separation of these powers.

Nor would efficiency be served under the provisions of S. 2515. If the EEOC is unable to handle the case load under the present arrangement, there seems little likelihood it could expeditiously dispose of additional responsibilities. It would take an enormous number of new employees and attorneys to handle this case load and it could easily take as long as 3 years before a case is disposed.

In the alternative, the Dominick proposal to empower the EEOC to sue in district courts when conciliatory efforts fail would achieve the objective of strengthening enforcement of equal employment opportunity under a fair and efficient procedure. Fairness is promoted under the district court approach by separating the functions of the policeman, the prosecutor, and the judge. A fair trial and due process are guaranteed to the accused.

Cases could be handled much more efficiently under a court enforced system. Whereas it now requires from 18 to 24 months to dispose of an EEOC case, the median time interval, from issue to trial for nonjury trials in U.S. district courts in 1970 was 10 months according to the annual report of the Director of the Administrative Office of the U.S. Courts.

In sum, I believe Senator Dominick's amendment to strike all EEOC cease-and-desist language and substitute therefor language allowing the EEOC to file civil actions in Federal district court if they are unable to conciliate the dispute will enhance the workability of S. 2515. This method will combine the EEOC's expertise in investigating, conciliating, and prosecuting unlawful employment cases with due process guarantees available only in impartial courts, a much more fair approach which I urge my colleagues in the Senate to support.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. BROCK. I yield.

Mr. DOMINICK. Just prior to the Senator's appearance in the Chamber today, the Senator from North Carolina (Mr. Ervin), in a colloquy with the manager of the bill, pointed out that President Roosevelt created a commission to look into the executive agencies to determine what should be done about them. Justice Jackson in referring to the findings of this Commission emphasized that the first thing that should be done is to separate the prosecutory, the investigatory, and adjudicatory functions. My recollection is that Mr. Landis said the same thing when he was made the head of a similar commission.

What I am trying to do is one portion, and only one portion of what these eminent commissions have already recommended and to which the Senator from Tennessee referred. I appreciate the support of the Senator from Tennessee. I hope we can generate enough support to establish a precedent in this bill against the easy but irresponsible delegation of important judicial powers and authority to nonelected administrative officials when such powers and authority clearly belongs in our Federal courts.

I thank the Senator for his remarks.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER. The Chair announces that the Senate will resume the consideration of amendment No. 611.

Calendar No. 41

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 32, strike section 2, lines 6 through 25, lines 1 through 13 on page 33, and renumber the following subsections as appropriate.

Amdt. No. 805

Calendar No. 412

RESS
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S. 2515

THE SENATE OF THE UNITED STATES

JANUARY 21, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

to be proposed by Mr. ERVIN to S. 2515, a bill to
r promote equal employment opportunities for Ameri-
orkers, viz:

On page 32, strike subsection (1), lines 8 through 10,
enumber the following subsections as appropriate.

On page 32, line 18, after "tribe," insert "a State or
cal subdivision thereof".

On page 33, strike subsection (3), lines 4 and 5, and sub-
on (5), lines 11 through 13, and renumber the following
ctions as appropriate.

Amdt. No. 806

Calendar No. 4

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN to S. 2515, a bill to ther promote equal employment opportunities for Ame workers, viz:

On page 32, line 13, strike "eight" and insert "two five".

On page 32, in subsection (b) beginning with comma on line 24, strike out through "employers" on 33, line 3.

On page 33, strike subsection (4), lines 6 through and renumber the following subsections as appropriate.

Amdt. No. 807

Calendar No. 412

RESS
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S. 2515

THE SENATE OF THE UNITED STATES

JANUARY 21, 1972

Ordered to lie on the table and to be printed

AMENDMENT

be proposed by Mr. ERVIN to S. 2515, a bill to promote equal employment opportunities for Amerorkers, viz: On page 62, beginning with line 3, strike ough line 17, and insert in lieu thereof the following bsections (a), (b), and (c):

c. 715. (a) Except as otherwise provided in this the authority, functions, and responsibilities vested Secretary of Labor pursuant to Executive Order as amended, relating to nondiscrimination in emnt by Government contractors and subcontractors and rimination in federally assisted construction contracts e retained by the Secretary of Labor following the ent of the Equal Employment Opportunities Enforce-Act of 1971.

dt. No. 808

(b) Whenever the Secretary of Labor has r
cause to believe that there has been a violation of E
Order 11246, as amended, he shall promptly notify
mission of such reasonable cause and the basis ther
Commission, on behalf of the Secretary, shall a
secure compliance with said order by informal m
conference, conciliation, and persuasion. If, with
days from receipt of such notice by the Secretary,
mission is unable to secure compliance, it may, or
the Secretary, institute an appropriate civil actio
Federal district court having jurisdiction in accorda
the provisions of this section. The court shall have p
grant such relief as it deems just and proper: *Provi*
no order of the court shall require the debarment of a
vidual unless said individual has willfully violated a
sion of said order.

(c) For purposes of this section, a district cour
deemed to have jurisdiction in any district in whi
compliance with Executive Order 11246, as amen
alleged to have occurred.

Calendar No. 412

ESS
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S. 2515

HE SENATE OF THE UNITED STATES

JANUARY 21, 1972

Ordered to lie on the table and to be printed

AMENDMENT

o be proposed by Mr. ERVIN (for himself and
len) to S. 2515, a bill to further promote equal em-
nt opportunities for American workers, viz:

page 33, line 24, strike out the word "religious".

dt. No. 809

Calendar No. 4

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. GAMBRELL to S. 2515, a
further promote equal employment opportunities for
ican workers, viz:

On page 34, line 21, after the period, insert the
ing: "Notice of the terms of eligibility for the resp
receive expenses and attorney's fees pursuant to s
(h) shall be served on him along with the notice
charge."

On page 37, line 17, after the parenthesis, ins
following: "and notice of the terms of eligibility
respondent to receive expenses and attorney's fees p
to subsection (h)".

On page 39, after line 19, insert the following:

Amdt. No. 810

(h) Any respondent that is an employer of less than
-five employees shall, upon application to the Com-
, be indemnified by the United States for the cost
defense against the charge in an amount not to exceed
, including all reasonable expenses and attorney's
curred after the serving of notice on him of the
unless a final determination is made that the re-
at willfully committed the unlawful employment
charged to him. Any respondent that is an em-
of twenty-five to one hundred employees whose av-
ncome from such employment is less than $7,500
pon application to the Commission, be indemnified by
ited States for one-half of the cost of his defense
the charge not to exceed $2,500, including all rea-
expenses and attorney's fees incurred after the serv-
notice on him of the charge, unless a final
ination is made that the respondent willfully com-
the unlawful employment practice charged to him.
sts evidenced by respondent's vouchers of his ex-
and attorney's fees shall be deemed reasonable so
they are comparable to the total amount of the
es and attorney's fees incurred by the Commission in
gating and prosecuting the charge. Disallowance of
rt of such request shall be made a part of the Com-
's order in such proceedings. Any United States

court before which a proceeding under this title
brought may upon request by the employer make
termination provided for in this subsection. The
of the United States shall indemnify the responde
vided for herein upon certification by the Commis
enforcement procedure under this title may be
against an employer until the amount of such in
has been paid in full."

Subsections (h) through (w) as referred to in
4 are redesignated as subsections (i) through
respectively.

LOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 811 THROUGH 819

be printed and to lie on the table.)
for himself and Mr. Allen) submitted nine amend- to be offered by them jointly to the bill (S. 2515) to te equal employment opportunities for American

AMENDMENT NO. 822

e printed and to lie on the table.)
ıbmitted an amendment intended to be proposed by S. 2515), supra.

* * * * *

T pro tempore. The Chair now lays before the Senate, order, S. 2515, the unfinished business, with the amend- ıator from Colorado (Mr. Dominick) pending.
read the bill by title.
e clerk read as follows: A bill (S. 2515) to further employment opportunities for American workers.
sumed the consideration of the bill.
T pro tempore. Under the previous order, 90 minutes is amendment. Who yields time?
West Virginia. Mr. President, I suggest the absence ask unanimous consent that the time may be equally both sides.
T pro tempore. Is there objection? Without objection, and the clerk will call the roll.
e clerk proceeded to call the roll.
K. Mr. President, I ask unanimous consent that the orum call be rescinded.
T pro tempore. Without objection, it is so ordered.
K. Mr. President, I yield myself 10 minutes.
T pro tempore. The Senator may proceed.
K. Mr. President, since the adoption last Thursday of General Counsel amendment, there has been substan- and discussion about its effect on my amendment. terpret the vote on the independent General Counsel statement of approval for the amendment created ma- e that the unanimous vote indicates instead a universal with the cease-and-desist enforcement procedure. It ognition that almost anything, however slight, can poor system. The distinguished Senator from North

Carolina (Mr. Ervin) described the amendment best wh
acterized its contribution toward an equitable enforcement
as being similar to starting off on the lengthy trip to heav
ping off at the first saloon on the way. I personally vot
amendment because it does represent a first step, albeit inc
toward impartial court enforcement of unlawful em
practices.

It is a step into the saloon, though, as it misleads many p
believing that an independent General Counsel actually wi
defects and inequities of cease-and-desist enforcement. I sub
will do no such thing. Its chief accomplishment will be a
salve for the conscience of cease-and-desist proponents an
rather skimpy bone to respondents whose due process r
continue to be violated.

An independent General Counsel is not the panacea for
desist enforcement because it does not even address itself
problems inherent in the mechanism which frustrate em
grievance resolution.

Perhaps the most crucial defect the cease-and-desist
promises is administrative snarls and unconscionable back
I say "promises" because use of a weaker verb would be
What else can you expect from a system faced with an
jurisdiction of approximately 21 million potential aggri
stantial new "pattern and practice" and Federal contract
responsibilities, more complex and time consuming proceed
one available tribunal to issue cease-and-desist orders, an
lacking approximately 100 trained trial examiners, when th
Commission backlog is over 32,000 cases and approximately
on just investigation and conciliation cases? Contrast this
existing Federal district court system of 93 courts and 3
with established reputations for fairness, discretion and
ity and a present median backlog, according to the most rec
available, of 10 months from issue to trial.

Additionally, utilization of the courts as initial adjud
Title VII actions will substantially increase the likelihood
tary settlements and thereby reduce the number of cases pr
the courts.

The imminence of court action, coupled with the threat
publicity and immediately enforceable orders will serve as
ful inducement to voluntary settlements.

A further factor that must be considered when determ
expediency of the two procedures is the effectiveness of th
ment order. The independent General Counsel does not add
to the defects in the cease-and-desist procedure which requi
step enforcement. The district court makes decisions and
appropriate orders immediately enforceable by contempt
issued by a person knowledgeable of the facts—the judge w
the case and entered the order. On the other hand, a reluctan
ent who disregards a Commission entered cease-and-desist
not be compelled to comply with the order by the Co
Instead, the Commission must petition an appropriate U.S.
Appeals, file the Commission hearing record, and then prove
findings are supported by substantial evidence in the record

niliar with the case enforces an order that he originally in entering. Now the reluctant respondent is subject to ceedings if he disobeys the Court of Appeals dictates. ission wants to avoid showing that the findings are sup- bstantial evidence in the record, they can wait for 60 e issuance of the order, at which time their findings d by the Court as being conclusive.
d of itself, puts enormous power in the hands of the

tiveness of the two-step cease and desist enforcement l its concomitant delay is best put into perspective when hat with a similar enforcement procedure under the or Relations Board, more than 60 percent of the enforce- n fiscal year 1967 had to go to the court of appeals. an, past General Counsel of the NLRB, told the Sepa- rers Subcommittee on March 29, 1968, that the number sions proceeding to the courts of appeals were increas- 54.3 percent in fiscal year 1973. Contrast these figures annual report of the Director of the Administrative U.S. Courts which indicates that only 7 percent of all court decisions were appealed. However expeditious cease-and-desist orders may be, if almost two-thirds s must ultimately be taken to the court of appeals, it that they are not getting the quick resolution of the is considered to be necessary by the people who are is bill.
igures present the most convincing testimony possible public's confidence in decisions rendered by politically rds. The public generally and the respondents specif- that these quasi-judicial decisions are quite often pired and as such will not stand up to the nonpartisan he courts of appeals. On the other hand, public con- leral court judges utilizing stare decisis is such that only one out of 15 of their decisions is appealed.
te is truly interested in an effective, expeditious griev- n procedure we should place our trust in our Federal Although cease and desist promises much, a shiny new procedure designed to redress grievances is no better mance, and if it requires 2 to 3 years to achieve justice, nothing but a frustrating promise of what might have

l court system provides an established forum of known Let us not gamble with the rights of both respondents on a most suspect administrative procedure when we ur court system.
ase-and-desist defect which the independent General o remedy is that of increasing concentration of Execu- s I mentioned last Friday, legislative concessions of case a clearly judicial function—to the executive branch epts of separation of power and checks and balances nding Fathers thought imperative to our tripartite sys- ment. It seems incongruous to me for my colleagues to mplain about the excessive abuses of power exercised

by the steadily growing ranks of executive agencies on 1 day, the next day place substantial quasi-judicial powers in just executive agency.

The PRESIDENT pro tempore. The Senator's 10 minutes have

Mr. DOMINICK. I yield myself 5 additional minutes.

Not only does the independent General Counsel fail to rem cease defects, it fails to effectively accomplish its one avowed the separation of the prosecutory and adjudicatory functi to accomplish a medium of impartiality. Consider the follow and then decide for yourself whether the General Counsel an independent and separate body.

First, the amendment is not clear whether the General C office would be placed in the Commission offices, but it is assu it would be. Also, the amendment is silent as to who would salaries of the Counsel, but once again, I assume that the Co would. Although the amendment's silence on the above two confusing, some of the things it does say are even more co Language in the newly added section 705(b) expressly indi no employer or agent of the Commission may engage in both ti cution and adjudication of the same case—clearly an attempt rate the two functions. Yet, the same section 705(b) gives th man concurrence power in the appointing of regional attorney language in the bill gives the General Counsel concurrence over the appointment of regional directors. I fail to see how a Counsel can be independent from a Commission which has on whether or not he is to be hired. Conversely, I fail to se gional directors can be impartial in hearing cases prosec General Counsel's office which ultimately hired him. With t lapping hiring power it is impossible to have an impartial adju

Whereas the independent General Counsel amendment and fails to separate the adjudicatory function from the pro function, it does not even attempt to separate the adjudicato tion from the investigatory function. Presumably, a respond process rights are not violated if an officer or employee of the C sion files an unlawful employment practice charge, serves the charge on the respondent, investigates the charge, deter reasonable cause for the filing exists, attempts to conciliate th and, that proving unsuccessful, recommends that the Genera file a complaint so the Commission can hear the case and m ings of fact and enter a cease-and-desist order thereon.

It is absurd to claim that the adjudicatory institution is stantially and directly involved in the investigatory proces through recommending the filing of the complaint and s to reach an impartial decision. The distinguished Senator fr Carolina (Mr. ERVIN) last Friday cited Justice Jackson's Wong Yang Sung against McGrath as requiring the separa vestigatory and adjudicatory functions to achieve a "gen partial hearing conducted with critical detachment." The field staff members did the actual investigatory work while officials within the same organization conducted the hearings sufficient in Justice Jackson's mind to provide a "guarantee tion and independence of the presiding official." Justice Jack

mend that judges be confined "entirely to the duties cus-
judge."
lent, I too, believe that judges be confined entirely to the
ary for a judge; and, as we know, the forum where this
tly practiced is in the Federal district courts. I fail to see
y of my colleagues continue to avoid the unavoidable
eral court enforcement. It offers an existing network of
d by competent, experienced judges known for their im-
t famous for their protection of individual civil rights.
f my respected colleagues continue to advocate the estab-
a vast new and untested administrative apparatus which
o our constitutional separation of powers concept, jeop-
ggrieved employee's rights with a potential administra-
re of unconscionable backlogs and ineffective enforce-
nd the respondent's due process rights with a star cham-
ng. The importance of equal employment opportunity
ppropriate to desert our proven and respected Federal
at this point. I urge my colleagues to support this

ENT pro tempore. The time of the Senator has expired.
ICK. I yield myself 1 additional minute.
nt, I believe that this amendment is of great significance.
are really coming down to is whether we are going to
almost every person investigating the agencies has said:
ate the enforcement procedures from the investigatory
that we can utilize the expertise of the commissions in
and rulemaking while utilizing the expertise of the
in determining whether enforcement should or should not
rried out.
ndamental concept of extraordinary importance. I am
ntering this year with this principle before the Senate
If we can decide it right, in behalf of the court system,
e are on a good start for a productive year for Congress,
ive field.
e remainder of my time.
ENT pro tempore. Who yields time?
MS. I yield 5 minutes to the Senator from Minnesota.
LE. Mr. President, I rise to oppose the amendment offered
r from Colorado to eliminate the cease-and-desist powers
in the pending EEOC legislation.
case for providing the Commission with cease-and-desist
whelming. The Commission has clearly found that more
nore timely relief is required by those who have been dis-
ainst. Turning this problem over to the already crowded
s not the answer.
ssue here is not a dry procedural one. It is a question of
lieve that human rights are important enough to be ac-
ne remedy which is found very widely in other adminis-
zations within the Federal Government and in most State
rnments. The question is whether we are of the opinion
ghts, as against commercial rights or labor rights, are of
iority that we should continue according the Equal Op-
mmission a second-cousin status, thereby consigning it

to a largely advisory and conciliatory role. With such a role, it cannot fully and effectively support what I regard to be the mental objective of equality in employment opportunity.

Why is there so much concern about putting an effective in the hands of an administrative agency? It has been charged amounts to making the same agency both judge and jury. (I the charge is insupportable. This is not a new administrative It is really a widely accepted remedy which is thought to be a indispensable to an effective administrative structure in gov We find it running throughout the Federal administrative ap the National Labor Relations Board, the Atomic Energy Co the Transportation Board, the FCC, the FPC, the Securities change Commission. Even the Subversive Activities Control B this power. The Departments of Agriculture, HEW, Justice portation, Defense, and the Interior, the ICC, the Treasury ment, and the Department of Labor have routinely been their administrative agencies with this indispensable powe cease-and-desist authority. Through the States, we find th ence of this remedy. It is well established in constitutional well established as a fair and proper way to proceed administ

There is no longer any dispute about that by the law schools legal scholars of this country. Indeed it is such an indispens to an effective administrative agency that today when you administrative agency without cease-and-desist powers, you as sure that it was intended to be an ineffective and unresponsive

Thus, what we are asking to do is not something new or so revolutionary. It is something long overdue, something elemen something which is very sensible. Under the present system, the tends to be largely an agency limited to conciliation. Many t hearings can only be called a dress rehearsal; because if the e disagrees with the finding of the specialists and the Commis self, he can make them start all over again—what the lawyers novo—as though nothing had ever occurred in the agency. T whole administrative procedure often is not given the seri sideration it should have; because if any employer really w discriminate, why should he take it seriously? He simply goes the ritual. In fact, he uses it as an additional way to delay when he must comply wtih the law of the land.

The PRESIDENT pro tempore. The 5 minutes of the Senat expired.

Mr. MONDALE. I ask for 2 additional minutes.

If a party does not agree with the order issued by the EEO the bill, it will have full access to the courts. It can appeal t and the Commission, itself, has to go to court to secure compli an order which was disregarded.

The hearing procedures under the proposed legislation ample protection for all parties. The Administrative Proced will apply. Fully qualified hearing examiners are required. T evidence will be applicable. Conciliation will be used to avoi and desist orders wherever practicable. Sufficient notice of acti be required. There is an appeal to the courts, but the appea courts is on the basis of whether the Commission, first of all, a an order on the basis of, and supported by, a preponderan

other words, the Commission cannot go off without a evidence which proves strongly that the defendant was rimination in employment practices.

. If the Senator will yield there, I know that he does not an erroneous statement——

ALE. I certainly do not and I am glad to yield to the North Carolina.

. This bill provides that it does not require a preponder- nce. It requires merely substantial evidence.

hold that substantial evidence is less than a prepon- vidence.

ALE. Let me say to the Senator from North Carolina that s correction. The Senator from North Carolina is correct nt. I think that the distinction is not one of substance. vidence requires essentially the same burden of proof. It is quite different. The courts say that the——

ING OFFICER (Mr. Chiles). The time of the Senator from s expired.

ALE. I will say to the Senator from North Carolina, in burden of proof as now found in the pending bill, that he

nator from New Jersey yield me 2 more minutes?

MS. I yield 2 minutes to the Senator from Minnesota.

ING OFFICER. The Senator from Minnesota is recognized

LE. The same point obtains. It is a distinction without n my opinion. It is valid if provable before a court under ill, that the plaintiff and the Commission did not have dence to sustain its findings. Moreover, there is a valid courts that the Commission dealt with it in an arbitrary way and that it was not fair treatment of all of the

ICK. If the Senator will yield there, is it not also true that on can get an enforcement order without proving that are supported by substantial evidence after 60 days as are deemed conclusive?

LE. That is only true if there is no appeal. A party has 60 nine if he has a grievance. Surely, that is sufficient time. ust be substantial evidence that the defendant was guilty nination and if that has not been proved then the courts wn the findings. Also if the Commission deals in a pro- which is unconstitutional, or deals unconstitutionally in y, through a valid challenge of the order, the court can tions of the Commission.

, these grounds for appeal are well accepted——

ING OFFICER. The time of the Senator from Minnesota

MS. If the Senator will yield, we can have enough time colloquy to proceed and to be concluded. I ask unanimous President, that we have such time as we may need to con- oquy.

ING OFFICER. Without objection, it is so ordered.

Mr. MONDALE. Mr. President, these procedures and the se challenge of appeal involve one of the most well establishe cepted principles of administrative law. This is a minimal tablished and traditional remedy that is being asked here tod

The only thing surprising is why it has taken so long t

Mr. WILLIAMS. I am very grateful that the Senator has point and so clearly. There is nothing novel about procedu bill that deals with enforcement through cease and desist. I agencies of the Government this is the method that supports ment. In the States it is also honored, time-honored, and practice in many areas.

I want to ask the Senator from Minnesota with regard to t area of equal employment in the State of Minnesota, through period of public service in that State, where he served as general, it is my understanding that that State has an equa ment commission and that it is armed with exactly what we to do here; namely, an effective and fair enforcement thro and desist.

Mr. MONDALE. The Senator is correct. As a matter of fact nearly 5 years as attorney general in my State of Minnesota to say that any administrative tribunal which did not have desist powers almost invariably came to the State legislatur this:

If you do not give us these powers, we are a second cousin as an adm tribunal. We cannot do our job.

Time and again, the State legislature has responded to granted such powers.

The remarkable thing is that, under the present system at eral level, if we have a commercial dispute surrounding, sa ties, then we get the full range of administrative remedies. If a labor dispute—a labor-management dispute on either side and-desist powers are to be found. If we have a dispute Department of Transportation before one of the tribunals, cease-and-desist powers. We are dealing with basic, fund human rights: The right to a job, the right to challenge the employment on the grounds of color. And the only right we is that if we do not use the traditional court system, we must b to come before a Commission which does not have the power to more than conciliate.

Mr. WILLIAMS. I thank the Senator.

Mr. MONDALE. I am glad to yield.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, this is a long-standing quarrel. T ments which have been made on both sides reflect the situat rately. I shall not endeavor to add to what has already bee there are a few new points which I think are critically impor us remember that many Federal agencies have the cease power and that this is the new and the more modern rather less modern and older method of enforcement. It was invent purpose. That is why we paired the Administrative Procedur order to regularize it, and to deal with the division of functions is the main argument made against the cease-and-desist author

motion but also on other motions, which have been made
lso adopted an independent general counsel amendment on
flection of that concern.
that before the committee and am very glad it was passed
loor of the Senate.
long list of agencies which have cease-and-desist author-
are worth reading off because it indicates the new concept
l throughout the Government.
n to the National Labor Relations Board, the list includes
Energy Commission, the National Transportation Board,
Communications Commission, the Federal Power Com-
Securities and Exchange Commission, the Subversive Ac-
rol Board, the Department of Agriculture, the Depart-
lth, Education, and Welfare, the Department of Justice,
ent of Transportation, the Department of Defense, the
of the Interior, the Interstate Commerce Commission, the
partment, and the Department of Labor.
ow that this is the way the administration is going, we
e 50 States which have cease-and-desist authority in their
employment practice commissions.
a rather vivid experience with this matter in the State of
here we passed the bill which was called the Ives-Quinn
ago. The principal architect of that bill was Senator Irv-
was my senior here when I first came to the Senate, and
body for many years.
ne, there were the most dire predictions as to harassment
sands of suits and the tremendous load which American
ld have to take which it could not possibly defend itself
6 years, this was found to be invalid—the cease-and-desist
s worked and worked effectively, and the backlog of work
ot within reason. The court review has been more than
terms of the ultimate practices to which the litigant is

ence between cease and desist and a court suit which is
a vast gulf. With a cease-and-desist order, the possibility
n becomes very great, and it is precisely those agencies
ease-and-desist power which have had the greatest suc-
t to conciliation. Without that backup power, there is a
h is what is happening. The backlog in the EEOC is
tinue to rise and rise and rise, because there is no way
ything definitive except over a long, dragged out period
which then goes into another department of Government
give the crisp opinion which would bring the case to a
the agency, as the cease-and-desist power would do.
ent is made that there is an average of 10 months delay
e case backlog in our Federal courts.
dent, I ask unanimous consent to have printed in the
tement prepared by the Senator from New Jersey (Mr.
n this matter. It shows the time interval in months, the
interval in months.
g no objection, the statement was ordered to be printed
d, as follows:

U.S. District Court Backlog

Prepared by the Subcommittee on Labor of the Committee on Labor a
Welfare, Harrison A. Williams, Jr., chairman.

Based on Annual Report of the Director of the Administration of
United States Courts, 1970. Reprinted at pp. 508-513. Hearings on S. 2

Time interval from filing to disposition on tried civil cases (fiscal y

CIRCUIT AND DISTRICT	
[Time interval in months—median]	
Total All Districts, 17	
District of Columbia	
First Circuit, 17	
Maine	
Massachusetts	
New Hampshire	
Rhode Island	
Puerto Rico	
Second Circuit, 26	
Connecticut	
New York:	
Northern	
Eastern	
Southern	
Western	
Vermont	
Third Circuit, 35	
Delaware	
New Jersey	
Pennsylvania:	
Eastern	
Middle	
Western	
Virgin Islands	
Fourth Circuit, 14	
Maryland	
North Carolina:	
Eastern	
Middle	
Western	
South Carolina	
Virginia:	
Eastern	
Western	
West Virgina:	
Northern	
Southern	
Fifth Circuit, 13	
Alabama:	
Northern	
Middle	
Southern	
Florida:	
Northern	
Middle	
Southern	
Georgia:	
Northern	
Middle	
Southern	

	27
	22
	13
	9
	12
	13
	17
	8
	9

Sixth Circuit, 16

	23
	15
	28
	18
	24
	23
	7
	—
	15

Seventh Circuit, 16

	20
	16
	18
	19
	12
	22
	—

Eighth Circuit, 13

	12
	11
	—
	15
	11
	10
	17
	24
	—
	12

Ninth Circuit, 16

	—
	21
	28
	—
	14
	—
	—
	—

Montana
Nevada
Oregon
Washington:
  Eastern
  Western
Guam

Tenth Circuit, 12

Colorado
Kansas
New Mexico
Oklahoma:
  Northern
  Eastern
  Western
Utah
Wyoming

Mr. JAVITS. Mr. President, the important point is that wh
at the big industrial States, that is where we have the big de
chusetts has a delay of 19 months. Rhode Island has a d
months. New York has a delay of 20 months. Indeed, in t
district of New York, there is a delay of 35 months—almost
Similarly, as we go down the list, we see that it is in the i
where the major problems occur. We see in the northern cir
nois, which I believe includes Chicago, that there is a de
months.

So, we can see that the average of 10 months picks up
States where there are no major industrial problems. Of co
we have the big industrial problems, then we have a treme
delay.

No one less than Chief Justice Burger in a recent addre
this out and he said in his speech to the American Bar As
July 1970:

> From time to time Congress adds more judges, but the total judic
> tion never quite keeps up with the caseload. Two recent statutes
> thousands of cases relating to commitment of narcotic addicts and
> ill. These additions came when civil rights cases, the voting cases
> petitions were expanding by the thousands.

So he himself sees this situation and that the desire here i
sensitive area, which deeply involves problems of the great
in our country, to equip the agency with a remedy which w
best and most useful in its field.

If we do that and it has complete range, up to and inclu
ing, then it is in the best position to conciliate and settle
wise it can be shrugged aside as the EEOC is now bei
aside, and indeed in the most impatient way. We should gi
this power because it is being shrugged off. The chair
authority so testified.

We have the Administrative Procedures Act which con
istrative hearings leading up to cease and desist orders
power is possessed by a whole range of agencies, the names
have already read into the Record. The courts are overloa
amendment would do would be to overload them more.

f job opportunities for the minorities, we ought to have
lete action and complete remedy for an agency which
st expertise and the most authority with the most deli-
ding.

nodern way to deal with the problem. That is why many
gone in that direction. We would be taking a retrograde
uld be damaging to ourselves and to our country if we
o this.

ts. Mr. President, will the Senator yield?

I yield.

ms. Mr. President, I think it should be pointed out that
om New York, as is also true of the Senator from Min-
oted a great deal of his public life to work and dedica-
ter of inequality. We are talking here about equal em-
ortunity. Again, the Senator from New York has a
law enforcement in his State. He was attorney general
New York. So, he does not come to this debate without
f work as attorney general in this area.

erstanding that New York has this method of enforce-
nan rights legislation, together with equal employment
d has a cease-and-desist enforcement procedure.

The Senator is exactly correct. I was attorney general
ld have general authority over court proceedings which
actions of our local Commission on Fair Employment.
n my speech that for years we have had this authority
led the Ives-Quinn bill.

ure has worked superbly well. We are merely recogniz-
n concept of administration in giving this urgently
We will have infinitely more cases consolidated and a
e decisions which will buttress the enforcement of the

are here because we want the law to be enforced. The
assed. It is the law. And if it is the law, we want the
And the most effective way to enforce that type of law
e-and-desist authority. So, all we are doing is bringing
es abreast of the best practice.

uld do if we were to agree to the pending amendment
y distinct step backward, which I hope we do not take,
ch days when the grievances of the minorities are very
as far as our Nation is concerned.

ms. Mr. President, I do not believe that enough atten-
iven today to this matter in the debate. Perhaps we can
Equal Employment Opportunity Commission is now
than being able to attempt to conciliate through per-
reement where there is now discrimination. There can
ive to agreement because there is no enforcement auth-
at conciliatory practice.

Exactly. This can be shrugged off by any employer who
can go into court. It will be a long time, and we will
t."

t the workload has pyramided because it is weak and
now being used as a means of cutting down its workload
leal with cases with finality.

If we really want to enforce the law and want the Co... do it, we have to give them this authority.

I was here when this deal was made which resulted in th... sion having so little authority.

It was the price of buying support for the Civil Rights A... It is as simple as that. There was no other reason for it, no o... in logic or in law. We have paid that price for 7 years and ... in my judgment, with such a sensitive matter before us, to s... it. We should have done it 7 years ago. We made our deal a... to it. Now the moment in history has come to take a step f... backward. That is why we should agree to the bill as is ... the amendment.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield 10 minutes to t... from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is r...

Mr. ALLEN. I thank the Senator from Colorado for yield... at this time. I wish to commend the Senator on this amend... would give some measure of due process to the procedure i... alleged unlawful employment practices or alleged discrimina... tices.

At the outset, however, I would like to suggest that this ... not create one single job in private industry or private b... might create several hundred bureaucratic jobs; it might put ... of people on the Federal payroll; but it does not create one ... in private business or private employment.

All of us favor the right of every person to seek and to ... ployment without discrimination where employment is ava... it must be kept in mind that for every person who obtains em... by use of the procedure provided for in this act, someone el... job. No jobs are created by the act, except the hundreds ... placed on the Federal payroll.

One of the prime tenets of Anglo-Saxon jurisprudence is t... is presumed to be innocent until proven guilty. While the ... us does not presume to go so far as to repeal this concept, it ... subverts it. It arrogantly undermines and brushes aside the g... and fundamental principles of due process and invokes a p... repressive procedures as alien to justice as the rack and t... screw.

Under the bill, the Equal Employment Opportunity C... would be given a "judicial" function, permitting it to order ... ents to "cease and desist" from alleged unlawful employment ... with such orders subject to limited review in a U.S. court o...

What is government by cease and desist? Government by ... desist is government according to the personal convictions ... tions, predilections and precipitant notions of government b... rather than government by certain and uniform laws appl... to all men and institutions in like situations. That is some... want to avoid by requiring the EEOC not to be prosecutor, ... jury, but to substitute the Federal district courts for the j... pects of the Commission as provided for by the bill. The ... amendment would accomplish this result.

eal difficulties in connections with the type of authority
ere is the attitude of the Commission and its staff. The
s and the staff of the Equal Employment Commission
because of a particular philosophical bent—it is ex-
r, that they are to be objective and impartial advocates
yment opportunity and to conciliate charges found to be
he facts adduced in their investigations.
ssion, however, has not been and is not now the im-
it was supposed to be and was charged to be by law.
ommission has been a rabid advocate of its own precon-
f fair employment opportunity and has been spending
ne assembling arguments in behalf of its obsession with
Congress the power to issue coercive orders. The Com-
generated into performing a private pressure job for
t authority.
g of the functions of conciliation and compulsion in this
uld be tragic. The EEOC conciliator, in such instances,
light, be viewed as a friendly counselor, but only as an
cutor. In other words, when he also possesses the power
rosecuting, but also of rendering an enforceable judg-
asion takes on the immediate character of coercion.
bitious bill would lodge in an unelected Federal agency
authority to act as investigator, prosecutor, judge, and
d up in one power-laden bill. S. 2515 does this by grant-
ssion the power to investigate complaints; granting the
he power to prosecute complaints, not withstanding
e Taft-Schweiker amendment last week; and granting
n the power to pass judgment on complaints and to
ly enforceable by a cease-and-desist order.
ave to be blind indeed not to see that this particular
ill overbalances the scales of justice against defendants
absolute violence to the best of Anglo-American judi-

t appellate review of orders by the Commission is pro-
ne point out, Mr. President, that the court entertaining
ld be limited by the record of the hearing examiner as
e Commission and would be required to affirm the Com-
finding of some evidence supporting the Commission's

uld the record of the Commission consist of? Let us not
ry of these charges of discriminatory employment prac-
ade by persons who are motivated by revenge, cruelty,
d perfidy. This is especially true inasmuch as S. 2515
quirement that charges must be made under oath. In
ll permits the Commission to deprive the accused of the
time-honored rules of evidence and procedure. Hear-
ith its inflammatory effect can easily be the entire basis
the Commission. What all of this boils down to is that
he enormous power of "cease and desist," and yet pro-
ards against a possible arbitrary determination by the
he Commission can, therefore, proceed to issue a com-
itute a proceeding which could lead to the exercise of
wers based on a tenuous claim of discrimination and the

courts would be powerless to touch it. In other words, the bi
out and out mockery of our dedication to due process of law.

This is not government by law. It is government by the E
ployment Opportunity Commission, for better or worse.

I believe the Dominick amendment would cure one of the
of the bill. It would not cure the evil that the bill still woul
the States, counties, and cities; it would not cure the evil tha
be applicable to educational institutions and religious schools
not cure the evil that it reduces the required number of empl
25 to 8 and makes it applicable to a small business—not bi
any manner or means, but small business—with government
tape, reports, investigations, and injuries, making it almost
for small businesses to stay in business, and to add this
power to this Commission would certainly force many small
to the wall.

It has been stated that if this power is placed in the ha
Federal district courts there will be a big logjam there. Le
out that there are 398 Federal district judges in the countr
only one EEOC lodged right here in Washington. I would
clined to feel there would be less of a logjam if the work
among 398 Federal judges than placed before one Commissi
Washington.

Mr. ERVIN. Mr. President, will the Senator yield for some
on this point?

Mr. ALLEN. Yes; I shall be glad to yield if I may be exte
tional time.

Mr. DOMINICK. I yield 2 minutes to the Senator.

Mr. ERVIN. I will ask the Senator from Alabama if it i
that each district judge can sit by himself and make a decisi
self.

Mr. ALLEN. Yes; under the amendment of the Senator fr
rado.

Mr. ERVIN. Under this bill, there would be five memb
Commission, which, under certain circumstances, could be ex
nine.

Mr. ALLEN. Yes, sir.

Mr. ERVIN. The bill provides that it takes three to co
quorum. So every time there was a case for decision, three
would have to be sitting on it.

Mr. ALLEN. Yes, sir.

Mr. ERVIN. So there would be more congestion before the
sion than there would be before district judges.

Mr. ALLEN. Of course, that would be so, since they would
398 ways under the Dominick amendment, rather than und
as it is before the Senate.

Mr. ERVIN. Does the Senator from Alabama agree with th
from North Carolina that every litigant, in any kind of act
ceeding, is entitled to a fair trial.

Mr. ALLEN. Certainly, sir.

Mr. ERVIN. Does the Senator from Alabama agree with th
from North Carolina that the right to a fair trial entitles a
have his cause determined by an unbiased jury and an impa
in an atmosphere of judicial calm?

That is correct. That is a part of the Anglo-Saxon con-
udence.
Does the Senator from Alabama agree with the Senator
arolina that under our system of law, if a man had pre-
ge against a litigant on which the litigant is going to
ould be ineligible to sit on the jury and find the facts

Oh, yes.
And if a judge had preferred a charge against the
ing him with illegal action, that judge could be incom-
the trial and determine that man's guilt or innocence?
Yes.
But under this bill——
Without the Dominick amendment.
es. Under this bill in its present form, members of the
d those they control, their agents, can prefer charges on
can be tried. Can they not?
es.
NG OFFICER. The Senator's 2 additional minutes have

RK. I yield 1 minute to the Senator.
And after they do that, they can file the charge with the
el.
Yes.
And his regional counsel, can be appointed only with the
Commission.
Yes.
They file the charge with the General Counsel, and then
igs the charge made by the agency before the agency for
rrect?
Yes.
Does the Senator think there is likely to be much justice
umstances?
Very little.
Does the Senator from Alabama agree with the Senator
arolina that under any fair system of justice, a man or
has expressed an opinion adverse to a litigant has no
g the cause of that defendant?
certainly agree with the Senator from North Carolina.
NG OFFICER. The Senator's additional 1 minute has

RK. Mr. President, will the Chair let me know how much
?
NG OFFICER. The Senator from Colorado has 12 minutes

RK. I yield 1 more minute to the Senator from Alabama.
want to ask the Senator from Alabama if he does not
Senator from North Carolina that the very concept
is bill represents a prostitution of the judicial process.
Yes, I do.
n other words, it creates conditions under which justice
e had.

Mr. ALLEN. That is right, in any form whatsoever, ex
adoption of the amendment pending before the Senate.

Mr. DOMINICK. Mr. President, I yield 7 minutes to the S
South Carolina (Mr. Thurmond).

Mr. THURMOND. Mr. President, of all the amendments
been suggested for amending the proposals to strengthen
the Equal Employment Opportunity Commission, this
offered by the junior Senator from Colorado is undoubted
important. The issue is whether we shall give a single ag
U.S. Government the power to make regulations, conduct
tions, issue cease-and-desist orders concerning alleged pr
also have the power to enforce these orders. Under the terms
the EEOC would become not only the legislator but also the
judge, and jury. In simple fairness, this procedure cannot
in the American system. Our philosophy of government
believed that such roles should be separated. No man should
to be a judge when his own interests will be affected by the
the litigation.

Before we give the EEOC more power, we ought to ex
capabilities and past performance. Simply on a statistical
obvious that the Commission has been very ineffective in
role of assisting all Americans to achieve equal
opportunity.

For example, in the calendar year 1971, the EEOC receive
33,214 complaints. Of that number, the Commission com
7,321 investigations. The EEOC attempted conciliation in
cases and was successful in the conciliation process in only

In addition, we must consider the staggering backlog of
the Commission has rolled up by December 31, 1971. The
amounted to 31,000 cases, or almost as many complaints as
received during the year.

Why has the EEOC been such a failure? I think for th
we must look within the EEOC itself. The Commission
achieved a notorious reputation for antagonistic attitudes t
employers charged in the complaints it has received. Its a
attitude has served to set back the course of better human
In fact, the record I have just cited, of so very few attem
ciliation, shows that the EEOC staff does not appear to be
in conciliation. There are documented cases of outright in
and the use of hearings in an attempt to establish a gener
of discrimination when actually only one complaint has
Further, the EEOC has made outrageous demands concer
pany records—demands that have been turned down by
courts.

In short, the EEOC is not ready to handle a procedu
cease and desist. In its 6 years of existence, it has had four
It has been plagued with a rapid turnover in personnel. T
two of the most important staff positions, the General Couns
Executive Director, have been vacant for several months.

In view of its present record, how can we seriously conside
ing its powers? However, without regard to this history, w
fore us a proposal which broadens its power unnecessarily
aspects. But principally, the addition of the power of the

vould bring a flood of new complaints, many of which nded for pure harassment. It is generally agreed that f 31,000 cases could conceivably double by the end of e of these new powers. From the foregoing remarks I to leave the impression that I do not believe in equal pportunity for all Americans. I strongly believe that n should have the opportunity to get a job and advance ording to his capabilities. If there are cases where indi- ing denied equal employment opportunity or advance- jobs, it is quite obvious they can get relief in an honest directly to our judicial system. They can go to their ourt instead of going to Washington and they can be will be no unnecessary delay in obtaining relief. Senator nendment will preserve the due process rights of an without taking away the investigatory and processing EEOC. For these reasons the amendment by Senator ost critical to the future of this Nation and to the equal pportunities of injured minorities.

NG OFFICER. Who yields time?

MS. Mr. President, I yield myself such time as I may

nous consent to have printed in the Record at this point n of procedural due process in administrative proceed- longer than the time remaining to me would permit me

g no objection, the memorandum was ordered to be Record, as follows:

EDURAL DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS

INTRODUCTION

Employment Opportunities Act of 1971 (S. 2515), EEOC is given ease-and-desist enforcement procedures to provide it with powers currently held by other Federal regulatory agencies. Opponents ype of enforcement approach argue that placing administrative cedures in the EEOC would deny parties due process of law, he quality of justice available in the proceedings, and would wer in one agency.

I that the above-stated objections are totally groundless and do count either the procedural safeguards specifically provided by Administrative Procedure Act (hereinafter APA), the quality e hearings, or the quality of judicial review available to all eterminations.

PROCEDURAL DUE PROCESS

rative hearing procedure clearly guarantees procedural due rties. While the importance of due process has been specifically urts,[1] the courts have also noted that the concept of due process inflexible standard. It has been well-recognized that the same licable to due process in the courts do not necessarily apply al or quasi-judicial proceedings.[2]

ent by Justice Douglas in *Joint Anti-Fascist Refugee Committee* v. 123, 71 S. Ct. 624 (1951): "Notice and opportunity to be heard are e process of law. . . . It is not without significance that most of the Bill of Rights are procedural. It is procedure that spells much of the ule by law and rule by whim or caprice."

Wilson, Inc. v. *FCC*, 170 F.2d 802 (D.C. App. 1948) where the court process is not necessarily *judicial process.*" (emphasis added).

Although the term due process cannot be precisely defined to c
circumstances where it may be found, its general elements can b
and protected. Professor Davis has defined administrative due
follows: [3]

"The true principle is that a party who has a sufficient interes
stake in a determination of governmental action should be en
opportunity to know and to meet, with the weapons of rebuttal cr
examination, and argument, unfavorable evidence of adjudicative

The above principles, the basis for administrative due proces
applied by the courts in assessing adjudication of rights by
agencies.[4] The realization of these principles is generally conta
administrative hearing.

The basic requirement for administrative hearings is to satisfy
ments of due process for parties whose rights are affected by ag
This principle was established by the Supreme Court in two early
essential rule laid down in these and other early cases is tha
agency determination is one involving "adjudicative facts" as oppos
lative facts",[6] an opportunity for hearing must be accorded to g
process. The enactment of the APA reinforced the requirements fo
afforded by the hearing process. Sections 4, 5, and 6 of the APA, 5 U
1005, and 1006 specifically require that agency determinations wh
substantive rights of the parties be held on the record after opp
an agency hearing.

The courts, while allowing a certain degree of flexibility in the
ings and the degree of judicial process to be accorded in each pa
have been explicit in stating that where administrative actions affe
rights are involved, such actions may not be taken without due pro
"and due process generally requires a hearing."[7] The courts ha
indicated that the type of hearing and the extent of adjudicatio
each particular case may be decided by the agency as particular
may require. For example, the courts have held that it is not necess
to satisfy the constitutional guarantees of due process, to have
on every question of law which may arise during an administra
This need for agency flexibility, within the basic context of th
guards for due process, has been affirmed.

Many of the determinations made by administrative agencies
complicated and highly specialized areas which do not lend themse
tional concepts of adjudication:

"Administrative agencies should be free to fashion their own
cedure and to pursue methods of inquiry capable of permitting them
their multitudinous duties." [9]

It should not be assumed, however, that the existence, and in f
for agencies to fashion specific rules of procedure in any way dero
process guarantees articulated by the courts in the cases discus
that it in any way serves to weaken the various guarantees provided

ADEQUATE NOTICE OF HEARING

Section 4 of the APA, 5 U.S.C. § 1004, provides that prompt and
of issues be given to opposing parties. Under the provisions of S 25
requirement would be applicable to EEOC procedures under the a

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[3] 1 Davis, *Treatise on Administrative Law* 412; see judicial affirmation
ciples in *Bacon* v. *Holyman*, 264 F. Supp. 120 (N.D. Ill. 1967).

[4] See *E. B. Muller and Co.* v. *FTC*, 142 F.2d 511 (6th Cir. 1944); *Jeffers*
F. Supp. 463 (S.D. Calif. 1954).

[5] *Londoner* v. *Denver*, 210 U.S. 373, 28 S. Ct. 708 (1908); *Bi-Metallic In*
Board of Equalization, 239 U.S. 441, 36 S. Ct. 141 (1915).

[6] Adjudicative facts are generally understood to be facts requiring a
tion [illegible] facts about the parties, their activities business, and properties
do not usually concern the immediate parties but are general facts
[illegible] decide questions of law and policy and apply discretion. See
in 1 Davis, *Administrative Law Treatise* (1958 ed) Cf. *U.S.* v. *Gonzales*
75 S. Ct. 409 (1955).

[7] *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 71 S. Ct.
Cf. *U.S.* v. *Gonzales*, 348 U.S. 407, 75 S. Ct. 409 (1955); *Magnolia Petroleum*
Oil, 118 F.2d 1 (10th Cir. 1954), cert. denied, 349 U.S. 916, 75 S. Ct. 605
McCrillis, 200 F.2d 884 (1st Cir. 1952).

[8] *FCC* v. *WJR*, 337 U.S. 265, 69 S. Ct. 1097 (1949); Cf. *Gart* v. *Cole*, 263
Cir. 1959).

[9] *Cella* v. *U.S.*, 208 F.2d 783 (7th Cir. 1953), cert. denied 347 U.S. 10
Lambross v. *Young*, 145 F.2d 34 (U.S. App. D.C. 1944).

proach. Moreover, S. 2515 specifically requires that respondents
arges within 10 days of receipt by the Commission.
nation of unsuccessful conciliatory efforts, S. 2515 stipulates
t, joined with notice of a hearing, shall be issued by the Com-
rved upon the respondent. In compliance with the APA, such
rvey the time, place, and nature of the hearing to be held; and
law and fact asserted.

FAIR AND FULL HEARING

or a fair and full hearing would also be guaranteed by EEOC
r S. 2515. Section 5 of the APA guarantees the right of parties
the time and place of hearings. Due regard shall be had for
and necessity of the parties or their representatives.
) of S. 2515 provides broad opportunity for a respondent to
mend his answer at any point in the proceedings, with leave
xaminer. The EEOC would also be required to abide by those
of the APA which provide that the presiding officer (at hear-
all interested parties opportunity for the submission and con-
ts, arguments, and offers of settlement or proposals of adjust-
the nature of the proceeding, and the public interest permit.
pplicability of § 5(d) to Commission proceedings would guaran-
vilege to present his case by oral or documentary evidence, to
evidence, and to conduct such cross-examination as may be
ull and true disclosure of the facts.
ificance is the provision of the APA which assures a fair and
g by providing, *inter alia*, that a Commission employee or agent
erformance of investigative or prosecuting functions in a case,
or a factually related case, participate or advise in the Com-
n, except as a witness or counsel in public proceedings. Section
5 patterned after this provision of the APA, would insure this

SEPARATION AND IMPARTIALITY OF EXAMINERS

above provisions of the APA, and on the basis of the discussion
sections, it seems unlikely that there could be any valid
ing procedural due process under administrative procedure.
nts of S. 2515 have also leveled charges against the EEOC on
it would be unable to fairly administer its hearing because
ias. In this regard, critics have also attacked the fact-finding
le VII, and the similar provisions of S. 2515 requiring an initial
nable cause" to initiate the conciliation process, as denying
ess by determining their guilt without a hearing.
riticism misconstrues the nature of a finding of "reasonable
es the specific provisions of the APA with regards to insuring
of hearing examiners.[10]
istance, the purpose of the preliminary determination as to
e" is to discover whether a complaint has a minimum of sub-
h to have further investigations or other action. It is, in effect,
the magistral finding prior to issuance of a search warrant.
ry finding of "probable cause" before bringing an indictment.
as is also true in the Title VII determination of "reasonable
lt or innocence of the accused decided, either in fact or in law.
l on this issue confuses the distinction between two separate
: the one to show need for further examination, and the other
on. The Supreme Court has clearly emphasized this difference:
a large difference between the two things to be proven (guilt
ise) as well as between the tribunals which determine them,
difference in the *quanta* and modes of proof required to estab-

rtant to note in this respect that an administrative hearing is,
de novo, where the parties are required to establish their case
al examiner.
onship of the hearing examiner and the agency has been dis-
separate memorandum "Hearing Examiners and the Enforce-

the APPA, 5 U.S.C. § 1006, provides in part:
f all presiding officers and of officers participating in decisions * * *
n an impartial manner."
358 U.S. 307, 312, 79 S. Ct. 329, 332 (1958).

ment of Federal Regulations" and will not be examined again here. ... mary of the applicable provisions of the APA will show, however, t... provisions have been made to insure the impartiality of examiners ... each case.

The APA provides that: hearing examiners are to be assigned to ... tation; they are prohibited from engaging in any other agency ac... their compensation, qualifications, and retention of status are con... Civil Service Commission and not the agency where they are empl...

In light of the procedural guarantees discussed supra, and consi... quirements attached to the office of the hearing examiner, it is unr... maintain that the administrative process does not provide parti... process or otherwise prejudices their rights. In fact, it may be tr... administrative regulations set a higher standard of procedural due ... that required by the Constitution or a statute." [13]

SEPARATED GENERAL COUNSEL

In addition to the procedural safeguards outlined above, the ... S. 2515 contain a further guarantee of insuring fair operation of th... tive hearing process. Pursuant to an amendment adopted by the Se... uary 20, 1972 (Amendment No. 797), the EEOC would have a Ge... separated from the other operations of the Commission. In this ma... to the system adopted for the National Labor Relations Board ... suant to the Congress' 1947 action in overhauling the Wagner Act ... cuting and judicial functions of the Commission will be entirely se...

Under the terms of the amendment, the Commission will hav... Counsel, appointed by the President (with the consent of the Senate ... of four years. It shall be the responsibility of the General Counsel ... plaints where he feels a violation has occurred which has not b... through the conciliation process, to prosecute any such complaints ... Commission, and to conduct all litigation to which the Commissio... party pursuant to §§ 706 and 707 of the Act.

While the provisions of the APA already establish comprehensive ... safeguards in the hearing process itself, with the adoption of the a... ment the precomplaint decision procedures (investigation, finding ... "no-cause", and the conciliation procedures), and the decision-maki... of the Commission (issuance of Commission orders pursuant to he... now been separated by law. In this manner, any potential areas ... interest, or merging of investigatory, prosecutorial, and decision-m... tions is eliminated. With the above amendment, the hearing proce... lined above assumes even further characteristics of a trial *de novo* ... appurtentant safeguards.

SCOPE OF JUDICIAL REVIEW

Although the foregoing sections amply demonstrate that parties ... teed due process in administrative enforcement procedures, it s... noted that there is an additional safeguard available to insure ... proceedings—i.e. court review of agency decisions. The courts ha... very beginning of the administrative enforcement process, reviewed ... on appeal to insure the proper administration of justice. In exerc... view, the courts have always closely examined agency procedure... protection for parties who appear before administrative agencies ... cisions, before adoption of the APA, reviewed agency actions on ... "substantial evidence"—i.e. an examination of the record to deter... there is substantial evidence to support agency findings.[15]

With the adoption of the APA in 1946, the "substantial evidence" ... formalized as part of that act.[16] The Supreme Court reaffirmed its ... in 1951:[17]

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[13] Section 11 of the APA, 5 U.S.C. § 1010; See also *Ramspeck* v. *Federal ... Conference*, 345 U.S. 128, 73 S. Ct. 570 (1953).

[14] *Jeffries* v. *Olsen*, 121 F. Supp. 463 (S.D. Calif. 1954).

[15] For a discussion of the reasons for the separated General Counsel in ... Klaus, The Taft Hartley Experiment in Separation of NLRB Functions, ... Rel. Rev. 371 (1958).

[16] *ICC* v. *Union Pacific R. Co.* 222 U.S. 541, 32 S. Ct. 108 (1912); *ICC* v. ... *K.R.*, 227 U.S. 88, 33 S. Ct. 185 (1913); *NLRB* v. *Columbian Enameling & ...* 306 U.S. 292, 59 S. Ct. 501 (1939).

[17] § 7(c) of the APA, 5 U.S.C. § 1009(c), provides in part: ". . . the ... shall decide all relevant questions of law, interpret constitutional and st... and determine the meaning or applicability of the terms of an agency ... hold unlawful and set aside agency action, findings, and conclusions found ... unsupported by substantial evidence . . ."

Universal Camera Corp. v. *NLRB*, 340 U.S. 474, 71 S. Ct. 456 (1951).

indings are entitled to respect: but they must nonetheless be
he record before the Court of Appeals clearly precludes the
from being justified by a fair estimate of the worth of the
nesses or its informed judgment on matters within its special
oth."

he courts look at the "substantial evidence" as presented in
y actions, but the APA also provides that in doing so, the
o examine the "whole record" upon review.[18] Courts have lib-
e principles of review to examine all aspects of an agency's
d have not hesitated to set aside an agency ruling.[19]

CONCLUSION

nise upon which the entire federal administrative hearing is
rovide complainants with an opportunity to present their greiv-
se federal agencies best qualified to resolve them. The admin-
process substitutes the quasi-judicial administrative hearing for
in those specific areas where the expertise and experience re-
adjudicate such complex issues is better suited to an expert
ner, those agencies which have the responsibility for admin-
ific area of Federal concern would also be able to resolve dis-
hese areas, thereby freeing the Federal courts from the need
tise in all these complex areas.

ative Procedure Act, adopted in 1946, formalized and codified
the early Federal administrative adjudicatory experiences. It
licial decisions which had set out the procedures and guar-
all citizens whose rights were affected by Federal action. The
se procedures was the guarantee of due process—to afford all
unity for a fair and full hearing under the law. This proposi-
so basic to the entire administrative process that the major
APA are directed to this aim. Any attack upon the due process
he administrative enforcement process cannot, therefore, be
nded in either fact or law.

s. I also ask unanimous consent to have printed in the
to me from the EEOC dated January 21, 1972, which
to-date estimate of the potential number of contested

no objection, the letter was ordered to be printed in
follows:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., January 21, 1972.

WILLIAMS, Jr.,
Committee on Labor and Public Welfare, U.S. Senate, Wash-

RMAN: Pursuant to the Committee's request on the effect that
cement would have in terms of anticipated initial case loads
the Federal District Courts, the following projections represent
sue.

loyment Opportunity Commission presently has a backlog of
. Of these, we anticipate that close to half will go no further
atory stage. Of the remaining cases, in which we expect a
o result, if direct court enforcement is granted, a substantial
usted or will result in a pretrial settlement.

se of the large number of charges involved, we anticipate
3,000 contested cases which will have to be filed with the Fed-
rts during the next year, if court enforcement rather than
adopted. This would represent an increase between 30 to 50
se loads before these courts. Additionally, our projections for

(e). Explaining the meaning of the term "whole record", the Senate
dicates: "The requirement of review upon 'the whole record' means
look only to the case presented by one party, since other evidence
indisputably destroy that case." Sen. Doc. No. 248, 79th Cong., 2d
).

Co-operative v. NLRB, 208 F.2d 296 (8th Cir. 1953); *United Church*
d (U.S. App. D.C. 1969).

the current year show an anticipated 32,000 charges to be filed w
mission. Of this number, the same breakdown as outlined above
resulting in another 2,000 to 3,000 cases on the heels of those
filed pursuant to our backlog.

I hope this information will prove helpful to you. If I can be of
assistance, please do not hesitate to call on me.

Sincerely,

STEPHEN C. BLAKESLE
Director, Congressio

Mr. WILLIAMS. I ask unanimous consent to have prin
Record excerpts from the annual report of the Director
ministrative Office of the United States Courts for 1970.

There being no objection, the excerpts from the report we
to be printed in the Record, as follows:

[Excerpts from the Reports of the Proceedings of the Judicial C
the United States, held at Washington, D.C., March 16–17, 1970,
29–30, 1970]

ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF
STATES COURTS, 1970

§ 331. JUDICIAL CONFERENCE OF THE UNITED STATES

The Chief Justice of the United States shall summon annually th
of each judicial circuit, the chief judge of the Court of Claims, th
of the Court of Customs and Patent Appeals, and a district judge
judicial circuit to a conference at such time and place in the United S
may designate. He shall preside at such conference which shall be k
Judicial Conference of the United States. Special sessions of the co
be called by the Chief Justice at such times and places as he ma

The district judge to be summoned from each judicial circuit sha
by the circuit and district judges of the circuit at the annual judicia
of the circuit held pursuant to section 333 of this title and shall serve
of the conference for three successive years, except that in the year f
enactment of this amended section the judges in the first, fourth, s
tenth circuits shall choose a district judge to serve for one year, th
the second, fifth, and eighth circuits shall choose a district judge to s
years and the judges in the third, sixth, ninth, and District of Colum
shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by th
the circuit is unable to attend, the Chief Justice may summon any c
or district judge from such circuit. If the chief judge of the Court o
the chief judge of the Court of Customs and Patent Appeals is unabl
the Chief Justice may summon an associate judge of such court t
summoned shall attend and, unless excused by the Chief Justice, s
throughout the sessions of the conference and advise as to the need
cuit or court and as to any matters in respect of which the admin
justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition
in the courts of the United States and prepare plans for assignment
to or from circuits or districts where necessary, and shall submit
the various courts, in the interest of uniformity and expedition of bu

The conference shall also carry on a continuous study of the o
effect of the general rules of practice and procedures now or here
prescribed by the Supreme Court for the other courts of the
pursuant to law. Such changes in and additions to those rules as the
may deem desirable to promote simplicity in procedure, fairness in
tion, the just determination of litigation, and the elimination of u
expense and delay shall be recommended by the Conference from
to the Supreme Court for its consideration and adoption, modificatio
in accordance with law.

The Attorney General shall, upon request of the Chief Justice, m
conference on matters relating to the business of the several courts
States, with particular reference to cases to which the United State

ice shall submit to Congress an annual report of the proceedings
'onference and its recommendations for legislation.
d of the United States civil case filings increase of an entire
red in the last year.
l actions filed in the United States district courts in 1970 was
more than the number filed during 1960, and 10,128 above the
scal year 1969. (The largest previous 1 year's increase—of 5,744
9 over 1968.)
ons in fiscal year 1970 were 7,000 fewer than filings, but up 10
9 terminations. The 30 percent increase in terminations, 1970
ubstantially less than the 47 percent increase in filings. The
ivil caseload is now the largest on record—93,207 cases. This is
ian a year ago, and 52 percent more than at the close of fiscal

S FILED, TERMINATED, AND PENDING IN THE U.S. DISTRICT COURTS, FISCAL YEARS 1960 THROUGH 1970

	Filed	Terminated	Pending June 30
	59,284	61,829	61,251
	58,293	55,416	64,128
	61,836	57,996	67,968
	63,630	62,379	69,219
	66,930	63,954	72,195
	67,678	65,478	74,395
	70,906	66,184	79,117
	70,961	70,172	79,906
	71,449	68,873	82,482
	77,193	73,354	86,321
	87,321	80,435	93,207
	47.3	30.1	52.2
	13.1	9.7	8.0

rcuits did the district courts register less than a 10 percent
in 1970 compared to 1969. The District of Columbia showed an
han 1 percent and the Third Circuit 7 percent. The greatest
filings—24 percent—occurred in district courts in the Eighth

69, civil filings in 1970 showed a drop in both the Second Circuit
n the District of Columbia (33 percent). For these 10 years the
Circuits experienced almost a 100 percent increase and the
5 percent increase. The comparisons appear below:

SES COMMENCED IN THE U.S. DISTRICT COURTS DURING THE FISCAL YEARS 1960, 1968, 1969, AND 1970, BY CIRCUIT

	Civil cases commenced (fiscal year)				Percent change	
	1960	1968	1969	1970	1970 over 1960	1970 over 1969
	59,284	71,449	77,193	87,321	47.3	13.1
	6,990	4,529	4,627	4,654	−33.4	0.6
	1,937	2,387	2,825	3,160	63.1	11.9
	9,845	8,208	8,688	9,652	−2.0	11.1
	5,043	7,638	8,243	8,824	75.0	7.0
	3,673	5,921	6,482	7,292	98.5	12.5
	9,475	14,890	16,697	19,536	106.2	17.0
	4,803	6,598	7,163	8,080	68.2	12.9
	4,196	4,942	5,526	6,173	47.1	11.7
	3,539	3,929	4,000	4,963	40.2	24.1
	6,964	8,997	9,389	10,882	56.3	15.9
	2,819	3,410	3,553	4,105	45.6	15.5

Types of Civil Cases

se in actions under special Federal statutes explains a good
ll growth in filings. For example, there were 3,985 civil rights
pared to 2,453 the previous year, an increase of 63 percent.
ore cases were filed under the civil commitment provisions of

Title III of the Narcotic Addict Rehabilitation Act of 1966 (P.L. 89
ber 8, 1966). There were 3,268 N.A.R.A. commitments in 1970;
1969. Suits under the Securities, Commodities and Exchange Act in
796 in 1969, to 1,211 in 1970—a 52 percent hike. More prisoner p
State and Federal, were filed than ever before. State prisoner petitio
for 11,812 suits; Federal prisoner petitions for 4,185. This repres
tively, an increase of 27 and 16 percentage points above the pr
prisoner fillings of 9,612 State and 3,612 Federal.

TABLE 14.—CIVIL CASES COMMENCED IN THE U.S. DISTRICT COURTS, DURING THE FISCAL
1968, 1969, AND 1970, BY NATURE OF SUIT

Nature of suit	Cases filed (fiscal year)				Perc
	1961	1968	1969	1970	1970 c
Total	58,293	71,449	77,193	87,321	
Contract actions	16,340	14,474	14,951	17,157	
Insurance	1,586	2,172	2,381	2,522	
Marine	2,412	2,850	2,838	3,496	
Miller Act	1,333	915	735	916	
Negotiable instruments	4,070	2,388	2,567	2,971	
Other	6,939	6,149	6,430	7,252	
Real property actions	3,326	3,969	3,737	3,284	
Mortgage foreclosure	1,326	1,946	1,664	1,349	
Land condemnation	997	920	1,020	880	
Other	1,003	1,103	1,053	1,055	
Tort actions	21,205	23,909	24,713	25,320	
Employers' Liability Act	1,114	1,074	1,233	1,272	
Marine	4,889	6,717	7,111	7,257	
Motor vehicle	9,083	9,679	9,504	9,363	
Other personal injury	4,574	4,989	5,369	5,592	
Property damage	1,545	1,450	1,496	1,836	
Actions under statutes	13,427	26,635	31,232	39,348	
Antitrust	420	707	783	929	
Civil rights	296	1,636	2,453	3,985	
Deportation	316	163	129	144	
Forfeiture and penalty suits	2,360	2,029	1,200	1,459	
Labor laws	2,484	3,518	3,721	3,999	
Narcotic Addict Rehabilitation Act		387	2,011	3,268	
Patent, copyright and trademark	1,585	1,829	1,865	2,150	
Prisoner petitions:					
Federal	1,589	2,851	3,612	4,185	
State	1,020	8,301	9,312	11,812	
Securities, commodities and exchange	267	689	796	1,211	
Social Security laws	537	1,188	1,572	1,735	
Tax suits	1,507	1,670	1,452	1,509	
Other	1,046	1,667	2,326	2,962	
Other actions	3,995	2,462	2,560	2,212	
Domestic relations (local jurisdiction)	393	648	700	758	
Insanity (local jurisdiction)	2,541	820	816	536	
Other	1,061	994	1,044	918	

[1] Percent change since fiscal year 1968 when Title III, N.A.R.A. took effect.

The accompanying chart [not printed in the Record] shows the p
distribution of the major classes of civil suits.

In addition to the above noted 1-year increase in other civil categ
actions increased overall by 15 percent with marine contract and M
sharing most of this. Personal injury suits climbed only slightly.
Property damage suits were up 23 percent. A small but notewor
occurred in motor vehicle injury suits.

Real property actions continued to show a decline with Governm
foreclosures decreasing by 19 percent and land condemnations by 14 p

In Table 14 above, civil case filings by nature of suit are shown f
1961, 1968, 1969, and 1970, together with percent change compar

969 and 1961. The overall number of filings in 1970 has increased
In nature of action categories the most notable increases have
ights: prisoner petitions; antitrust, securities, commodities and
's of decisions of the Social Security Administration; and
ts.

under the Federal statutes accounts for 45 percent of all civil
district courts, compared to 23 percent in 1961. Civil rights,
id prisoner petitions both State and Federal, account for 27
petitions alone now make up 18 percent. Back in 1961 civil
r cases combined were only 5 percent of all Federal civil filings.
ase in prisoner petitions can be seen in a later chart and table.

Civil Cases Terminated and Pending

districts which terminated more cases than were filed dropped
mpared to 32 in 1969, 33 in 1968, and 48 in 1967. Most notable
ts was the Eastern District of Pennsylvania which terminated
ore than the 3,531 filed during the fiscal year. Through several
nges in this court including the adoption of the individual
judge, the pending caseload dropped from 7,135 on June 30,
ne 30, 1970, a 17-percent decrease.

strict of New York recorded 1,955 terminations, greater by 217
S findings. This district began the fiscal year with 1,744 pending
th 1,527, a drop of 12 percent.

districts in which filings exceeded terminations by more than
n three in 1969, to 11 in 1970. This means that civil case back-
t larger in these 11 districts, specifically increasing by 586
ern District of New York; by 363 cases in Massachusetts; by
Northern District of California; 316 in Puerto Rico; 298 in
Virginia; 247 in the Northern District of Illinois; 263 in the
ia; 266 in the Southern District of Texas; 253 in New Jersey;
District of Florida; and 206 in Maryland. These 11 districts
ercent of the 6,886 increase in civil cases pending on June 30,
es pending a year earlier.

OMMENCED AND TERMINATED IN THE UNITED STATES DISTRICT COURTS, FISCAL YEARS 1969 AND 1970

r	Pending July 1	Commenced	Terminated	Pending June 30	Percent change over July 1
	82,482	77,193	73,354	86,321	4.7
	86,321	87,321	80,435	93,207	8.0
	3,993	4,627	4,304	4,316	8.1
	4,316	4,654	4,391	4,579	6.1
	2,682	2,825	2,524	2,983	11.2
	2,983	3,160	2,458	3,685	23.5
	104	159	158	105	1.0
	105	198	161	142	35.2
	1,371	1,429	1,261	1,539	12.3
	1,539	1,617	1,254	1,902	23.6
	159	123	128	154	−3.1
	154	148	153	149	−3.2
	291	164	215	240	−17.5
	240	219	228	231	−3.8
	757	950	762	945	24.8
	945	978	662	1,261	33.4
	15,112	8,688	7,996	15,804	4.6
	15,804	9,652	9,096	16,360	3.5
	685	532	467	750	9.5
	750	720	607	863	15.1
	540	447	421	566	4.8
	566	479	511	534	−5.7

TABLE C[illegible] U.S. DISTRICT COURTS. TIME INTERVAL FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED DURING THE FISCAL YEAR ENDED JUNE 30, 1970, BY DISTRICT AND METHOD OF DISPOSITION

[Includes land condemnation cases, habeas corpus cases, deportation reviews and motions to vacate sentence. Intervals shown are for the median time and for the range of the middle 80 percent of the cases]

Circuit and district	Total cases				No court action				Court action										
									Before pretrial				During or after pretrial				Trial		
	Time interval in months[1]				Time interval in months[1]				Time interval in months[1]				Time interval in months[1]				Time interval in months[1]		
	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than
Territorial districts	64,571	1	10	35	30,567	1	8	31	15,802	1	5	26	10,902	7	18	42	7,300	5	17	44
District of Columbia	3,797	1	9	30	1,639	1	7	26	1,220	1	2	19	583	12	21	41	355	7	21	42
1st circuit	2,242	1	10	29	1,261	1	9	25	557	1	7	24	175	6	17	38	249	8	17	38
Maine	140	1	6	17	55	1	3	11	13				48	4	8	18	24			
Massachusetts	1,136	2	11	27	727	3	11	25	267	1	7	23	24				118	9	19	37
New Hampshire	139	1	12	24	42	1	7	22	32	1	8	26	30	5	13	23	35	6	14	25
Rhode Island	265	2	15	106	139	2	16	107	29	1	5	12					37	10	18	55
Puerto Rico	622	1	5	28	298	1	2	13	216	1	9	29	73	9	20	39	35	9	21	39
2d circuit	7,715	2	18	44	4,852	2	15	36	1,133	1	12	44	925	14	34	57	805	7	26	57
Connecticut	464	1	11	43	131	1	12	32	207	1	3	27	73	17	32	52	53	1	27	47
New York																				
Northern	333	2	21	59	219	2	23	59	38	1	13	40	21				55	5	20	64
Eastern	1,536	1	12	32	1,098	1	12	31	186	2	11	20	77	7	21	41	175	6	20	42
Southern	4,813	3	22	47	3,123	3	17	36	586	2	21	50	709	17	36	59	395	15	35	61
Western	258	1	14	39	121	1	8	32	62	1	12	42	45	10	21	47	30	1	19	68
Vermont	311	5	11	19	160	5	10	17	54	2	10	20					97	7	13	21
3d circuit	7,953	2	21	51	4,181	2	18	54	1,767	1	7	37	1,255	17	36	50	752	10	35	59
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

															16	37	57	7	31	98
5th circuit	15,032	1	8	26	5,845	1	5	19	4,288	1	5	22	2,926	6	14	34	1,973	4	13	37
Alabama:																				
Northern	707	2	8	17	81	1	3	10	254	1	6	16	124	6	11	23	284	5	9	17
Middle	224	1	5	10	57	1	3	7	57	1	3	6	65	3	5	13	45	3	6	12
Southern	409	2	11	29	180	1	6	18	71	1	9	33	109	11	16	31	49	6	20	37
Florida:																				
Northern	154	1	6	18	51	1	4	11	54	1	6	15	23				26	2	10	44
Middle	1,231	1	6	23	720	1	4	20	353	1	6	18	39	9	17	41	119	6	18	34
Southern	1,341	1	7	18	336	1	3	10	581	1	5	15	275	6	13	22	149	7	14	26
Georgia:																				
Northern	686	1	10	26	247	1	7	17	209	1	7	20	99	13	20	34	131	3	17	36
Middle	236	2	5	16	95	2	5	15	44	1	5	18	38	3	8	17	59	2	5	14
Southern	280	1	11	29	155	1	9	30	80	1	10	24					45	6	17	29
Louisiana:																				
Eastern	3,629	2	10	35	1,220	1	5	20	1,108	1	7	29	1,022	7	17	43	29	8	27	64
Western	877	1	9	39	459	1	4	30	175	2	9	43	135	12	21	41	108	2	22	37
Mississippi:																				
Northern	309	2	10	31	148	1	6	19	38	1	3	26	35	6	16	46	88	5	13	39
Southern	481	1	6	17	289	1	5	14	77	1	6	19	44	4	9	19	71	3	9	18
Texas:																				
Northern	1,062	1	7	19	393	1	4	14	221	1	3	15	300	4		21	148	4	12	31
Eastern	625	2	10	23	231	1	6	17	117	1	7	20	188	6	13	25	89	7	13	26
Southern	1,544	1	10	28	684	1	7	22	284	1	3	31	414	7	14	28	162	5	17	46
Western	914	1	3	14	385	1	4	14	427	1	1	8	14				88	3	8	26
Canal Zone	323	1	3	13	114	1	7	16	138	1	1	7	2				69	2	9	14
6th circuit	5,835	1	8	30	1,935	1	6	23	2,101	1	3	20	1,214	7	20	39	585	4	16	43
Kentucky:																				
Eastern	357	1	11	45	139	1	12	33	181	1	9	48	4				33	1	23	60
Western	399	1	6	19	131	1	4	15	133	1	2	9	104	6	12	24	31	2	15	53
Michigan:																				
Eastern	1,780	1	4	33	395	1	6	19	841	1	2	8	462	10	23	45	82	7	28	57
Western	320	1	12	27	127	1	5	14	31	1	9	25	109	9	18	29	53	6	18	30
Ohio:																				
Northern	1,220	1	12	32	420	1	6	24	367	1	6	23	330	12	25	38	103	3	24	38
Southern	668	1	9	35	310	1	7	26	261	1	6	29	49	15	23	43	48	6	23	56

See footnote at end of table

TABLE C5 — U.S. DISTRICT COURTS. TIME INTERVAL FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED DURING THE FISCAL YEAR ENDED JUNE 30, 1970, BY DISTRICT AND METHOD OF DISPOSITION—Con'inued

(Excludes land condemnation cases, habeas corpus cases, deportation reviews and motions to vacate sentence. Intervals shown are for the median time and for the range of the middle 80 percent of the cases)

Circuit and district	Total cases				No court action				Court action										
									Before pretrial				During or after pretrial				Trial		
		Time interval in months[1]				Time interval in months[1]			Time interval in months[1]				Time interval in months[1]				Time interval in months[1]		
	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than
Tennessee:																			
Eastern	578	1	6	13	161	1	4	10	149	1	5	14	148	5	8	13	120	4	7	15
Middle	159	1	11	43	87	1	12	43	49	1	6	35	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Western	354	1	9	24	165	1	6	20	89	1	7	24	8	[illegible]	[illegible]	[illegible]	92	6	15	25
7th circuit	4,450	1	8	25	1,905	1	5	16	924	1	4	20	1,190	5	14	30	431	6	19	41
Illinois																			
Northern	2,071	1	7	24	804	1	4	13	478	1	3	17	587	5	11	25	202	6	20	45
Eastern	258	2	10	26	100	1	6	19	47	2	6	24	79	7	14	28	32	8	16	24
Southern	281	1	9	27	159	1	7	23	30	1	6	14	60	7	14	30	32	1	18	39
Indiana:																			
Northern	545	1	13	28	229	1	7	20	103	1	9	23	160	11	20	34	53	10	19	31
Southern	721	2	7	24	371	1	5	15	117	1	6	20	162	5	12	31	71	4	12	36
Wisconsin																			
[illegible]	603	1	8	30	174	1	4	13	93	1	5	21	104	6	18	38	32	10	22	42
[illegible]	171	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

9th circuit	7,0.4	1	9	30	4,088	1	7	25	1,469	1	6	29	833	8	16	38	694	4	16	44
Alaska	239	1	11	31	134	1	10	30	64	1	5	25	25	9	25	37	16			
Arizona	635	1	7	34	251	1	7	28	277	1	5	24	50	7	18	50	57	5	21	53
California:																				
Northern	1,622	2	14	38	1,051	2	11	30	342	1	14	42	125	19	31	53	140	3	28	61
Eastern	347	2	9	38	244	2	8	35	67	2	9	34	19				17			
Central	1,709	1	7	25	1,188	1	6	21	182	1	8	41	157	8	15	34	182	1	14	38
Southern	144	1	7	29	113	1	8	29	26	1	4	14	4				1			
Hawaii	144	1	13	34	99	1	10	28	26	1	13	23	4				15			
Idaho	190	2	9	23	109	1	5	19	44	3	10	23	14				23			
Montana	207	2	9	26	73	1	5	19	42	1	7	19	66	6	13	29	26	5	14	27
Nevada	199	1	10	40	85	1	7	21	58	1	2	17	28	12	12	42	28	5	31	54
Oregon	682	1	8	16	281	1	4	11	86	1	2	6	204	7	11	18	111	6	13	24
Washington:																				
Eastern	181	2	7	18	89	2	6	12	44	1	5	12	20				28	6	12	25
Western	679	1	10	22	300	1	8	20	200	1	4	18	102	7	13	31	77	8	14	21
Guam	106	1	5	14	71	1	4	12	11				15				9			
10th circuit	2,616	1	7	23	1,049	1	4	17	538	1	4	19	610	5	12	26	419	5	12	32
Colorado	516	1	8	23	162	1	4	15	134	1	5	19	131	6	14	25	89	4	13	28
Kansas	523	2	12	33	256	2	9	24	118	1	8	33	74	13	20	34	75	7	24	40
New Mexico	334	1	7	19	114	1	4	11	90	1	3	13	67	6	12	21	63	5	11	30
Oklahoma:																				
Northern	261	1	6	23	124	1	4	16	33	1	2	13	75	4	10	27	29	5	10	30
Eastern	123	1	7	13	40	1	4	9	23				22				38	3	10	15
Western	496	1	5	15	180	1	3	7	88	1	4	8	162	4	8	18	66	5	10	28
Utah	248	1	8	21	123	1	5	13	27	1	3	6	61	8	13	24	37	8	13	29
Wyoming	115	1	5	14	50	1	4	8	25	1	4	11	18				22			

[1] Time interval computed only where there are 25 or more cases.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, JULY 1, THROUGH DEC. 31, 1970

FIGURE 1. CIVIL CASES COMMENCED DURING THE FIRST HALF OF THE FISCAL YEARS 1967 THROUGH 1971

Nature of suit	Civil cases commenced— 1968	1969	1970	1971	Percentage change 1971 over 1970
Total	34,162	36,705	42,361	46,654	10.1
Contract actions	7,233	7,259	8,139	9,346	14.8
Real property actions	1,971	1,706	1,511	1,781	17.9
Tort actions					
Marine personal injury	3,177	3,394	3,699	3,628	−1.9
Employer's Liability Act	508	594	595	669	12.4
Motor vehicle, personal injury	4,752	4,794	4,730	4,591	−2.9
Other personal injury	2,420	2,678	2,787	3,018	8.3
Personal property damage	707	699	892	1,035	16.0
Statutory actions					
Antitrust	315	381	465	895	92.5
Civil rights	654	1,056	1,731	2,669	54.2
Statutory actions—Continued:					
Prisoner petitions:					
Federal	1,503	1,628	2,107	2,065	−2.0
State	3,672	4,125	5,788	5,854	1.1
Forfeiture and penalty	1,059	623	714	883	23.7
Labor suits	1,611	1,840	1,891	2,178	15.2
Copyright, patent, trademark	922	915	1,013	1,052	3.8
Tax suits	841	701	753	700	−7.0
Narcotic Addict Rehabilitation Act	36	823	1,565	1,382	−11.7
Other statutory actions	1,678	2,123	2,804	3,848	37.2
Other actions [1]	1,103	1,366	1,777	1,060	−10.0

[1] Mostly local jurisdiction cases.

Nature of suit	Total				No court action			
		Time intervals in months [1]				Time intervals in months [1]		
	Number of cases	10 percent less than—	Median	10 percent more than—	Number of cases	10 percent less than—	Median	10 per more than—
Total cases	64,571	1	10	35	30,567	1	8	31
U.S. cases	18,753	1	5	25	9,128	1	4	22
Contract actions								
Negotiable instruments	2,209	1	3	15	1,881	1	3	13
Recovery of overpayments and enforcement of judgments	270	1	4	30	234	1	3	27
Other contracts	1,314	1	7	31	739	1	5	29
Real property	1,309	1	4	17	836	1	4	13
Tort actions								
Marine, personal injury	568	4	14	30	320	3	11	28
Motor vehicle, personal injury	800	2	11	35	429	2	8	20
Other personal injury	596	2	17	52	252	2	13	55
Other torts	420	2	11	37	265	1	8	34
Actions under statutes								
Antitrust	54	1	19	72	23			
Civil rights	300	1	4	17	108	1	2	14
Liquor forfeitures	111	2	6	22	56	2	5	22
Other forfeiture and penalty suits	1,227	1	3	20	926	1	3	16
Narcotic Addict Rehabilitation Act	3,165	1	1	4	159	1	1	3
Fair Labor Standards Act	1,671	1	5	16	1,312	1	4	13
Other labor litigation	302	1	5	21	167	1	5	22
Social Security Laws	1,384	3	9	21	198	3	8	15
Tax suits	1,504	4	17	46	630	3	14	35
All other U.S. actions	1,458	1	5	22	593	1	3	23

[1] United States is plaintiff.

TABLE C-4A—U.S. DISTRICT COURTS—TIME INTERVAL FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED DURING FISCAL YEAR ENDED JUNE 30, 1970, BY NATURE OF SUIT AND METHOD OF DISPOSITION—Continued

[Excludes land condemnation cases, habeas corpus cases, deportation reviews and motions to vacate sentence. Intervals shown are for the median time and for the range of the middle 80 percent of the cases.]

Nature of suit	Court action											
	Before pretrial				During or after pretrial				Trial			
		Time intervals in months [1]				Time intervals in months [1]				Time intervals in months [1]		
	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than	Number of cases	10 percent less than	Median	10 percent more than
Total cases	15,802	1	5	26	10,902	7	18	48	7,300	5	17	44
U.S. cases	7,033	1	3	17	1,886	6	16	42	1,238	3	16	47
Contract actions:												
Negotiable instruments	325	2	4	17	76	5	14	38	18			
Recovery of overpayments and enforcement of judgments	26	1	14	29	7				3			
Other contracts	407	1	7	25	99	5	15	37	69	8	17	42
Real property	365	2	5	14	48	6	17	48	60	6	17	41
Tort actions:												
Marine, personal injury	65	5	17	39	126	9	15	33	57	8	17	36
Motor vehicle, personal injury	131	2	7	28	117	8	18	40	120	8	20	43
Other personal injury	124	2	6	33	113	8	24	57	107	11	27	58
Other torts	64	2	9	29	54	7	16	48	37	8	21	57
Actions under statutes:												
Antitrust	13				7				11			
Copyrights	133	1	4	14	11				48	1	8	23
Labor laws and standards	25	1	6	18	8				22			
Other labor litigation and benefit plans	163	1	4	20	67	3	12	38	71	2	8	29
Selective Service Act	3,066	1	1	4					6			
Tax suits	141	1	6	19	144	5	10	23	74	3	13	25
Other statutes	59	1	5	16	14				12	1	4	24

Contract actions:								
Marine	3,104	1	15	42	2,063	1	13	39
Miller Act	831	2	9	34	550	2	7	31
Other contracts	98	2	12	31	45	2	12	30
Real property	231	1	5	28	174	1	4	19
Tort actions:								
Employers' Liability Act	1,204	5	17	37	411	3	14	33
Marine, personal injury	5,284	3	14	39	2,797	2	11	34
Other torts	766	4	19	50	335	2	14	37
Actions under statutes:								
Bankruptcy trustee suits	347	4	14	40	196	3	13	30
Antitrust	567	2	18	49	228	2	15	30
Civil rights [2]	2,327	1	5	23	787	1	4	19
Fair Labor Standards Act [2]	425	3	10	32	235	2	9	31
Other labor litigation	1,336	1	7	39	704	1	5	33
Copyright	602	2	7	32	429	1	5	28
Patent	893	2	14	50	483	2	9	33
Trademark	416	1	7	30	235	1	5	26
All other Federal question	1,599	2	10	37	711	1	7	30
Diversity of citizenship	21,633	3	12	38	9,317	2	10	33
Contract actions:								
Insurance	2,021	3	11	32	725	2	7	27
Negotiable instruments	374	1	8	30	204	1	5	23
Other contracts	4,343	2	12	39	1,932	1	8	32
Real property	557	2	7	30	287	2	6	20
Tort actions:								
Marine, personal injury	1,685	5	19	47	1,099	4	15	41
Motor vehicle, personal injury	8,010	3	12	35	3,411	3	10	31
Other personal injury	4,148	3	14	39	1,545	2	11	35
Other torts	478	2	10	34	194	1	8	32
All other diversity	17				10			
Local jurisdiction	4,155	1	8	30	1,670	1	7	27
Contract actions	602	2	10	33	332	1	8	27
Real property	301	1	11	39	164	1	8	289
Tort actions:								
Motor vehicle, personal injury	998	6	16	30	437	3	11	25
Other personal injury	443	4	17	42	169	3	11	32
Other torts	51	2	14	31	25	1	11	28
Domestic relations	641	1	4	13	137	1	8	17
Substitute trustee	28	1	2	25	21			
All other local	1,091	1	1	13	391	1	1	19

TABLE C6a—U.S. DISTRICT COURTS—TIME INTERVAL FROM FILING TO DISPOSITION OF CIVIL CASES TERMINATED DURING FISCAL YEAR ENDED JUNE 30, 1970, BY NATURE OF SUIT AND METHOD OF DISPOSITION—Continued

[Excludes land condemnation cases, habeas corpus cases, deportation reviews and motions to vacate sentence. Intervals shown are for the median time and for the range of the middle 80 percent of the cases.]

Nature of suit	Court action											
	Before pretrial				During or after pretrial				Trial			
		Time intervals in months [1]				Time intervals in months [1]				Time intervals in months [1]		
	Number of cases	10 percent less than—	Median	10 percent more than—	Number of cases	10 percent less than—	Median	10 percent more than—	Number of cases	10 percent less than—	Median	10 percent more than—
Federal question	3,816	1	7	35	3,640	7	19	43	2,128	3	19	49
Contract actions:												
Marine	433	2	11	39	442	7	20	47	166	9	22	59
Miller Act	104	3	8	32	107	7	20	46	70	6	17	36
Other contracts	25	1	10	30	17				11			
Real property	19				27	9	21	49	11			
Tort actions:												
Employers' Liability Act	113	1	8	33	458	7	21	39	222	7	20	40
Marine, personal injury	629	2	12	37	1,424	8	18	41	434	10	25	48
Other torts	118	2	16	43	208	9	21	51	105	10	31	76
Actions under statutes:												
Bankruptcy trustee suits	55	3	12	35	68	7	16	43	28	6	20	43
Antitrust	187	1	12	46	83	7	25	66	69	9	33	74
Civil rights	382	1	3	18	189	4	9	23	9			

Real property	104	1	7	22	89	5	19	37	77	3	18	38
Tort actions:												
Marine, personal injury	136	4	26	45	411	9	26	51	129	9	30	52
Motor vehicles, personal injury	920	2	9	31	2,291	6	16	39	1,388	6	14	37
Other personal injury	695	2	9	39	1,131	7	19	41	777	6	18	44
Other torts	105	1	6	29	92	5	13	36	87	5	19	38
All other diversity	5								2			
Local jurisdiction	1,471	1	2	18	582	12	20	40	426	5	17	39
Contract actions	135	1	6	24	71	8	25	46	64	6	21	39
Real property	64	1	7	27	41	15	27	58	32	3	19	41
Tort actions:												
Motor vehicle, personal injury	86	7	16	27	337	12	19	21	138	10	19	34
Other personal injury	71	3	11	31	119	11	28	45	84	10	28	55
Other torts	12				9				5			
Domestic relations	427	1	2	9					77	5	9	14
Substitute trustee	4				1				2			
All other local	672	1	1	11	4				24			

[1] Time interval computed only where there are 25 or more cases.

[2] United States is plaintiff.

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C., September

Mr. DONALD ELISBURG, *Counsel,*
Senate Labor Subcommittee, New Senate Office Building, Washington

DEAR MR. ELISBURG: In accordance with our telephone conversation I am enclosing time elapsed data that you requested.

Please note that Table 2 sets out the latest data that we have available in the area of court processing time.

We are presently incorporating court time-elapsed data into our data processing system for reporting on a monthly basis. Thus, in future, we will be able to supply this material on a current basis.

If I may be of further assistance, please feel free to contact me (ext. 5072).

Sincerely,

MILFORD C. CLEVELAND
Statistical

TABLE 1.—UNFAIR LABOR PRACTICE CASES PROCESSED BEFORE THE NLRB MEDIAN DAYS ELAPSED STAGES (FISCAL YEARS 1970 TO 1971 AND JULY 1971)

	Fiscal years	
	1970	1971
Filing to complaint	57	58
Complaint to close of hearing	58	62
Close of hearing to trial examiner decision	84	96
Trial examiner decision to contested board decision	124	143
Filing to board decision (based on actual contested decisions issued during period(s))	348	376

Source: National Labor Relations Board, Division of Administration, Office of Statistical Reports and Ev

TABLE 2. UNFAIR LABOR PRACTICE CASES PROCESSED BEFORE THE U.S. CIRCUIT COURTS OF A... DAYS ELAPSED FROM BOARD DECISION TO COURT OPINION (1ST HALF OF FISCAL YEARS 196...

	1st half of ...
	1969 (July to December 1968)
On petitions for enforcement [1]	592
On petitions for review [2] of board orders	454

[1] Board petitions U.S. Court of Appeals for a court decision enforcing the order of the board.
[2] Parts aggrieved by a final order of the board petitions a U.S. Court of Appeals to review such order.
Source: National Labor Relations Board, Division of Administration, Office of Statistical Reports and ...

TABLE 3. REPRESENTATION PETITIONS MEDIAN DAYS ELAPSED BY MAJOR STAGES (FISCAL YEA... AND JULY 1971)

	Fiscal years	
	1970	1971
Filing to notice of hearing	9	11
Notice to close of hearing	14	14
Close of hearing to board decision	139	150
Close of hearing to regional director's	20	22
Filing to board decision	228	239
Filing to regional director's decision	48	51

Source: National Labor Relations Board, Division of Administration, Office of Statistical Reports and Ev...

Mr. WILLIAMS. It has been mentioned, I think, by two of the ... who spoke in opposition to the amendment offered by the ... from Colorado, that there is great concern in the Federal ... expressed from the pinnacle by the Chief Justice of the Unit...

r, speaking as the Senator from New York pointed out.
ould be emphasized again that the crushing problems of
oad that is coming to the Federal district courts was
the Chief Justice in a speech before the American Bar
believe in July of 1970, and that the situation has not
he matter inserted in the Record will show.

time Congress adds more judges, but the total judicial organiza-
keeps up with the caseload. Two recent statutes alone added
es re'ating to commitment of narcotic addicts and the menta'ly
ns came when civil rights cases, the voting cases, and prisoner
panding by the thousands.

on, if the amendment of the Senator from Colorado
and became law, would be further aggravated. That
the only reason for a definitive decision on this ques-
ize that. If due process and fairness of judicial equity
course, we would have to pay that price, and the Presi-
alize it and would have to appoint more judges to take
load.

ire history, particularly, I would say, of the last 30
nator from New York will correct me if I misstate—
of experience with this matter of enforcement by an
agency, with the Administrative Procedure Act as
hole process, have shown that it preserves all of the
mandates in this country of fairness in reaching a

Mr. President, will the Senator yield?

MS. I yield.

The Senator is aware that the Supreme Court of the
has held that Congress is without constitutional power
urisdiction to an administrative or quasi-judicial body
ight of review in Federal courts, is he not?

MS. Well, of course, and that is provided clearly in the
ore the Senate.

So this measure recognizes that there can be a review
courts even under the bill as introduced by the distin-
or from New Jersey.

MS. Well, certainly. It is abundantly clear that all the
nanded by the Constitution are a part of this legislation.

This bill would extend the jurisdiction of the Commis-
ring practices of every businessman who employs as
employees, would it not?

MS. That is correct.

And that would bring millions of additional people
rage of the bill, would it not?

MS. Yes.

Not only that, but this bill would extend the coverage
all employees of all the States and local subdivisions
ld it not?

MS. Yes. And I wonder, if we are going to have an
upport of the amendment here, whether the Senator
some time.

I have no time. If the Senator will yield me some time,
d to have it.

Mr. Williams. Well, if it is in support of the amen Senator can seek the generosity of the Senator from Colo is the Senator's wish?

Mr. Ervin. I wanted to ask the Senator if this bill does the coverage of this act——

Mr. Williams. Fortunately, yes.

Mr. Ervin (continuing). To millions of additional em private industry, and at least 10 million employees of State subdivisions of States.

Mr. Williams. I say gratefully, yes.

Mr. Ervin. It also enables the political hands of Caesar upon the sacred things of God. And each one of these cases of these things occur is subject to be reviewed in the Federa it not?

Mr. Williams. I would say that equality of rights has do with Caesar, and maybe had more to do with God.

Mr. Ervin. I would say you do not get equality of rights the majority of their rights, and that is what this bill wi majority of the people of this country. But apart from tha

Mr. Williams. I do not think any one has a right to d against a person because of religion, race, sex, or national or

Mr. Ervin. I do not think Congress has a right to author to lay his political hands upon the affairs of God and that what this bill does.

Mr. Williams. I interpret God's mandate to man differ the Senator from North Carolina.

Mr. Ervin. But apart from that question, every one of th arises affecting any one of the millions of additional employ vate industry which are brought under the bill and the mo million State and local employees would be subject to be re the Federal courts under the bill in its unamended form, w not?

Mr. Williams. The appeals procedure is here, and the co peals is written in clearly as the court of review.

Mr. Ervin. So this will increase rather than diminish th the Federal courts, regardless of whether the amendment o tinguished Senator from Colorado is adopted or rejected, w

Mr. Williams. The Senator, of course, knows that Ch Burger was referring to the case load in district trial courts

Mr. Ervin. Which goes to show that when a man gets to eral judge he is just like every other man who gets a Fe The first thing he wants to do is have his duties lightened next thing he wants is to have his salary increased. This Federal judges are as human as other people.

Mr. Williams. I am not going to argue that. When we caseload of the district courts, which has been included ord at the request of the Senator from New York, I am the fact that from the inception of a case in the State of N to its conclusion, the time has now reached 29 months. I am of that. Justice delayed, it has been said by wiser author this Senator, is justice denied. Twenty nine months is a time in the district courts of the State of New Jersey.

that in the State of North Carolina, in the eastern dis-
s is the time from the filing of an action to a decision in
at is too long.
ıs it may, with time running, I have no further requests
hout yielding back the few minutes that I might have,
that it is suggested here, in support of this amendment,
debaters, that we are introducing a monstrous and un-
in this area of equal employment opportunity. This is
at is being done by the legislation. A time honored pro-
orcement, with all the protections for due process and
ed, is exactly what we have done, a method that is being
other administrative agencies of importance, that is
34 of the 38 States that have human rights commis-
e a guarantee that there will be equal employment

rom anything new. What this proposes is that the Fed-
ıs, constitutional protections, of equal opportunity be
enforcement procedures in the administrative agencies
ll the economic agencies of the Federal Government,
ost of the States that have human rights commissions
sections.
K. I yield myself 3 minutes.
nt, I want to make some brief points. I have listened
to the proponents of the system as is presently con-
ill—namely, the cease-and-desist authority. So far as
say that a court enforcement system would take longer
and desist has been used in other cases, and therefore
it for equal employment.
nk either one of these is a very compelling argument,
ve testimony—which I have already referred to—that
there is now a backlog of more than 20 months in the
compliance and mediation cases. If you expand their
ontrol by 21 million people, expand the procedural com-
ving them cease-and-desist authority and say they are
00 attorneys or more—about which we have testimony—
oing to do it all within their one agency, you obviously
o have 20 months' delay but more than 3 years' delay.
facts I presented indicate that cease and desist proce-
e circuit court of appeals procedure, so you have just as
, if not more in the circuit courts, as you would if they
s in the district courts as my amendment does. I think
is not supported by the facts.
point is that in the discussion of this bill in committee,
what should be done about State and local employees,
hem a right to proceed through the Attorney General
system and not be subject to cease-and-desist orders. We
ral employees the right to go through their agency and
to the Civil Service Commission Board of Appeals and
the court. But in the case of private employees, this bill
cannot use the court system; they cannot be like the
overed under this bill. They will have to redress their
ough the cease-and-desist machinery without ever get-
rict court.

I do not have to make any apologies to the Senator from Y or the Senator from New York on my civil rights record. has been fairly strong. I do not recall that I have ever vo a civil rights bill in my life, and I say that in my public say that with considerable pride.

I also started out by saying that I think we do need equ ment enforcement procedure. But it seems to me that the w is not the way we are doing it here by overburdening an age already cannot keep up with its load, but by doing someth into force what almost every commission has ever said w vestigated the executive agencies: Separate their functions.

This amendment, if adopted, will separate at least the ad functions and put them into the court system. By so doing also remedy the discrimination that S. 2515 language wou on private employees.

The Presiding Officer (Mr. Spong). The time of the S expired.

Mr. Dominick. I yield myself 1 additional minute.

The Senator from Minnesota mentioned the fact that S. 2 the respondent a fair appeal of his case in the court of ap President, this is not entirely true as if an employer has a cea against him and an order issued against him, under the pr and because of one reason or another he does not get around ing the Commission's order with 60 days, the findings of the sion are final, and the courts are not permitted even to whether or not there was substantial evidence of any kind t such findings, much less a preponderance of the evidence. S come final after 60 days, and neither the employer nor the has any right to challenge this.

I do not think that is proper judicial procedure. I ha doubt as to its constitutionality.

The next point I want to make is that we are adding 2 people. Let us give the chance to separate these functions enforcement procedures where they belong.

I reserve the remainder of my time.

Mr. Javits. Mr. President, will the Senator yield me 1 min

Mr. Williams. I yield the Senator from New York 1 m

Mr. Javits. Mr. President, the Senator said something ab cease-and-desist orders being unfair because in 60 days the final. What the Senator did not say is that any respondent filing a petition for review with the Circuit Court of Appeals them not become final. He has a perfect right to test out which has been issued against him. Certain presumptions a the substantial evidence rule, but there is no finality by w respondent is foreclosed. He has an absolute right to app Circuit Court of Appeals, which has a very broad jurisdi described in the bill before the Senate, to review. Indeed, can go either way.

If the agency wants to have the power to seek contem event of a violation, it, too, can move in the Circuit Court of for a court order. But it is the very reason why we seek th and desist authority, and we say it has some teeth in it. it gives finality within the agency. The respondent, him

court, but there is no inhibition in that. He can do
cases does do so, and the order is then reviewed.
at this adds anything but efficiency.
I said before. You cannot argue at one and the same
is a tremendous backlog of work and yet not give
or that work to be terminated by giving the necessary
which it can be terminated, and that is the cease-and-

. Mr. President we are about to vote on this issue.
where we were on September 30, 1970. The same bill,
as before the Senate at that time. There was a record
rejecting the well-intentioned motive of our good
tor from Colorado, who, I will say in closing, has in
constructive and productive in the development of
re the Senate. We disagree without any disagreement

. Mr. President, do I have any more time?
Officer. The Senator has 1 minute remaining.
. I will use it to summarize:
g a large number of people under the jurisdiction
hich already has a big backlog. We are also adding
ed powers which are perhaps even unprecedented.
onally treating private employees and private em-
y than we treat Federal, State, and local employees—
iem a right to redress their grievances in the Federal

it would provide more effective enforcement, do it
l preserve the difference in separation of powers which
to our whole system of justice, our whole system of
less we do approve the amendment, we are once again
tar Chamber kind of operations which have been
many cases within the agencies themselves and by
ch have looked at the agencies to determine whether

ident, I urge support of my amendment.

CEASE-AND-DESIST POWERS ARE ESSENTIAL

r. Mr. President, the present substitute amendment
Equal Opportunities Enforcement Act—amendment
ed by the Senator from Colorado (Mr. Dominick)—
ient nondiscrimination enforcement powers in the
e heart of the issue of what constitutes effective pro-
ployee's civil rights. I am convinced that the process
on would fail to achieve this goal, and I urge the
his amendment.
desist enforcement powers granted to the Equal Em-
tunity Commission under the pending bill constitute
hanism for assuring that the rights enunciated in
Civil Rights Act of 1964 will, in fact, and after an
delay of over 7 years, be guaranteed.
hrough cease-and-desist administrative proceedings
almost all other Federal regulatory agencies—most

recently, to the Occupational Safety and Health Review C
under the law enacted by the last Congress—Public La
to protect the right of some 57 million American workers
conditions that are free of health and safety hazards. Mo
type of enforcement authority is the same as that ado
of the 38 States which have equal employment opportunit

I fail to see the logic that the enforcement of a wo
basic rights requires any less vigorous approach by the Fe
ernment. The increasingly overcrowded caseloads of o
courts are a well-known fact. Over 16,000 trials were co
U.S. district courts in 1970—60 percent more than in 196
was a total of 127,240 civil and criminal cases on the d
same year, with an expectation, that many will not be r
several years.

Let me state the case in its stark reality: The delay o
the denial of justice. Respect for law is directly related
forcement of law.

This is the heart of the matter. Speed and efficiency ar
to the administration of justice affecting the most basic ne
American—man or woman, black or white—the right to
opportunity to obtain or advance in a job, without regar
color, religion, sex, or national origin.

It is my firm judgment that the balance of evidence pres
Senate clearly weights in favor of administrative enforcem
right, as over against court enforcement, to assure that it is
protected. It has been clearly established the extensive adm
expertise is required in the resolution of complex problems
ment discrimination under Title VII proceedings. The C
acknowledged the EEOC's specialized qualifications in
these problems, and EEOC opinions have been given gr
in subsequent judicial interpretations and decisions.

Moreover, there is sufficient evidence that the administ
proach encourages early settlement of claims and provides
that is frequently so vital in resolving complaints, there
alleviating the courts and providing quick relief for agg
viduals. For example, of the 33,581 cases received by the
Labor Relations Board in fiscal 1970, 92.4 percent were d
with only the need for a formal hearing, with only 420 of the
heard by hearing examiners having to be filed for review
ment in the courts of appeals, and only about half of t
set for oral argument.

Third, we need this unified approach, through the EEOC
lems of employment discrimination, wherein decisions
rendered by one agency rather than several hundred d
judges. Only in this way can we achieve clear patterns i
pretations and remedial approaches that are essential to t
protection of Title VII rights.

The administrative process provided for under S. 2515
of EEOC efforts initially to achieve voluntary compliance
by hearings under the provisions of the Administrative
Act, with the incorporation of existing law relating to the
of preliminary relief, and a subsequent EEOC decision a
issuance of cease and desist orders, and with either party

peal to the appropriate U.S. court of appeals—is a guarantee to all parties fair and impartial adjudications.

nate to reach a firm decision that administrative enferable to court enforcement of equal employment its. I regard the EEOC cease-and-desist enforcement ial to guaranteeing justice to aggrieved individuals—blacks, American Indians, Chicanos, and members of groups who continue to wait for the fulfillment of re basic to making a reality of the promise of America.

. Mr. President, when the Congress passed Title VII ghts Act of 1964, it created the Equal Employment mmission to help those people who believe they have unfair employment practices because of their race, ex, or national origin. As prescribed by that law, the EEOC are limited to investigating, mediating, and ed instances of discriminatory employment practices. II did not provide the Commission with a mechanism dings and redress legitimate grievances.

question which the Senate must answer today is expansion of the jurisdiction and functions of the ake: Should the Commission be empowered to take n cases into the Federal district courts, or should it be e cease-and-desist orders unilaterally?

I am convinced that the district court approach is the administrative approach. Court enforcement is vides greater protection for both plaintiff and des administrative enforcement. It separates the funcho prosecute and those who judge. It assures due

enforcement machinery should be geared toward sing legitimate grievances and promptly dismissing ints. Unlike a district court decision in favor of the dings, which would be immediately enforceable, encease-and-desist order issued by the EEOC would the appropriate Federal court of appeals. It would that the enforcement approach involving only one s superior to that involving two.

rtant as the number of procedures involved are the district courts and the EEOC, and their respective e their present workloads.

since the Commission came into existence in 1965, been presented to it. As of June 30, 1971, the Comacklog of 32,000 cases and required from 18 to 24 se of a complaint. On the other hand, the backlog s in the United States district courts was relatively about 10 months for disposition of a case.

ident, the matter which concerns me most greatly is granting the EEOC authority to issue cease-and-uld pose to the elemental concepts of fairness and h are fundamental to our system of justice. Under t proceeding, the EEOC would investigate the charge, int, prosecute the case, adjudicate the merits, and

seek enforcement of its decision. The Commission wou
the roles of both prosecutor and judge, and the entire pr
take on the atmosphere of a kangaroo court.

Predictably, proponents of administrative enforcement
this approach has become the rule over the last 25 years. t
Federal agencies, the Securities and Exchange Commissio
eral Trade Commission, the Interstate Commerce Commissi
National Labor Relations Board, have been granted such
However, they fail to point out that with the exception of t
the agencies which have been given cease-and-desist pow
sentially regulatory agencies. Moreover, it is interesting t
with regard to the National Labor Relations Board, Co
hearings have been held on proposals to expedite the NLRB
some processes which are very similar to those being adv
the EEOC.

Mr. President, I submit that the proposal to grant the C
the authority to issue cease-and-desist orders without prov
in a court of law goes to ridiculous lengths. It would seek
the rights of one party by subverting the rights of the other
seek to redress the grievances of one party by creating grie
the other. It would place a tremendous additional burden on
agency whose past record clearly demonstrates that it is
handle its present workload. It purports to expedite justice
ing it from the courtroom and placing it in an administra
mire and by adding procedural steps instead of reducing t

Therefore, Mr. President, I cannot support the provisions
granting the EEOC the authority to issue cease-and-des
Instead, I shall vote for the amendment of the Senator from
to authorize the Commission to sue directly in the Feder
courts to enforce its findings, and I urge my colleagues to d

Mr. CHILES. Mr. President, I am supporting the Domini
ment because I believe it is obvious to everyone that the E
ployment Opportunity Commission needs some "teeth" in it
some enforcement power. The question then becomes, "Do
EEOC the power to investigate, prosecute, act as trial judg
view in cases of alleged violation of Title VII?" Do we jeops
longstanding belief in separation of powers among the three
of our Government by placing judicial power in the hand
Executive? Or do we empower EEOC to sue in district co
their efforts at conciliation fail and thus preserve fair tria
process, preserve our doctrine of separation of powers, and
effort to shelter the regulatory process from the politica
within the EEOC? I think we must do the latter.

All are agreed, I believe, that the time is right for the C
establish some type of enforcement power giving streng
purposes of the law establishing the Equal Employment Op
Commission. There are many good reasons, however, to
the EEOC to sue in district courts rather than empower the
sion itself to issue complaint, conduct hearings, and issue
desist orders. I think the most important reason is the fact
EEOC has the role of civil rights advocacy. Because an ad
nature represents one side of the law it is no longer able to
partial arbiter of the law. It cannot be asked to apply
without prejudice.

on for empowering the EEOC to sue in district courts
the Commission has a backlog of cases for 18 to 24
ld probably take several years to set up proper ad-
edures and develop staff expertise with the EEOC.
existing court system would mean not only more im-
out would bring EEOC skill and Federal court free-
ical pressure together in a single effort. It would also
th the current trend in Government—as evidenced by
and SEC cases—of keeping the judicial power in the
e agencies and commissions ought to have the investi-
nd the power to charge violations of the law. But the
hether the law has indeed been violated, ought right-
om the courts.

here that needs doing. Congress established the EEOC
omplaints of discrimination in employment and to try
ures of conciliation to resolve the grievance. But some
cedure is necessary—some effective protection of both
nd the employee's rights through a speedy resolution
I believe the most effective method to assure final
edy settlement of the dispute would be to allow the
nue its investigations and hearings—to continue its
oluntary compliance with the Civil Rights Act, but
EEOC attorneys with the power to sue in Federal
n cases where there is reasonable cause to believe a
le VII has occurred and where EEOC's attempts at
e failed.

Mr. President, no form of discrimination is more per-
rican values than denying an individual a chance to
f his or her abilities and to be judged on merit. Free-
nity is what this country is all about and it must be
for all Americans, regardless of race, sex, religion, or

ave not done enough in the past to end discrimination
The time has come to put enforcement powers be-
ses that have been made. The issue remains, however,
way to achieve our goal.

no question that willful or knowing discrimination in
wrong and I believe it should be dealt with in the most

is a significant part of the problem, today is not the
act of some employer but rather the effect of long-
tices or systems in which there may be no intent to
even knowledge that such is the effect. The commit-
y clear on that point:

ment discrimination tended to be reviewed as a series of iso-
ished events, for the most part due to ill-will on the part of
individual or organization. It was thought that a scheme that
on rather than compulsory processes would be most appro-
olution of this essentially "human" problem, and that litiga-
essary only on an occasional basis. Experience has shown this

crimination as viewed today is a far more complex and per-
n. Experts familiar with the subject now generally describe
ms of "systems" and "effects" rather than simply intentional
literature on the subject is replete with discussions of, for

example, the mechanics of seniority and lines of progression, per present effect of pre-act discriminatory practices through vario devices, and testing and validation requirements.[1] In short, the whose resolution in many instances requires not only expert ass the technical perception that the problem exists in the first ins the system complained of is unlawful. This kind of expertise found in either the personnel or legal arms of corporations, a terms of conciliations is often an impasse, with the responde unable to understand the problem in the same way that the G ceives it.

I am not suggesting that because it may have been or unknowing, an act of job discrimination should be to saying such cases ought to be treated differently than discrimination.

The problem here is not one of simply assigning blam ing remedy but of defining what constitutes a violation first place and of constructing a solution which takes a the circumstances. I believe that kind of question should to the full processes of a court of law.

Mr. President, the purpose of the bill before us is to go conciliation in achieving equal job opportunities, but we m the mistake of moving to the opposite pole of confronta end, the success of our efforts will not depend on the degr ity we bestow on some Federal agency but on our abilit climate of cooperation and understanding in dealing wi plex problem. I do not believe we further that goal by due process to a defendant who may not recognize his culpa case and may not even perceive that a wrong has been done.

In my opinion, there is a basis for distinguishing in the acts in which there is an element of knowing or willfulne which are the unintended and unperceived results of an systems. The first may properly be the object of cease-and ers, but the latter in my judgment is not. Unfortunately, th us makes no such distinction.

While I believe in legislation to improve enforcement opportunities, I will vote for the amendment offered by from Colorado as an improvement in the bill before us.

Mr. HART. Mr. President, I ask unanimous consent to in the RECORD the views of the National Council of Jewis in opposition to the Dominick amendment. Senators and cerned with the EEOC extensions will, I am sure, be inter position of this informed group, as conveyed to me today by Marvin, national president.

There being no objection, the statement was ordered to in the RECORD, as follows:

The National Council of Jewish Women opposes the amendment by Senator Dominick, for this amendment will deny the Equal Opportunity Commission the necessary authority to enforce the Title VII of the Civil Rights Act. We believe that the EEOC s the authority to issue cease and desist court enforceable orders

[1] See e.g. "Developments in the Law- Employment Discrimination and the Civil Rights Act of 1964," 84 Harv. L. Rev. 1109 (1971); Cooper and Sobol, "Seniority and Testing Under Fair Employment Laws: A General Approach To Objective Criteria of Hiring and Promotion," 82 Harv. L. Rev. 1623 (1969); Blumrosen, "Strategies in Fair Recruitment Under the Civil Rights Act of 1964," 22 Rutgers L. Rev. 465 (1968). See also M. Sovern, Legal Restraints on Racial Discrimination in Employment (1966); and decisions in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971); *Local 53* v. *Vogler*, 407 F. 2d 1047 (CA 5 1969); *Quarles* v. *Phillip Morris*, 279 F. Supp. 505 (E.D. Va. 1968); *United States* v. *Local 189, United Papermakers*, 282 F. Supp. 39 (E.D. La. 1968) and cases cited therein.

tunities for all may, at long last, become a reality rather than
nciple. It has been demonstrated over the years that persua-
on are not adequate to combat discrimination. More vigorous
to achieve results. It has also been shown that the judicial
our Federal District courts, whether initiated by EEOC, or by
plainant is a lengthy and burdensome one.
in our population have struggled for more than a century
ht to work, so basic to human dignity. The EEOC must be
ong overdue cease and desist powers to carry out its respon-
ing the right to work of all Americans.

Ir. President, this Nation was founded on the philoso-
ess of law. A man accused must be given the right to
y of his peers and plead his case—and be judged by
ght or wrong.
debating legislation that threatens to undermine this
.
nployment Opportunity Commission bill actually al-
tory Commission to put agents into the field who have
go into a small business and say "Mr. I don't like
ing it is discrimination, you are guilty, you are fined
to plead innocent because there is no appeal, my deci-

his legislation to pass with this authority, we will be
mission that will send bureaucrats, who have been
ie, out to serve as policemen, judge, jury, and prose-
into one.
jury, just a bureaucrat with the power to judge and

llable regulatory authority, in the EEOC bill is a
ry tenant of America. There is simply no excuse for
gate this kind of raw power to this agency.
Government does not have the right to say to Ameri-
circumstances, that "you are guilty until proven in-
have no appeal."
t, I urge my colleagues to support the Dominick
ch removes this regulatory power from the bureauc-
where it should be, with the courts.
G Officer (Mr. Spong). All time on the amendment
d.
is on agreeing to the amendment of the Senator from
Dominick).
ion the yeas and nays have been ordered, and the clerk
.
e clerk called the roll.
fter having voted in the affirmative). On this vote I
h the distinguished Senator from Ohio (Mr. Taft).
ent and voting, he would vote "nay"; if I were at lib-
uld vote "yea." I withdraw my vote.
West Virginia. I announce that the Senator from
Hartke), the Senator from Washington (Mr. Magnu-
r from New Hampshire (Mr. McIntyre), the Senator
. Moss), the Senator from Alabama (Mr. Sparkman),
n Illinois (Mr. Stevenson), are necessarily absent.
nounce that, if present and voting, the Senator from
r. Magnuson), the Senator from New Hampshire (Mr.

McIntyre), the Senator from Utah (Mr. Moss), the S... Illinois (Mr. Stevenson), would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New... Buckley) is absent on official business.

The Senator from Kentucky (Mr. Cooper) is necessar... attend the funeral of a friend.

The Senator from South Dakota (Mr. Mundt) is ab... of illness.

The Senator from Ohio (Mr. Taft) is absent because... his family.

The Senator from New Hampshire (Mr. Cotton), t... from Kansas (Mr. Dole and Mr. Pearson), the Senator fr... (Mr. Hatfield), and the Senator from Illinois (Mr. Percy... sarily absent.

The pair of the Senator from Ohio (Mr. Taft) has been announced.

On this vote, the Senator from Kentucky (Mr. Cooper... with the Senator from Illinois (Mr. Percy). If present... the Senator from Kentucky would vote "yea" and the Se... Illinois would vote "nay."

On this vote, the Senator from Kansas (Mr. Dole) is p... the Senator from Oregon (Mr. Hatfield). If present and... Senator from Kansas would vote "yea" and the Se... Oregon would vote "nay."

The result was announced—yeas 41, nays 43, as follows:

[No. 4 Leg.]

YEAS—41

Allen	Dominick	Jordan, Idaho
Allott	Eastland	Long
Baker	Ellender	McClellan
Bellmon	Ervin	Miller
Bennett	Fannin	Roth
Bentsen	Fulbright	Smith
Bible	Gambrell	Spong
Brock	Goldwater	Stennis
Byrd, Va.	Griffin	Talmadge
Byrd, W. Va.	Gurney	Thurmond
Cannon	Hansen	Tower
Chiles	Hollings	Weicker
Cook	Hruska	Young
Curtis	Jordan, N.C.	

NAYS—43

Aiken	Hughes	Packwood
Anderson	Humphrey	Pastore
Bayh	Inouye	Pell
Beall	Jackson	Proxmire
Boggs	Javits	Randolph
Brooke	Kennedy	Ribicoff
Burdick	Mansfield	Schweiker
Case	Mathias	Scott
Church	McGee	Stafford
Cranston	McGovern	Stevens
Eagleton	Metcalf	Symington
Fong	Mondale	Tunney
Gravel	Montoya	Williams
Harris	Muskie	
Hart	Nelson	

GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED

NOT VOTING—15

Hatfield	Pearson
Magnuson	Percy
McIntyre	Sparkman
Moss	Stevenson
Mundt	Taft

nick's amendment was rejected.

NG OFFICER. The bill is open to further amendment.

Mr. President, I move to reconsider the vote by which was rejected.

Mr. President, a point of order.

TG OFFICER. The Senator will state it.

Mr. President, is the Senator qualified?

NG OFFICER. Did the Senator from North Carolina vote ing side?

did not.

NG OFFICER. The Senator is not qualified to make the

is on agreeing to the committee amendment in the titute as amended.

Mr. President, I suggest the absence of a quorum.

TG OFFICER. The clerk will call the roll.

e clerk proceeded to call the roll.

Mr. President, I ask unanimous consent that the order call be rescinded.

TG OFFICER. Without objection, it is so ordered.

* * * * *

ontinued with the consideration of the bill (S. 2515), a promote equal employment opportunities for American

AMENDMENT NO. 809

Mr. President, I call up amendment No. 809, and ask

TG OFFICER. The amendment will be stated.

e clerk read as follows:

24, strike out the word "religious".

Mr. President, I suggest the absence of a quorum.

G OFFICER. The clerk will call the roll.

e clerk proceeded to call the roll.

Mr. President, I ask unanimous consent that the order call be rescinded.

NG OFFICER. Without objection it is so ordered.

Mr. President, I have called up amendment No. 809, trikes one word out of the bill as presently before the loes a whole lot more than knock out a word. It changes the bill in a very important particular.

One of the most horrendous provisions of S. 2515 is sec
removes the existing exemption for employees of educati
tions as presently contained in section 702 of the Civil R
1964. This over-zealous proposal attempts, first, to subv
freedom and, second, violates the prohibition contained
amendment which guarantees the free exercise of religion.

Mr. President, under the present law, exempted fr
visions of the EEOC Act are not only educational insti
kinds but also religious corporations, associations, or s
respect to the employment of individuals of a particular
perform work connected with the carrying on by such
association, or society of its religious activities. Then i
the section which is deleted from the law by the prese
clause, and it removes this exemption: "or to an educatio
tion with respect to the employment of individuals to pe
connected with the educational activities of such institu

So it removes from the exemption, from the operation of
Act, all educational institutions of any sort with respect
ucational activities; then as to societies or corporations or
with respect to the employment of individuals of a partic
to perform work connected with the carrying on by such
association, or society of its religious activities.

So that the only exemption that is given to religious
associations or corporations is with respect to the employ
dividuals to perform work connected with their religious

In other words, Mr. President, in the case of an educatio
tion sponsored by a church group, the provisions of the bill
the Senate would protect that religious association or
school or society in the employment of people of its own
carrying on the religious activities of that association or
or school. If it were a college supported by the Catholic
the Baptist Church or the Episcopal Church, the bill as
would protect it only as to the employment of someone fo
it to carry on its religious activity. So that in a church
school, if the Baptist supported school wanted to emplo
to teach theology or if a Catholic supported school wante
a Catholic to teach theology, it would be protected.

But as to all its other activities, there would be no prote
the provisions of the bill, there would be nothing to prev
being forced upon a religious school to teach some subject
theology. A religious school would not like to have a
people of a different faith teaching other subjects and
right to be selective in the choice of its faculty only to
of the work carrying out its religious activities.

The present law goes on from that, though, and says
educational institution shall be exempt from EEOC in
on of its educational work, but the present bill removes
tion. Religious schools are protected under the present
tional institutions, so that they are exempt. But if the
mitted is passed and becomes law, religious schools would
from the provisions of the EEOC Act only insofar as the
tains to the carrying on of religious activities. The educ
tivity would not be exempt.

ıendment would do would be to knock out the word
ıere it appears in the bill before activities.
ds as follows:

l not apply to any employer with respect to the employment of
ıy State—

e present law and in the bill itself.

ous corporation, association, educational institution, or society
the employment of individuals of a particular religion to per-
ıected with the carrying on by such corporation, association,
tution, or society of its religious activities.

ıment would knock out the word "religious," leaving
on in the carrying out of its activities. Exemption from
be provided by the amendment as to religious schools,
societies, as to religious corporations or associations,
ucational institutions.

ut, the charge is frequently made with respect to aca-
that the Government is moving in, the Government is
ıe Government is regulating the thought in an institu-
freedom is in peril. Many colleges have had their ac-
an approved institution withdrawn because of political
ecause of political dictation, because of the State tak-
tivities and controlling the activities of an educational
e bill as presented to the Senate at this time, as it comes
mittee, knocks out the exemption for educational in-
many of our schools throughout the country are going
p in charges of political control, political manipulation,
ıation. Academic freedom which is so revered by liberal
s country, might very well be a thing of the past if
without this amendment and we would have the Equal
Opportunity Commission taking over the employment
practicies of colleges and schools throughout the coun-
church-supported schools. So that I believe the effort
s of the bill and the effort by the committee substitute
ional institutions out from under the exemption pro-
resent law is going just a little bit too far in this power
t is what it is—on the part of the EEOC, not only to
employment and promotion policies of every State,
y in the country—and that is provided by the bill—but
over the employment and promotion policies of every
his country employing as many as eight employees.
does little business have?

pecial Subcommittee on Small Business that is seeking
ıs to help small business, because we all know that the
ns in this country get most of the defense work and
ent contracts. But with all the paperwork and Govern-
ns and all the redtape imposed on small business, it is
any of them can survive. Now, to put this additional
ll business is going to crowd many small businesses

ıg, Mr. President, that impresses me about this whole
bill is that it purports to provide an equal opportunity,
and an equal freedom for every person to obtain em-

ployment without discrimination. We are all in favor of th
I am sure there is not a Member of the Senate that does
see every person gainfully employed, every person rec
treatment in his application for employment, and every
just as far in life as his abilities, ambitions, and efforts wil
One would think, from hearing the debate in this body,
are hundreds of thousands, even millions of jobs out there
being denied to certain of our citizens.

This bill does not create one single job unless it is that of
ment bureaucrat, and that is the only job that is created, is
ment job. It does not create a single job in private business
enterprise. It just provides the means to harass business,
and labor unions.

When the bill seeks out and draws under its so-called
active control, and domination, every school in the cou
college in the country, every church-supported school in th
that is going a little bit too far.

The amendment by the distinguished senior Senator fr
Carolina (Mr. Ervin) and myself would preserve this
and would leave the present law exactly as it is. It would
people who want so greatly to expand the field of operati
EEOC, "Do not touch the colleges. Do not try to take over
by which the colleges and schools throughout the country a
ing the young people of the country."

I would say, Mr. President, that the EEOC is some 18 to
I believe it is, behind in its backlog of cases. It anticipates,
present law 32,000 new filings that will come in fiscal year
is, the year beginning July 1 of last year—and 45,000 case
year 1973. They are going to take under their purview so
million State and local, county and city employees, city
county agencies, and so forth. They will start having, I assu
court proceedings providing due process for the respondent
will take a whole lot more time than this method they have
little "popsicle" investigation, complaint, and decision.

If they are going to provide for due process under the EE
in the world are they going to take over all of these other
they take over every school, that would include every priv
every public school, every educational institution, and the
that activity over to the EEOC.

Mr. ERVIN. Mr. President, will the Senator from Alabama
a question?

Mr. ALLEN. I am happy to yield to the Senator from North

Mr. ERVIN. This bill, for the first time, undertakes to ma
the 50 States and all of their political subdivisions subj
EEOC, does it not?

Mr. ALLEN. That is correct.

Mr. ERVIN. It does this, in effect, by making them emplo
are included in the definition of the term that the bill
employers.

Mr. ALLEN. Yes, sir.

Mr. ERVIN. I invite the Senator's attention to section 701 o
Rights Act of 1964 which is part of Title VII, the Equal Em
Opportunity title. This section says this, in subsection (f):

The term "employee" means an individual employed by the employe

s or their political subdivisions are made employers, as
is bill, it means that every person employed by a State
al subdivision of a State is an employee subject to the
his act and that the EEOC has jurisdiction to supervise
t practices of all States and all political subdivisions of
it not?

The Senator is correct.

Does the Senator from Alabama agree with the Senator
arolina that Chief Justice Salmon P. Chase stated the
Constitution of the United States in a nutshell when
he case of Texas versus White:

on in all of its provisions looks to an indestructible union com-
ctible States.

believe that is a correct statement.

Can the Senator from Alabama reconcile that analysis
tion of the United States with a bill which says that a
which is politically appointed shall have jurisdiction
practices of every State and every political subdivision
n the Union?

Appointed at the Federal level?

hat is correct.

I would certainly feel that is not consistent with Chief
statement.

To come down to a question of definition, I do not know
the terms of this act. This is correct, but perhaps the
ew Jersey can enlighten us on this point. The Governor
ina is employed by the State of North Carolina. Does
the EEOC has jurisdiction to compel the people of
to elect or employ a Governor who happens to be a
inority race or a member of a religious minority or a
s a national origin different from the majority of the
Carolina?

I would certainly resist any such construction being
y provision of the bill.

This legislation has no provision, does it, which would
application of this act the elected officials of the State
otedly employed by the State?

have read the bill through and I do not see any excep-

The bill is broad enough, and it would be if amended,
is made an employer, to cover any individuals employed
y a political subdivision of a State. It would cover all
l positions in the State government.

The Senator is correct.

North Carolina, for example, has superior judges who,
endation of the clerk of the superior court, appoint
peace, and the justices of the peace exercise part of the
of the State. So, we would have an agency here in the
gton which would have the jurisdiction to say that a
judge in the State of North Carolina and the clerk of
rt of North Carolina, if they prefer to appoint a person

that belongs to the same race as the justice of the peace is
person belonging to another race or if they prefer to appoint
justice of the peace who has a religion similar to theirs in pre
a man who does not have a religion similar to theirs or any
whatever, would violate the act.

Mr. ALLEN. It looks as if under a strict interpretation of
that would be true. It would be subject to such interpretat
placed upon it. The language is susceptible to that construc

Mr. ERVIN. Mr. President, in the dictionary the word "dis
means to make a clear distinction, to distinguish, to differen
time a State employee is chosen by a State official acting for
where there are a number of applicants for the position, he
distinguishes or differentiates or makes a distinction betwe
he appoints and the ones he refuses to appoint.

Mr. ALLEN. It would seem too, the Senator is correct.

Mr. ERVIN. And so if he preferred to appoint and did
person of a particular race, a particular religion, or a part
in preference to another person of any other religion or an
or the other sex, he would violate this act.

Mr. ALLEN. It would seem to be a strong argument.

Mr. ERVIN. Is there any doubt in the mind of the Sen
Alabama that the word "discriminate" means that the
State official discriminates when he prefers one man over an
or a woman?

Mr. ALLEN. If the preference is wrongful.

Mr. ERVIN. I am assuming that both people have the same
tions.

Mr. ALLEN. That is correct.

Mr. ERVIN. Not only that, but I am not exaggerating w
that this bill authorizes the Federal Government to lay the
hands of Caesar upon the things that belong to God.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. Our amendment would strike out the word "
and remove religious institutions in all respects from sub
the EEOC.

Mr. ALLEN. The Senator is correct, and that would not be a
from the present law. It leaves the present law as it is. It
allow an extension of control by EEOC over educational
institutions.

Mr. ERVIN. We have a college in North Carolina known as D
College that is affiliated with the Southern Presbyterian
Davidson College is supported by the fees of its students
voluntary contributions of people interested in its activities
supported in any respect by the Federal Government. I ha
had the honor to serve as a member of the board of trust
institution for 10 years.

This college was founded and is controlled by people who
gious a Christian education to the students of the institu
recall it had at the time I was a member of the board of
perhaps still has, a regulation which says that any person
to be a full professor at the institution shall be a member
local Christian Church, does the Senator from Alabama
there is anything immoral or ought to be anything

college devoted to giving a Christian education taking
that the youth who attend it should be instructed on any
er religious or nonreligious, by teachers who are mem-
ian church?

It seems to the junior Senator from Alabama to be a
nd logical requirement.

Mr. President, I ask the Senator from Alabama whether,
isions of this bill, it would not be made illegal for a
eeks to provide a Christian education at the hands of a
lty in all subjects to employ in preference to an atheist,
dan, or an agnostic, a professor to teach chemistry or
r sociology who happened to be a member of the Chris-

Under this bill, I will say to the distinguished Senator,
a discriminatory practice and the college could be
he EEOC and ordered to cease and desist from that
it did not comply with that order, it would be subject

will ask the Senator if under the provisions of the bill
could not only say "Cease and desist from employing
fessor rather than a Mohammedan, agnostic, or atheist,"
ssion could go further and say, "You have to appoint
icant who is a Mohammedan, agnostic, or atheist to fill
ition to teach chemistry or economics or sociology and
will have to pay his salary, from the time he applied

Under the bill, that would be possible; but with our
would not be allowed.

s. Mr. President, will the Senator yield for a question?
am delighted to yield.

s. May I have the hypothesis here? What is the hypoth-
ator from North Carolina? Is this an institution of
promotes the education of religion?

It is an institution of learning which is affiliated with
Presbyterian Church, and which conducts a college de-
Christian education at the hands of Christian teachers
subjects.

is. Is the institution owned, supported, controlled, or
particular religion or by a particular religious corpora-
, or society?

would say that it is a denomination which is affiliated
ern Presbyterian Church and supported by fees of the
luntary gifts of people who believe in giving the kind
s institution gives.

s. In the hypothesis was it stated that this amendment
hat institution from employing people of a particular

h, Yes.

s. That is contrary to what this amendment does.

ask that the Senator read the paragraph at the bottom
amendment to section 702 of the Civil Rights Act of

This title shall not apply to an employer with respect to the employment aliens outside any State, or to a religious corporation, association, education institution, or society with respect to the employment of individuals of a parti lar religion to perform work connected with the carrying on by such corporati association, educational institution, or society of its religious activities.

That leaves that institution under the jurisdiction of the EEOC wi respect to everybody who does anything except teach religion. Sin the institution teaches chemistry and other nonreligious courses t EEOC has jurisdiction to deny it the right to prefer, and carry o such preference, to employ a man to teach chemistry who happens be a member of the Christian church; and can compel the institutio instead of doing that, to employ an applicant for the position wh happens to be a Mohammedan, an agnostic, or an atheist. That is wh the Senator from Alabama and I are seeking to prevent by th amendment.

Mr. ALLEN. All we are seeking to do, I say to the Senator from Ne Jersey, is knock out the limitation on the exemption, to knock ou the confining of the exemption to those having to do with carrying o its religions activities. If you knock out "religious" and leave it wid open and accept the amendment, we would have no further debate o the matter.

Mr. WILLIAMS. I would suggest to the distinguished Senator fro Alabama and the distinguished Senator from North Carolina that i the hypothesis stated the present law would protect that institutio in its desire to hire an individual of its institutional religious persu sion. This is contained in section 703(e)(2) of the law, and that not disturbed by the bill that is before us, to which the amendme is offered.

Mr. ERVIN. I disagree with the Senator. The language of the bi exempts the institutions covered only "with respect to the employme of individuals of a particular religion to perform work connected wi the carrying on by such corporation, association, educational instit tion, or society of its religious activities."

Chemistry or economics or sociology is not a religious activity.

Mr. WILLIAMS. I think that is the situation where—I was going t say we are both right, but that is not exactly correct because I thi the Senator from North Carolina is only reading part of what we a dealing with here.

Would the Senator turn to section 703. The amendment is offered section 702. I was directing the attention of Senators to section 7 and paragraph (e)(2).

Mr. ERVIN. The exemptions in subsection (e)(2) of section 702 Title VII of the Civil Rights Act of 1964 are inconsistent with th provision to which the amendment is directed and would be nullifi by such provision, which would be subsequent in point of time.

The exemption subsection (e)(1) of section 703, of Title VII of th Civil Rights Act of 1964 does not apply because religion is not a bo fide qualification of teaching chemistry, or economics, or sociolog or any similar subjects.

Mr. WILLIAMS. Would the Senator read on to subsection (2)? L us read it all together.

Mr. ERVIN. I say to the Senator from New Jersey that every prov sion of this bill which is enacted into law will nullify to the extent its provisions any provision on the same subject in the original a

l here this exemption on page 33 modifies the other and says that
nly time they can hire a person of a particular religion is to help
n in carrying out their religious activities—not educational activi-
as contradistinguished from religious.

r. WILLIAMS. Would the Senator help the Senate by reading sec-
703(e)(2) in the present law, and if the Senator will not, will
Senator yield and let me read it?

r. ALLEN. Yes.

r. WILLIAMS. All right, Section 703(e) and within the paragraph
bered (2) reads:

shall not be an unlawful employment practice for a school, college, university,
her educational institution or institution of learning to hire and employ
oyees of a particular religion if such school, college, university, or other
ational institution or institution of learning is, in whole or in substantial
owned, supported, controlled, or managed by a particular religion or by
rticular religious corporation, association, or society, or if the curriculum
ch school, college, university, or other educational institution or institution
arning is directed toward the propagation of a particular religion.

hat is the end of the quotation of (2), and I read it all because I
sk the Senator what hypothesis we were working with, and I used
anguage of that section. The hypothesis, the Senator from North
olina says, is exactly what is contained here, which says they can
a person of a particular religion.

r. ERVIN. That is what Congress said in 1964. But it is inconsistent
what lines 20 through 24 of the bill say.

r. WILLIAMS. That is the law at the present time.

r. ERVIN. But that law will be modified by this bill. The bill says
title—the whole Title VII—

not apply to an employer with respect to the employment of aliens outside
State, or to a religious corporation, association, educational institution, or
y with respect to the employment of individuals of a particular religion
rform work connected with the carrying on—

his is what I invite the Senator's attention to—

ch corporation, association, educational institution, or society of its religious
ties.

erything outside of religious activity is changed by this provision
e bill.

r. ALLEN. If it is already in the present law, I wonder why the
[illegible] Senator from New York is objecting to restating it again.

r. WILLIAMS. Because we are including education, and the bill
re us restates section 702. It is a complete restatement, and the only
tion in it is the words "educational institution."

r. ALLEN. The Senator drops out the last clause, though.

r. WILLIAMS. Yes, and that deals with educational institutions. It
not have anything to do with the religious part of it. The section
anguage, as it appears on page 33, is identical language with pres-
aw with the exception of the addition of the two words, twice,
cational institution." But I understood the Senator from Alabama
not dealing with that. With his amendment he was dealing with
eligious part of it.

r. ALLEN. No; and if the Senator followed my remarks, I stated
ill as approved by the committee and as now being considered by
Senate would cover every single school in the country. I did not
ne it to religious schools.

Mr. WILLIAMS. What does the Senator's amendment say? I thought it struck just one word.

Mr. ALLEN. That is what it does.

Mr. WILLIAMS. That does not deal with educational institution?

Mr. ALLEN. As the Senator said, I have added "educational institution" in two places in the amendment, so it does cover that.

Mr. WILLIAMS. As I read the Senator's amendment, it does only one thing—strike out "religious."

Mr. ALLEN. Yes, but we have accepted what the Senator has done by adding "educational institution" in two places in the exemption. So therefore, it is to continue the exemption that is now allowed for educational institutions; and in addition for religious institutions that are not educational institutions insofar as the work has to go with carrying on religious activity. So the amendment knocks out the one word "religious," and would protect religious corporations, associations, educational institutions, or societies in work having to do with their activities. That is all it does.

Mr. WILLIAMS. The Senator is dealing only with religious educational associations——

Mr. ALLEN. No; I did not say that.

Mr. WILLIAMS. I do not see how the Senator's amendment reaches the other educational——

Mr. ALLEN. If it does not reach them, why does the Senator not agree to accept the amendment? If he is willing to concede the religious institution point and it does not reach the other institutions, why is he concerned?

Mr. WILLIAMS. I am not concerned. I wondered what the Senator was trying to do. I thought he was striking the word "religious" on page 33, line 24.

Mr. ALLEN. That is what the amendment does, but it also includes the exemption that is made of granting exemptions to educational institutions in the first half of the exemption rather than in the last half, which the committee dropped. If the Senator does not object, then, to exempting the religious institutions, he would agree to accept the amendment.

Mr. WILLIAMS. I cannot at this time accept the amendment. The reason for this legislation including the word "religious" is that we feel that this Congress should not in any way breach the constitutional demands that we do nothing to disturb religion.

Mr. ALLEN. Does the Senator concede that the committee is trying to gain control of employment and promotion practices of all educational institutions other than religious institutions?

Mr. WILLIAMS. As far as employment is concerned, which it determines for the covered reasons, the answer is "yes."

Mr. ALLEN. In other words, the committee is trying to add to the coverage all educational institutions. Is that right?

Mr. WILLIAMS. Exactly, yes.

Mr. ALLEN. Does the Senator from New Jersey desire to engage in any further colloquy on the amendment?

Mr. WILLIAMS. No. I just wanted to point out that on the hypothesis of the situation presented by the Senator from North Carolina, the present law permits the kind of educational institution he was talking about to hire a person of a religious faith if it wanted to, and we are not changing that law.

Mr. ERVIN. Mr. President, if the Senator will yield, I would say I ould agree with the Senator from New Jersey in respect to educa- ional institutions only if the Senator from New Jersey would strike ut lines 20 through 24 on the bottom of page 33. Otherwise the Sena- or from North Carolina will insist that all the emphasis at his com- and that these lines, 20 through 24 on page 33, change the prior w and provide for exemption only for those who are directly en- aged in carrying on religious activities.

That is the inescapable conclusion of the Senator from North arolina.

Mr. WILLIAMS. Mr. President, I shall have to consider this matter. f there is further discussion, I would suggest that the Senator from labama proceed while I consider the Senator's suggestion.

Mr. ERVIN. I would suggest that we have a quorum call, without he Senator from Alabama losing his right to the floor.

Mr. JAVITS. Mr. President, I would be compelled to object to that. I m perfectly willing to have a quorum call, but I do not want to lock he floor up. So I object, if that request is made.

Mr. ALLEN. Mr. President, in addition, if this section of the bill is assed—that is, section 702 as it appears in the bill—it invites a fur- her expansion and continuation of the practice of harassing local chool officials and interfering with local school systems that have en running rampant since the adoption of Title VI of the 1964 Civil ights Act. Enactment of section 3 of S. 2515 could destroy academic reedom, as suggested earlier in my remarks. Objective criticism, in- ependent judgment, the search for truth unhampered by transient olitical interests—all of which are vital to academic freedom—could e altered and reshaped by the EEOC.

Mr. President, in view of the fact that there is another matter that eeds to come before the Senate at this time, I withdraw the amend- ent and will reoffer it at a later time.

CALL OF THE ROLL

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

Mr. SAXBE. Mr. President, I move that the vote by which the amend- ent——

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Beall). The Senator from New York uggests the absence of a quorum. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SAXBE. Mr. President, I ask unanimous consent that the order or the quorum call be rescinded.

Mr. JAVITS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SAXBE. Mr. President, I wish to propound a parliamentary quiry.

The PRESIDING OFFICER. Debate is not in order. A parliamentary quiry is not in order during a rollcall.

Mr. SAXBE. Did I have a motion on the floor?

The PRESIDING OFFICER. Debate is not in order. There is a quorum ll in progress. The clerk will continue the rollcall.

The rollcall was continued.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. JAVITS. I object.

The PRESIDING OFFICER. Objection is heard.

The rollcall was resumed and concluded, and the following Senators answered to their names:

Allen	Ervin	McClellan
Beall	Griffin	Nelson
Byrd, W.Va.	Hart	Packwood
Curtis	Javits	Saxbe
Dominick	Mansfield	Williams

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Aiken	Ellender	Muskie
Allott	Fannin	Pastore
Anderson	Fong	Pell
Baker	Gambrell	Proxmire
Bayh	Goldwater	Ribicoff
Bellmon	Gurney	Roth
Bennett	Hansen	Schweiker
Bentsen	Hollings	Scott
Boggs	Hruska	Smith
Brooke	Inouye	Spong
Burdick	Jordan, N.C.	Stafford
Byrd, Va.	Jordan, Idaho	Stennis
Cannon	Kennedy	Stevens
Case	Long	Symington
Chiles	Mathias	Talmadge
Church	McGee	Thurmond
Cook	McGovern	Tower
Cotton	Metcalf	Tunney
Cranston	Miller	Weicker
Eagleton	Mondale	Young
Eastland	Montoya	

The PRESIDING OFFICER. A quorum is present.

(Several Senators addressed the Chair.)

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. SAXBE. Mr. President, I move that the vote by which the Dominick amendment was rejected be reconsidered, and I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, is the Senator qualified in view of the fact that he voted?

The PRESIDING OFFICER. The Senator is qualified. He did not vote.

Mr. JAVITS. May we understand why he is qualified?

The PRESIDING OFFICER. Because he did not vote.

Mr. JAVITS. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, is time limited on this motion, and if so, y what authority?

The PRESIDING OFFICER. The time is limited to 20 minutes under ne unanimous-consent agreement.

Mr. JAVITS. Mr. President, who controls the time under the nanimous-consent agreement?

The PRESIDING OFFICER. The Senator from Ohio (Mr. Saxbe) and he Senator from New Jersey (Mr. Williams) control the time. Who ields time?

Mr. SAXBE. Mr. President, I yield back my 10 minutes.

Mr. BYRD of West Virginia. Mr. President, may we have order n the Senate.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD of West Virginia. Mr. President, will the Chair ask Senators to return to their seats?

The PRESIDING OFFICER. Senators will please return to their seats. The Senator from Ohio has yielded back his time. The Senator from New Jersey has 10 minutes.

Mr. WILLIAMS. Mr. President, I first yield 3 minutes to the Sena- or from New York.

The PRESIDING OFFICER. The Senator from New York is recog- nized for 3 minutes.

Mr. JAVITS. Mr. President, this is legitimate. A Senator can move o reconsider, of course. It is well known that in this present season, Members go and Members come, especially as quite a few Members are unning for the office of President. Therefore, these little games are layed, and I do not use that word in any invidious sense, because moving party has an absolute right to move at any time he can et the floor and there is no other business. Nevertheless, it is a fact hat the most opportune time can be chosen for a vote on an amend- ment as close as the Dominick amendment.

It is a great tradition, and a noble tradition, that on an important ote, we do our utmost to accommodate each other to get the maxi- mum assurance that all Senators will have an opportunity to vote. I know that I express perhaps a vain hope, but I do rise to suggest hat if we want to do this thing as it should be done—and as I say, he moving party has every right to do this—a time should be fixed for voting which would enable those who had left, under the assump- ion that this matter had been decided, to return.

Because of the fact that the moving Senator has yielded back his ime, I am not much encouraged on that score. Nonetheless, in order to pose the issue, I ask unanimous consent that the vote on the motion to reconsider take place at 11 o'clock tomorrow.

Mr. DOMINICK. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. JAVITS. Mr. President, I think it is essential to make that point clear to the Senate so that if an effort is made on our part to do our utmost to give an opportunity to Senators, who have already voted after a mature consideration of this very important amendment, to vote on the motion. This request should be recognized as being only the desire to treat fairly those who, as I say, assumed that for the

time being the matter was disposed of, and they undertook other business which they considered to be important at this time.

Mr. WILLIAMS. Mr. President, my intention is to move to table the motion to reconsider. Certainly within the procedures, the motion offered is available to Senators. As manager of the bill I had no information that this motion would be offered. I speculated with Senators who had engagements elsewhere that this matter would not be raised today on a motion to reconsider. It has been. Of course, it is allowed under the rule. It is with personal regret, of course, that this motion has been made, because some of the Members who wanted to go all the way on this issue are not able to be present.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. ALLEN. Mr. President, as to the time for making this motion, was it not within the power of the proponents of the measure to move to reconsider the vote by which the Dominick amendment was rejected immediately after the rejection, so that the proponents of the bill could have controlled the time for voting on this motion to reconsider, had they so desired?

Mr. WILLIAMS. Any member on the prevailing side could have so moved.

Mr. ALLEN. Then did the proponents not take a calculated risk in not making that motion at that time?

Mr. WILLIAMS. We took a risk, the Senator is correct.

Mr. President, if no one else wants to speak at this time in opposition to the motion to reconsider, at this time I yield back the remainder of my time and move to table the motion to reconsider.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to reconsider the vote by which the Dominick amendment was rejected. On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. [illegible] of West Virginia. I announce that the Senator from Nevada (Mr. Bible), the Senator from Arkansas (Mr. Fulbright), the Senator from Alaska (Mr. Gravel), the Senator from Oklahoma (Mr. Harris), the Senator from Indiana (Mr. Hartke), the Senator from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from New Hampshire (Mr. McIntyre), the Senator from Utah (Mr. Moss), the Senator from West Virginia (Mr. Randolph), the Senator from Alabama (Mr. Sparkman), and the Senator from Illinois (Mr. Stevenson) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from Utah (Mr. Moss), the Senator from West Virginia (Mr. Randolph), the Senator from Illinois (Mr. Stevenson), and the Senator from New Hampshire (Mr. McIntyre) would each vote "yea."

Mr. SCOTT. I announce that the Senator from New York (Mr. Buckley) is absent on official business.

The Senator from Kentucky (Mr. Cooper) is necessarily absent to attend the funeral of a friend.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The Senator from Ohio (Mr. Taft) is absent because of illness in his family.

The Senator from Tennessee (Mr. Brock), the Senators from Kansas (Mr. Dole and Mr. Pearson), the Senator from Michigan (Mr. Griffin), the Senator from Oregon (Mr. Hatfield), and the Senator from Illinois (Mr. Percy) are necessarily absent.

If present and voting, the Senator from Oregon (Mr. Hatfield) and the Senator from Illinois (Mr. Percy) would each vote "yea."

On this vote, the Senator from Ohio (Mr. Taft) is paired with the Senator from Kansas (Mr. Dole). If present and voting, the Senator from Ohio would vote "yea" and the Senator from Kansas would vote "nay."

The result was announced—yeas 37, nays 39, as follows:

[No. 6 Leg.]

YEAS—37

Aiken	Inouye	Pastore
Anderson	Javits	Pell
Bayh	Kennedy	Proxmire
Beall	Mansfield	Ribicoff
Boggs	Mathias	Schweiker
Brooke	McGee	Scott
Burdick	McGovern	Stafford
Byrd, W. Va.	Metcalf	Stevens
Case	Mondale	Symington
Cranston	Montoya	Tunney
Eagleton	Muskie	Williams
Fong	Nelson	
Hart	Packwood	

NAYS—39

Allen	Dominick	Long
Allott	Eastland	McClellan
Baker	Ellender	Miller
Bellmon	Ervin	Roth
Bennett	Fannin	Saxbe
Bentsen	Gambrell	Smith
Byrd, Va.	Goldwater	Spong
Cannon	Gurney	Stennis
Chiles	Hansen	Talmadge
Church	Hollings	Thurmond
Cook	Hruska	Tower
Cotton	Jordan, N.C.	Weicker
Curtis	Jordan, Idaho	Young

NOT VOTING—24

Bible	Harris	Moss
Brock	Hartke	Mundt
Buckley	Hatfield	Pearson
Cooper	Hughes	Percy
Dole	Humphrey	Randolph
Fulbright	Jackson	Sparkman
Gravel	Magnuson	Stevenson
Griffin	McIntyre	Taft

So Mr. Williams' motion to lay on the table the motion to reconsider was rejected.

The PRESIDING OFFICER. The question now recurs on the motion to reconsider the vote by which the amendment of the Senator from Colorado (Mr. Dominick) was defeated.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Indiana (Mr. Hartke), the Senator from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from New Hampshire (Mr. McIntyre), the Senator from Utah (Mr. Moss), the Senator from West Virginia (Mr. Randolph), the Senator from Alabama (Mr. Sparkman), and the Senator from Illinois (Mr. Stevenson) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. Hartke), the Senator from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from New Hampshire (Mr. McIntyre), the Senator from Utah (Mr. Moss), the Senator from West Virginia (Mr. Randolph) and the Senator from Illinois (Mr. Stevenson) would each vote "nay."

Mr. SCOTT. I announce that the Senator from New York (Mr. Buckley) is absent on official business.

The Senator from Kentucky (Mr. Cooper) is necessarily absent to attend the funeral of a friend.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The Senator from Ohio (Mr. Taft) is absent because of illness in his family.

The Senator from Tennessee (Mr. Brock), the Senators from Kansas (Mr. Dole and Mr. Pearson), the Senator from Michigan (Mr. Griffin), the Senator from Oregon (Mr. Hatfield), and the Senator from Illinois (Mr. Percy) are necessarily absent.

If present and voting, the Senator from Oregon (Mr. Hatfield) and the Senator from Illinois (Mr. Percy) would each vote "nay."

On this vote, the Senator from Kansas (Mr. Dole) is paired with the Senator from Ohio (Mr. Taft). If present and voting, the Senator from Kansas would vote "yea" and the Senator from Ohio would vote "nay."

The result was announced—yeas 40, nays 39, as follows:

[No. 7 Leg.]

YEAS—40

Allen	Eastland	McClellan
Allott	Ellender	Miller
Baker	Ervin	Roth
Bellmon	Fannin	Saxbe
Bennett	Fulbright	Smith
Bentsen	Gambrell	Spong
Bible	Goldwater	Stennis
Byrd, Va.	Gurney	Talmadge
Cannon	Hansen	Turmond
Chiles	Hollings	Tower
Cook	Hruska	Weicker
Cotton	Jordan, N.C.	Young
Curtis	Jordan, Idaho	
Dominick	Long	

NAY—39

Aiken	Harris	Nelson
Anderson	Hart	Packwood
Bayh	Inouye	Pastore
Beall	Javits	Pell
Boggs	Kennedy	Proxmire
Brooke	Mansfield	Ribicoff
Burdick	Mathias	Schweiker
Byrd, W. Va.	McGee	Scott
Case	McGovern	Stafford
Church	Metcalf	Stevens
Cranston	Mondale	Symington
Eagleton	Montoya	Tunney
Fong	Muskie	Williams

NOT VOTING—21

Brock	Hatfield	Mundt
Buckley	Hughes	Pearson
Cooper	Humphrey	Percy
Dole	Jackson	Randolph
Gravel	Magnuson	Sparkman
Griffin	McIntyre	Stevenson
Hartke	Moss	Taft

So the motion to reconsider the vote by which the Dominick amendment was rejected was agreed to.

Mr. JAVITS. Mr. President, I submit an amendment to the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 2, lines 13 and 14, strike out the words "or in the Courts of Appeals.

The PRESIDING OFFICER. Debate on the amendment is limited to 30 minutes. The Senator from New York may proceed.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

Mr. DOMINICK. Mr. President, a point of inquiry, if the Senator fro
New York does not mind. I am just trying to find out if this is
amendment to my amendment, or an amendment to the bill.

Mr. JAVITS. It is an amendment to the Senator's amendment.

Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York will state h
parliamentary inquiry.

Mr. JAVITS. In view of the fact that the amendment of the Senato
from Colorado strikes that part of the bill which is found betwee
page 38, line 7 and page 50, line 7, are amendments in order to th
part of the bill which is proposed to be stricken by the amendment o
the Senator from Colorado?

The PRESIDING OFFICER. In answer to the Senator's inquiry, such
amendments are in order.

Mr. JAVITS. So that the Senator from New York would be privileged
to amend such parts of the bill as are stricken.

The PRESIDING OFFICER. The Senator from New York can amend
those parts of the bill that are proposed to be stricken by the amend
ment of the Senator from Colorado.

Mr. JAVITS. And the same time limitation would apply. Is that
correct?

The PRESIDING OFFICER. Thirty minutes would apply.

Mr. JAVITS. Mr. President, this amendment is directed only to th
amendment by the Senator from Colorado, and it would propose to
qualify the attorneys for the Commission to conduct litigations in
the courts of appeals as well as the district courts.

Mr. President, while we have enough Senators in the Chamber, I ask
for the yeas and nays.

The yeas and the nays were ordered.

Mr. JAVITS. Mr. President, this amendment would propose to allow
the attorneys for the Commission to appear in the courts of appeals
of the United States in respect of the scheme of enforcement which
the amendment seeks to put into effect, rather than the Attorney
General, and would limit the Attorney General's authority to the
Supreme Court of the United States. It is my understanding that the
authority of the Commission in that case would pretty well go along
with the authority given to the National Labor Relations Board, which
is probably a fair model of this kind of cease-and-desist order enforce
ment or court enforcement which succeeds it, and would give the
agency itself greater control over the litigations to which, in the final
analysis, this amendment would confine it.

I might say, also, that I am advised that the Department of Labor
in the Fair Labor Standards Act, presents a direct analogy to this
situation.

Mr. President, it is well known that I favor the cease and desist
procedure which is contained in the basic measure before the Senate
and which this amendment seeks to overturn, and which has now been
reconsidered.

If we are going to go into the court proceedings, it strikes me that
one thing is very interesting. The argument was made that the agency
to wit, the Equal Employment Opportunity Commission—would have
to hire a hundred lawyers, or some such number, if it sought to do
everything it is required to do under our bill. With the enormous

amount of litigation which is going to descend upon the Federal courts of the United States, every word which is uttered about the backlog of the agency immediately proliferates the burden upon the courts; because if the recourse of the agency is going to be to the courts, then one must expect that if it is going to have any teeth, so that it can bring about conciliation and compromise in respect of the many complaints which might be brought in to the Commission, it would have to engage in an enormous number of litigations.

Talk about vexation. That has been the main argument made on this whole proposition. The vexation and the expense which respondents will go to in the thousands of cases which the Commission has will be absolutely unbelievable if this tremendous burden of literally thousands of cases is thrown upon the courts. As we argued earlier, the idea of getting conciliation because there is a stop sign, a terminal point, at the end of the road, so far as this particular Commission's activities are concerned, will not be present, thereby, in my judgment, making the job more difficult for the Commission and more difficult for the respondents. Proceedings before the Commission in one place and under rules of procedure which even accommodate appearances in person will hardly be as costly as proceedings in the courts. Yet, this is the only recourse the Commission would have, under the amendment.

So far as the practice of the various commissions is concerned, there is a very good reason why the cease-and-desist authority has been granted to so many of these commissions, and that reason is precisely why we who feel as we do are resisting this particular amendment so strongly. These commissions, after all, are, in a sense, tribunals for administrative purposes, designed to do a particular job with a particular kind of expertise and with the great desirability of trying to curtail the difficulties surrounding that job by proceedings which are, as it were, in house. This does not mean any lack of protection so far as concerns equal opportunity to be heard and to have witnesses, and so forth—the due process which is required in these cases; but it does mean a far greater informality of procedure and a far less expensive procedure than is provided for by the courts.

I might point out, too, that under an amendment which I sponsored, we have the provision for the appointment of four additional commissions, in the discretion of the President, should the burden of work which is involved require it; and that also goes to facilitating and making it possible for the Commission to do its work within the cease-and-desist context.

So, in my judgment, if we are going to go to the court route—the Senate has not decided that yet, but it will, with respect to the amendment which is now again before the Senate—that court route should at least be within the control of lawyers, at least until it gets to the Supreme Court, where there are problems of basic policy on the part of the Solicitor General for all the courts of the United States, and certainly in the appellate courts it should continue to be within the control of the Commission's own lawyers, so that some unity of approach, some coordination of their efforts, in respect of all these cases may be effected.

The interesting thing about those who argue against the cease-and-desist power is that I really believe it is going to be to their very serious detriment. I believe that by giving a power to the Com-

mission with no alternative whatever to institute suits, they are goi
to make it much stiffer and much more expensive for themselv
with less certainty—and the businessman is always looking for c
tainty—in the way of decision, because of the great diversity of t
views of judges, the very different constructions of the law whi
are received in various courts, with no settlement of the law in
final way until it actually is in the U.S. Supreme Court for fi
determination.

I cannot see how the path to efficiency, administrative decisiven
or any of the other aspects of this matter will be easier if the recou
is to litigation instead of to the likelihood—because that has be
the record of all these agencies—that the overwhelming majority
cases will be settled, compromised, conciliated, or agreed upon by cea
and-desist orders entered, as is very frequently the case. For exampl
we have the NLRB which has shown an extraordinary basis for tha
all of which is designed to bring the procedure within manageab
bounds in time and in due course. I hope very much, therefore, tha
the Senate—I shall have quite a few of these amendments whi
will go both to this amendment and to parts of the bill which is soug
to be stricken itself—will look favorably on this amendment and
least——

The Presiding Officer (Mr. Beall). The time of the Senator fro
New York has expired.

Mr. Javits. How much time has expired?

The Presiding Officer. Ten minutes.

Mr. Javits. Mr. President, I reserve the remainder of my time.

Mr. Williams. Mr. President——

Mr. Dominick. Mr. President, a parliamentary inquiry.

The Presiding Officer. The Senator from Colorado will state it.

Mr. Williams. Mr. President, am I recognized?

The Presiding Officer. The Senator from New Jersey is reco
nized.

Mr. Dominick. Mr. President, will the Senator from New Jers
yield the floor to me? I should like to find out what happens wh
presumably Senators are trying to amend my amendment and I
not even have any time, as it is under the control either of t
manager of the bill or the Senator from New York.

The Presiding Officer. The agreement entered into provided f
time to be under the control of the manager of the bill and the mov
of the amendment.

Mr. Dominick. I would then ask the manager of the bill and th
mover of the amendment if they would allocate to me some time—
couple of minutes periodically is all I need.

Mr. Williams. Let me say to the distinguished Senator from Col
rado that I fully intend to offer and suggest that some of the ti
that I control be used by the Senator from Colorado if he so desir
I happen to be in a position where I do support the amendment offer
by the Senator from New York, so that, if anyone opposed shou
have the time under the unanimous consent request, it is not provid
for, is it?

The Presiding Officer. The Senator is correct. Time has not be
provided for under the unanimous consent agreement.

Mr. WILLIAMS. I would be happy to yield time to the Senator from Colorado, with the understanding that the time granted is not yielded back.

Mr. DOMINICK. I would suggest that a far more equitable way would be to allow the Senator from Colorado, as the mover of the amendment which is under discussion and which is being amended, to take time in opposition to any amendments that may be offered to it, and that there would be unanimous-consent request to supplant the other one.

Mr. WILLIAMS. Perhaps that could be worked out with another one, say, striking the time limitation on amendments.

Mr. DOMINICK. I would not agree to that.

Mr. JAVITS. If the Senator will yield, I think that the Senator makes a proper condition. I thoroughly agree that the Senator from Colorado (Mr. Dominick) should have time and should not have the privilege of yielding it back, which seems to me to be eminently fair.

I am sure that the manager of the bill would gladly assign to the Senator who wishes to defend the amendment—to wit, the Senator from Colorado (Mr. Dominick)—and anyone he might suggest, half the time, as a pragmatic thing. That would be better and fairer to us, considering the circumstances.

Mr. WILLIAMS. That was to be the offer on this amendment. Until we might work out other settlements, I would offer that to the Senator from Colorado; that is, my time on this amendment, with the understanding that it be used in debate and not yielded back.

Mr. DOMINICK. Will the Senator yield me 5 minutes for the purpose of making some parliamentary inquiries and asking a question or two of the Senator from New Jersey and the Senator from New York?

Mr. WILLIAMS. Certainly.

Mr. DOMINICK. A parliamentary inquiry first, if I may, then.

The PRESIDING OFFICER. The Senator from Colorado will state it.

Mr. DOMINICK. How much time is there on amendments to the amendment No. 611 now pending?

The PRESIDING OFFICER. Thirty minutes for each amendment.

Mr. DOMINICK. Fifteen minutes per side?

The PRESIDING OFFICER. Per side.

Mr. DOMINICK. If there is only one side, then only 15 minutes; is that correct?

The PRESIDING OFFICER. The time is divided, 15 minutes to the mover of the amendment and 15 minutes to the manager of the bill, the Senator from New Jersey (Mr. Williams), without a proviso as to which side of the question they may be.

Mr. DOMINICK. So that on future unanimous-consent requests we make, then, we had better make a provision in there that someone is entitled to speak against an amendment, instead of just the 30 minutes. Is that in order as a parliamentary inquiry?

The PRESIDING OFFICER. The Chair would have to draw a conclusion from that, which he is not competent to draw.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Colorado yield, without losing his right to the floor?

Mr. DOMINICK. I am happy to yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous conse
in fairness to Senators who may wish to oppose an amendment in t
second degree, that after the pending amendment is disposed of, ti
on any additional amendments in the second degree be equally divid
between the mover of such and the manager of the bill, except wh
the manager of the bill favors such an amendment, in which case t
time in opposition to any amendment in the second degree would
under the control of the minority leader or his designee.

Mr. JAVITS. Reserving the right to object, Mr. President, I shou
like to be frank with the Senator from West Virginia. I do not thi
it is fair to us, with the circumstances which have developed wh
every legitimate advantage has been taken of the rules, for us to wai
the rules. This unanimous-consent agreement confined us to 20 minut
on the motion to reconsider. We had to abide by the rules and ti
was promptly yielded back on the side of the mover. What the Senat
is asking us to do, if we agree, is to bobtail every 30-minute deba
into a 15-minute debate.

There is no question about the fact that the Senator from Ne
Jersey (Mr. Williams) will allow half the time to the opponents
whatever amendments I, or he, or any other Senator might make.
that time is granted under unanimous consent, it can be yielded bac
That is something we do not want. So that I would ask the Senator,
all fairness, whether he could not amend the request to provide for tha
by providing that the time may not be yielded back except by unan
mous-consent request.

Mr. BYRD of West Virginia. Mr. President, I so amend my reque

The PRESIDING OFFICER. Is there objection to the unanimous-conse
request?

Mr. DOMINICK. Mr. President, reserving the right to object ju
a minute—if we have the right to be in opposition to the amendmen
I think we would have the right, then, to do whatever we wanted wi
that time, yield it up or yield it back. I do not see that we should
penalized if we wanted to yield it back. Then the other side gets a
extra 15 minutes.

I have cooperated here before. The Senator from New York, in o
of the other debates before we adjourned or recessed, I remember that
took about 20 minutes and he took about an hour and 20 minutes, b
cause that was the amount of time he requested.

Similarly, I remember that the Senator from Wisconsin did the sa
thing in reverse, giving us an hour and he took only 15 minutes; so th
this has been worked out before, where we have an amendment bein
offered to which someone may be in objection. I would think that t
share of the time should be allocated to the person suggesting t
amendment and he should be able to do whatever he wants to d
with that time.

The PRESIDING OFFICER. Is there objection to the unanimous conse
request?

Mr. DOMINICK. Mr. President, as modified, I would have to objec
because at this point it does not do me any good.

Mr. BYRD of West Virginia. Mr. President, in the interest of fairne
to those who oppose an amendment in the second degree, I repeat m
unanimous consent request——

Mr. JAVITS. Mr. President, reserving the right to object, I have a suggestion. I would suggest that we let this particular amendment stand and let the Senator from New Jersey (Mr. WILLIAMS) allow 15 minutes to the Senator from Colorado (Mr. DOMINICK) without the right of yielding back the time, and then, if he will be kind enough to reconsider, asking unanimous consent——

The PRESIDING OFFICER. The time of the Senator from Colorado has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the 5 minutes which have just been consumed in discussing this point not be charged against either side.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. BYRD of West Virginia. It was my thought that I had exempted the pending amendment from my request. If I did not, I would like to do that.

Mr. JAVITS. May I ask the Senator——

Mr. BYRD of West Virginia. Mr. President, I withhold that.

Mr. DOMINICK. Mr. President, will the Senator from New Jersey then yield me 5 minutes?

Mr. WILLIAMS. Yes.

The PRESIDING OFFICER. The Senator has 5 minutes under the previous——

Mr. DOMINICK. I rise to ask the Senator from New Jersey and/or the Senator from New York—probably both—whether they anticipate having a large number of amendments to this, so that it will be improbable that we will get to a vote on my amendment tonight.

Mr. WILLIAMS. As I indicated informally to the Senator from Colorado, I had withheld some of the amendments I had, as I wanted to get to a final decision on the amendment; but now that it is reconsidered, I have several that I now have an opportunity to bring up and I feel that I will be bringing up. So that it is unlikely that we will come to a final vote on the Senator's amendment this evening.

Mr. DOMINICK. Mr. President, I ask the Senator from New York if he has a number of other amendments.

Mr. JAVITS. I have quite a few amendments, both to the amendment and to the part which is sought to be stricken. I feel that it is important to bring them up.

Mr. DOMINICK. In light of the Senator's statement then on a previous occasion that it is always nice to let people know ahead of time when we are to vote, am I correct in anticipating that we will not vote before 11 o'clock tomorrow morning on the merits of amendment No. 611?

Mr. JAVITS. I cannot control that at all. The Senator controlling that is on the aisle. I have a good many other amendments, and I believe that the Senator from New Jersey also does.

Mr. DOMINICK. Mr. President, how much of my 5 minutes do I have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 3 minutes remaining.

Mr. DOMINICK. Mr. President, I will not be very long. This is a very simple amendment. What the Senator from New York is saying is that the Attorney General and the Justice Department should not be en-

titled to appear on behalf of the Commission in the course of a appeal.

It strikes me that this is going pretty far when we put a provision in legislation that the Department of Justice is not entitled t appear on behalf of the Commission on an appeal. For that reason, am opposed to it.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator cannot suggest the absence a quorum under the precedents if the Senator has only a little tim remaining, except by unanimous consent, until he yields the time bac

Mr. JAVITS. Mr. President, how much time remains?

The PRESIDING OFFICER. Twelve minutes remain.

Mr. BYRD of West Virginia. Mr. President, I ask that committe staff people be cleared from the well.

Mr. JAVITS. Mr. President, how much of the 12 minutes do I have

The PRESIDING OFFICER. The Senator from New York has 5 min utes, and 7 minutes remain to the Senator from New Jersey.

The Senators could yield back their time and then suggest the a sence of a quorum.

Mr. JAVITS. I understand that. I yield back the remainder of m time.

Mr. WILLIAMS. Mr. President, I yield back the remainder of my tim and suggest the absence of a quorum.

The PRESIDING OFFICER. All time has expired. The clerk will ca the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the orde for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515), bill to further promote equal employment opportunities for Amer can workers.

The PRESIDING OFFICER. On this question there is no time for debat The yeas and nays have been ordered, and the clerk will call the rol

The assistant legislative clerk called the roll.

Mr. WEICKER (after having voted in the negative). Mr. Presiden on this vote, I have a pair with the junior Senator from Ohio (M Taft). If he were present and voting, he would vote "yea." I have a ready voted "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator fro Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), th Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (M HUMPHREY), the Senator from Washington (Mr. JACKSON), the Sen tor from Washington (Mr. MAGNUSON), the Senator from New Hamp shire (Mr. MCINTYRE), the Senator from Utah (Mr. MOSS), the Sen tor from West Virginia (Mr. RANDOLPH), the Senator from Alaban (Mr. SPARKMAN), and the Senator from Illinois (Mr. STEVENSON) a necessarily absent.

I further announce that, if present and voting, the Senator fro Alaska (Mr. GRAVEL), the Senator from Washington (Mr. Jackson

he Senator from Illinois (Mr. Stevenson), the Senator from Minnesota (Mr. Humphrey), the Senator from West Virginia (Mr. Randolph), the Senator from Iowa (Mr. Hughes), and the Senator from Washington (Mr. Magnuson) would each vote "yea."

Mr. Scott. I announce that the Senator from New York (Mr. Buckley) is absent on official business.

The Senator from Kentucky (Mr. Cooper) is necessarily absent to attend the funeral of a friend.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The Senator from Ohio (Mr. Taft) is absent because of illness in his family.

The Senator from Tennessee (Mr. Brock), the Senators from Kansas (Mr. Dole and Mr. Pearson), the Senator from Michigan (Mr. Griffin), the Senator from Arizona (Mr. Goldwater), the Senator from Oregon (Mr. Hatfield), and the Senator from Illinois (Mr. Percy) are necessarily absent.

If present and voting, the Senator from Illinois (Mr. Percy), would vote "yea."

The pair of the Senator from Ohio (Mr. Taft) has been previously announced.

On this vote the Senator from Oregon (Mr. Hatfield) is paired with the Senator from Kansas (Mr. Dole). If present and voting, the Senator from Oregon would vote "yea" and the Senator from Kansas would vote "nay."

The result was announced—yeas 40, nays 37, as follows:

[No. 8 Leg.]

YEAS—40

iken	Inouye	Pastore
ayh	Javits	Pell
ggs	Kennedy	Proxmire
rooke	Mansfield	Ribicoff
urdick	Mathias	Saxbe
se	McGee	Schweiker
hurch	McGovern	Scott
ook	Metcalf	Stafford
ranston	Miller	Stevens
agleton	Mondale	Symington
ng	Montoya	Tunney
ulbright	Muskie	Williams
arris	Nelson	
art	Packwood	

NAYS—37

llen	Cotton	Jordan, Idaho
llott	Curtis	Long
nderson	Dominick	McClellan
aker	Eastland	Roth
ell	Ellender	Smith
ellmon	Ervin	Spong
ennett	Fannin	Stennis
ntsen	Gambrell	Talmadge
ible	Gurney	Thurmond
rd, Va.	Hansen	Tower
rd, W. Va.	Hollings	Young
nnon	Hruska	
hiles	Jordan, N.C.	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED:

Weicker, against.

NOT VOTING—22

Brock	Hatfield	Pearson
Buckley	Hughes	Percy
Cooper	Humphrey	Randolph
Dole	Jackson	Sparkman
Goldwater	Magnuson	Stevenson
Gravel	McIntyre	Taft
Griffin	Moss	
Hartke	Mundt	

So Mr. Javits' amendment to Mr. Dominick's amendment (No. 61 was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by whi the amendment was agreed to.

Mr. SCOTT. Mr. President, I move to lay that motion on the tab The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I offer an amendment to the Domini amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment to the Domini amendment as follows: "On page 5, strike out line 24."

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recogniz for 5 minutes.

Mr. JAVITS. Mr. President, this is an amendment to the amendmer It would strike that part of the amendment of the Senator fro Colorado which relates to page 65, lines 23 and 24, of the bill.

If Senators will refer to that particular section, they will find th page 65, lines 23 and 24, applies the provisions of another secti of the Equal Employment Opportunities Act, to wit, 706(q) throug (w), to civil actions brought by Federal Government employees und the equal employment opportunity protections of the law. The Senat from Colorado (Mr. Dominick) proposes to strike that out. Sectio 706(q) through 706(w) will no longer apply if the amendment shou pass unamended.

If you refer to those provisions, insofar as they are applicable, y find that the main point is that where the complainant is suing court, you have arrived at the stage of the proceeding where has that remedy, and in such circumstances as the court may dee just, the court may appoint an attorney for the complainant a authorize the commencement of the action without the payment fees, costs, or security.

Mr. President, that is a very important right for the individual, ju as it is a very important right for a Government employee, for t individuals involved are not, in the main, high salaried, in that the who would be likely to sue in these equal employment opportunity cas are fairly modest people.

So I see no reason, Mr. President, why in the one case, to wit, that the normal complainant who is not a Government employee with remedy in court that complainant shall be the beneficiary of a cour appointed lawyer, and not have to pay these costs or securities a

hy this provision should be stricken out when it comes to a Federal overnment employee who has to sue and is also a person, because at is the generality of the cases, of modest means.

So the motion which I make is to strike out the provision of the Dominick amendment which would withdraw that opportunity from Government employee. I do not see how we can very well make iat distinction.

Mr. President, I ask for the yeas and nays.

The nays and nays were ordered.

Mr. JAVITS. Mr. President, again, this amendment goes to the effort phase the Dominick amendment—and we will be doing that, I iink, for a little while—to whatever the Senate may wish to do in spect of exercising its will, but to fashion it so that at last when it is esented to the Senate finally, as it now will be, it will be a fair id balanced proposition. If the complainant is going to have nothing it a remedy in court, at least let us lock that up in the best way we n, and that is the point of this amendment, as it was of the preceding nendment.

Mr. President, one other thing which I think is important in this gard: We have now learned through hard experience the critical ass which is involved in the choice of a lawyer. It is interesting to me at one of the things we have learned about the poor is that they lue dignity even over and above money and what one would think perficially would alleviate their immediate distress. We have found—is goes for Senator Dominick and myself, both of us are rather nior on the Committee on Labor and Public Welfare, as well as enator Williams and others—that one of the most important aspects our antipoverty program is the legal services program.

It is true that Members have various complaints about it, and we e trying to deal with those, but essentially the idea that a poor man n have a lawyer, too, is an extremely attractive proposition to him, id this amendment which I have offered is offered very much in that me spirit, that as we are going to do what we can to get legal service or the complainant who is not a Government employee, let us at ast do our utmost to lay on with an even hand as far as the com-ainant who is a Goverment employee is concerned.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. JAVITS. Mr. President, I reserve the remainder of my time.

Mr. WILLIAMS. Mr. President, would the Senator from Colorado ke to have some of the time that I have allotted to me?

Mr. DOMINICK. I shall in a moment, but not just right away.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, if I may have the attention of the enate, it is evident that we are not going to make much more progress is evening on the pending legislation, the EEOC measure. There ve been some indications that some Members wanted the vote put off the pending amendment until Wednesday. Frankly, I think that do so would be a disservice to the Senate, and very likely is a dis rvice to the very important legislation under consideration.

I would call to the attention of the Senate that we have been on the esent legislation almost a week. The end is not in sight. The Presi-nt sent up another very important piece of legislation which was

introduced by request by the distinguished Senator from New Yo
(Mr. Javits) and the distinguished Senator from Oregon (Mr. Pac
wood). It is my understanding that hearings may get underway
the legislation—involving the west coast dock situation—around t
middle of the week, and if legislation is reported out. It will rece
expeditious consideration.

Then we have a higher education bill, which is going to take so
time because of the busing question inherent therein. Very likely
will have the foreign aid appropriation bill, which will also be co
tentious. Then around the middle of next month, hopefully, thou
not at the rate we are going, we will have an equal rights for wom
amendment, and in the meantime we will have 4 or 5 days off
the Lincoln recess.

Then we have the voter registration bill to consider and H.R. 1
welfare reform and social security—both likewise contentious. We ha
a farm bill, the Smith-Melcher bill, on which the Agriculture Comm
tee held hearings this morning. I am assuming that it may be report
out later this week. It likewise is a contentious piece of legislation.

Then we have war powers legislation on the calendar, another fo
eign aid authorization, and very likely a minimum wage bill and oth
items.

Every Member has received, or should have received, an outline as
what the recess schedule will be for this year. Every Member is awa
of the fact that in early July there will be a Democratic Conventio
and that that will take several weeks, because of the fact that t
Fourth of July period comes in between.

In the latter part of August, there will be a Republican Conventio
and that will take at least 10 days for the consideration of the matte
which will come before that meeting.

Insofar as the attendance of the Senate is concerned, it leaves mu
to be desired. Last week, after a month off, we had an average of 55
56 Senators in attendance. Today we had a high of 85, which now
down to a high of 74 to 76 or 77; and I assume that as time goes o
that number may decrease.

We have a job to do, no matter what our outside interests may h
The pending issue is a very important question, because it deals wi
people and their rights; I think it is one of the most important que
tions which will come before the Senate this year and it will be treat
as such.

However, I would express the hope to my colleagues that they wou
think this matter through and do what they could in behalf of the we
fare of the Senate and its consideration of the legislation before
Earlier I was fearful of amendments to be offered on that side of t
aisle. Now I am up against the fact that we have amendments offere
from this and that side of the aisle, and it looks like the weapo
in the hands of Senators are being used, and not discriminately b
indiscriminately, and therefore the reason for these few brief r
marks.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MANSFIELD. I ask for 2 additional minutes.

Mr. WILLIAMS. I yield 2 additional minutes to the Senator.

Mr. MANSFIELD. Every proposal I have mentioned today is going
take days and days. There is no easy item of legislation to be co

idered in the next several months. Furthermore, we have appropria-
ion bills to consider and other pieces of legislation which I have not
ven mentioned at this time.

So I would hope, Mr. President, that it would be possible to achieve
degree of cooperation between those who are opposed to and those
ho are in favor of the bill, those who want to offer amendments, to
ie extent that it might be possible not to waste the time of the Senate,
s we are today, but to arrive at a solution which would perhaps call
or a vote at a time certain tomorrow afternoon on the pending busi-
ess. Everyone knows what it is; it is the Dominick amendment.

A great deal of maneuvering has been going on on both sides, and
iat maneuvering is all legal; but it does not help the Senate to be
ymied this early in the session with this type of schedule confront-
g us.

Therefore, without consulting anyone, I ask unanimous consent
iat the vote on the Dominick amendment occur at 3 o'clock tomorrow
'ternoon.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, reserving the right to object—and I
ould like to consult Senator Williams on this subject—how does the
enator from Montana expect to give us an opportunity to deal with
ie amendments to the Dominick amendment? A number of things
the Dominick amendment really deserve correction—for all we
iow, it may be adopted and therefore it has concentrated our at-
ntion upon it.

Frankly, I do not believe that the amendment I am now proposing
by any means frivolous. It is a serious matter and really affects
ie rights which will remain in the individual when, as, and if this
nendment is dealt with.

Personally, I am thoroughly sympathetic to the Senator, and I
ish to cooperate with him. He knows me very well in that respect.
should like to coincide with his view. Will he give us an idea as
how we can deal with these amendments to the Dominick amend-
ent within the time bracket he has mentioned?

Mr. MANSFIELD. I would suggest that no further amendments be
fered this afternoon. I would suggest that we return, if possible, to
e vote on the Dominick amendment immediately after the conclu-
on of the mornining business tomorrow and that the time be equally
vided between the distinguished chairman of the committee, the
enator from New Jersey (Mr. Williams), and the distinguished
ponsor of the amendment, the Senator from Colorado (Mr.
ominick).

Mr. JAVITS. Mr. President, I still ask the question. We do not want
shut off amendments to the Dominick amendment. How will we
commodate those amendments?

Mr. DOMINICK. Mr. President, will the Senator from New York
eld?

Mr. JAVITS. I yield myself 1 minute to yield to the Senator from
olorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized
r 1 minute.

Mr. MANSFIELD. I would state that it is my understanding that the
irpose of those who are in favor of the Dominick amendments is to

achieve another vote on that amendment, in the hope that this t
it will carry. It is my understanding, also, that those who are oppo
to the Dominick amendment are offering amendments at this t
not for the purpose so much of strengthening that amendment
for the purpose—at least in part—of delaying long enough so t
the troops can be gathered here in force to vote on the amendm
itself.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. I yield the Senator 3 minutes of my time.

Mr. President, as we come to examine the amendment carefully,
do find a good many things in it that need to be changed. I wo
suggest for consideration the possibility that we might have the
portunity to amend the Dominick amendment through tomorrow
vote the first thing on Wednesday. Would that possibly be agreea
to the majority leader?

Mr. MANSFIELD. Mr. President, I would hope that the distinguish
Senator would reassess his position and recognize, as I am sure
must, the difficulties which confront us in the Senate this year.
a matter of fact, in all my years—I have never seen such an ardu
schedule in outline confronting this body at this time. On top of t
we have the two conventions. Unless something is done to br
order out of the difficult situation which confronts us and all Senat
work together, on both sides of the aisle, frankly, I think we
going to be in a hell of a mess.

Mr. JAVITS. Mr. President, I respectfully suggest to the majo
leader that we have a brief quorum call so that I can confer w
Senator Williams. I ask unanimous consent that the time consum
in the quorum call be charged to my time and that of Senator Willia

The PRESIDING OFFICER. Is there objection? The Chair hears no
and it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the or
for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Harris). Without objection, it is
ordered.

Mr. DOMINICK. I thank the Senator from New York.

Mr. President, I want to say for the record that this particu
amendment language was included, as the specific provisions of
bill deal only with Federal employees for whom we had a differ
procedure. They go through their own agencies and then they h
the right as a Federal employee to go to the civil service board o
go through the Federal court system. The amendment to strike
language was included because the language to be struck was thou
to be inappropriate to the specialized grievance procedures adop
in committee for Federal employees. A closer reading of sec. 706
through (w) does indicate that language for providing attorne
fees and waiving court costs are applicable.

Therefore, I have no objection to the Senator's amendment, an
he would want to withdraw his yea and nay request, that would
fine with me, and we can accept the amendment.

Mr. JAVITS. Mr. President, just so that I am aware of the situati
I hope that any other Senator who does not agree with that proced

will let me know because I want to request that the majority leader ask unanimous consent to vacate the order for the yeas and nays.

Mr. MANSFIELD. I ask unanimous consent that the order for the yeas and nays be vacated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. I yield back my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER (Mr. Harris). The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. MANSFIELD. Mr. President, there will be no further votes tonight.

The PRESIDING OFFICER. The Chair would make inquiry of the distinguished majority leader. The Parliamentarian has informed the Chair that there was a unanimous-consent request. Has that been withdrawn?

Mr. MANSFIELD. Whatever it was, I ask unanimous consent that it be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered. The request was to vote at 3 p.m.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on any amendment in the second degree, which is offered to the pending amendment of the Senator from Colorado (Mr. Dominick), be limited to 1 hour, to be equally divided between the mover of such amendment and the manager of the bill, except in instances, if there be such, when the manager of the bill is in favor of the amendment in the second degree, in which instance the control of the time in opposition to the amendment in the second degree be under the control of the minority leader or his designee.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

The Chair hears none, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, as the matter now stands, time on any motion, appeal, or point of order, with the exception of nondebatable motions, is limited to 20 minutes; is that not correct?

The PRESIDING OFFICER. The Senator is correct, the Chair is so informed.

Mr. BYRD of West Virginia. Is it not also correct, Mr. President, that such time under the agreement of last week is under the control of the mover of such motion or appeal or point of order and the manager of the bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD of West Virginia. Mr. President, I think it might only
fair that the same parallel construction be given to the agreement w
respect to motions, appeals, or points of order, as in the case of amen
ments in the second degree.

Therefore, I ask unanimous consent that such time on any moti
appeal, or point of order, with the exception of nondebatable motio
be under the control of the mover of such and the manager of the b
except when the manager of the bill is in favor of such, in wh
instance the time in opposition would be under the control of
minority leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Without any change in the time, t
time being 20 minutes on any such motion, appeal, or point of ord

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 42, lines 17, 18, and 19, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court, which shall reject them and make its own findings of fact on the evidence in the record in the event it concludes that the findings of fact of the Commission are not supported by the preponderance of the evidence in the record."

2. On page 43, lines 5 and 6, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the

Amdt. No. 811

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words "shall be reviewed by the court under the rule hereinbefore specified governing its review of other findings of fact of the Commission."

3. On page 44, lines 17 and 18, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court, which shall reject them and make its own findings of facts on the evidence in the record in the event it concludes that the findings of fact of the Commission are not supported by the preponderance of the evidence in the record."

4. On page 45, lines 5, 6, and 7 strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court under the rule hereinbefore specified governing its review of other findings of fact of the Commission."

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz.

1. On page 32, strike out lines 8, 9, and 10.

2. On page 32, line 18, insert the words "a State or political subdivision thereof" between the comma following "United States" and the words "an Indian tribe."

3. On page 33, strike out lines 4 and 5.

4. On page 33, strike out lines 11, 12, and 13.

5. On pages 32 and 33, renumber (2) and (4) as (1) and (2), respectively.

6. On pages 36 and 37, strike out everything from the beginning of line 22 on page 36 through the end of line 12 on

page 37, and re-letter the remaining subsections appropriately.

7. On pages 38 and 39, strike out everything from the word "In" on line 18 on page 38 through the word "hearing" on line 2 on page 39.

8. On page 48, strike out everything from the word "upon" on line 14 through the word "importance" on line 24.

9. On page 49, strike out everything between "Subsection (c)" and the words "or the efforts" on line 2.

10. On page 49, strike out everything between "Subsection (f)" on lines 6 and 7 and the words "or the Commission" on line 8.

11. On page 54, strike out everything from the word "or" on line 16 through the word "Subdivision" on line 17.

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92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 32, line 13, insert the words "twenty-five" between the word "has" and the word "or".

2. On pages 32 and 33, strike out everything from the word "during" on line 25 on page 32 through the figure "1971" on line 1 on page 33.

3. On page 33, strike out lines 6, 7, 8, 9, and 10.

4. Renumber (5) as (4).

Amdt. No. 813

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, insert the following between line 10 and line 11:

"(5) In subsection (f) change the period at the end of the subsection to a colon, and add thereafter the following words: "*Provided, however*, The term 'employee' shall not include any individual who is empowered to exercise any of the legislative, executive, or judicial powers of a State or political subdivision thereof."

Renumber (5) appropriately.

Amdt. No. 814

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, strike out everything from the word "or" on line 20 through the word "activities" on line 24, and insert the following in lieu thereof: "or to the employment of any individuals by any educational institution or by any religious corporation, association, or society."

Amdt. No. 815

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, line 24, strike out the words "its religious activities", and insert in lieu thereof the words "any of its activities".

Amdt. No. 816

Calendar No. 412

92d CONGRESS
2d SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 34, lines 9, 10, and 11, strike out the words "or by an officer or employee of the Commission upon the request of any person claiming to be aggrieved."

2. On page 48, lines 6, 7, and 8, strike out "(1)" and the following: "or (2) if such charge was filed by an officer or employee of the Commission by any person whom the charge alleges was aggrieved."

3. On page 51, lines 22, 23, and 24 strike out the word "whether"; the words "or on behalf of"; and the words "or by an officer or employee of the Commission".

Amdt. No. 817

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972
Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 41, lines 15 and 16, strike out the words "or in the Court of Appeals for the District of Columbia Circuit.".

Amdt. No. 818

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 59, strike out lines 23, 24, and 25.

On page 60, strike out lines 1 and 2; and reletter subsections (f), (g), and (h) of section 8 appropriately.

Amdt. No. 819

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. Saxbe to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

Section 10, of page 61, line 24 through page 62, line 17, is struck and sections 11 and 12 are redesignated as sections 10 and 11, respectively.

Amdt. No. 822

[From the Congressional Record—Senate, Jan. 25, 1972]

QUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

Mr. Scott. Mr. President, in regard to the unanimous-consent agreeent entered into yesterday, with the time to be controlled by the inority leader on amendments to the Dominick amendment, I now signate the Senator from Colorado (Mr. Dominick) to be in conol of the time in opposition.

* * * * * * *

The Acting President pro tempore. Under the previous order, the hair lays before the Senate the unfinished business, which will be ated.

The assistant legislative clerk read as follows:

A bill (S. 2515) to further promote equal employment opportunities for Ameri- n workers.

The Senate proceeded to consider the bill.

The Acting President pro tempore. The pending question is the ominick amendment, No. 611.

Mr. Byrd of West Virginia. Mr. President, I suggest the absence of quorum.

The Acting President pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Byrd of West Virginia. Mr. President, I ask unanimous conent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Unanimous-Consent Agreement

DOMINICK AMENDMENT

Mr. Byrd of West Virginia. Mr. President, I am prepared to proound a unanimous consent request with regard to the pending amendent of the distinguished Senator from Colorado (Mr. Dominick). I n authorized to do so by the distinguished majority leader after havg cleared the matter with the distinguished Republican leader, after ving consulted with the distinguished manager of the bill, the Senor from New Jersey (Mr. Williams), the distinguished senior Senor from New York (Mr. Javits) the distinguished junior Senator om Colorado (Mr. Dominick), and after having discussed the mat- r with other Senators.

I ask unanimous consent that the vote on the pending amendment the Senator from Colorado (Mr. Dominick), as amended, if ended, occur tomorrow at 10:45 a.m.

Provided further, that the amendment by the Senator from Colodo (Mr. Dominick) not be open to amendments in the second degree ter today.

ADJOURNMENT TO 9:45 A.M.

Ordered further, that when the Senate completes its business tod it stand in adjournment until 9:45 a.m. tomorrow.

ROUTINE MORNING BUSINESS

Provided further, that following the recognition of the two lead tomorrow, there be a period for the transaction of routine morn business not to exceed 15 minutes.

UNFINISHED BUSINESS

Provided further, that at the conclusion of morning business tom row, the Chair lay before the Senate the unfinished business and t time on the Dominick amendment then begin running, to be equa divided and controlled by the Senator from Colorado (Mr. Dominic and the manager of the bill, the Senator from New Jersey (M Williams).

Mr. ALLEN. Mr. President, reserving the right to object, and I ho that I shall not object, if I understand the request by the distinguish Senator from West Virginia correctly, the junior Senator from A bama voted for the Dominick amendment. It was voted on by t Senate on one occasion. He voted to reconsider the vote by which failed of adoption. He is ready to vote on it right now. He is ready vote on it at any time. He has enjoyed the discussion of this amen ment and the postponement of the final vote by the proponents S. 2515. But he is not ready, as long as this amendment is pending, bring in any of the amendments that he and the distinguished sen Senator from North Carolina (Mr. Ervin) have.

Does the junior Senator from Alabama correctly understand, th that insofar as this bill is concerned, the Dominick amendment w remain the pending business before the Senate until the vote?

I would not want to rule out bringing in other matters, but inso as consideration of other amendments is concerned, will any oth amendments be brought in prior to a vote on the Dominick amen ment? In other words, the junior Senator from Alabama feels th that should be the first amendment voted on.

Mr. BYRD of West Virginia. I have already discussed this mat with the junior Senator from Alabama. He states the situation ve clearly. As I understand it, there may, and in all likelihood will, amendments in the second degree offered today.

The bill cannot be advanced to third reading, of course, certain not before 11 a.m. tomorrow and the vote to be taken thereon. T Senator from Alabama would be under no pressure to offer his amen ments today. There is no way he could be forced to. Certainly attempt would be made to do so if——

Mr. ALLEN. Well, theoretically, of course, the amendment could laid aside and then it would be in order to bring in other amen ments, but the outcome of the other amendments depends in lar measure on the outcome of the vote on the Dominick amendment.

So, for that reason, the junior Senator from Alabama would n like to see any vote on any amendment to the pending bill, althou not an amendment in the second degree to the Dominick amendme

'hat could be offered, of course. But I would not like to agree to ake up any amendment and have a vote on it or have a discussion rior to a vote on the Dominick amendment.

Mr. Byrd of West Virginia. Mr. President, if the Senator would ield, I will give the Senator that assurance, that no amendments other nan amendments in the second degree to the pending amendment will e considered today. As I understand it, the Senator would object o temporarily laying aside the pending amendment for other amend- ents, but would not object to laying it, or the bill for that matter, mporarily aside, for the consideration of other business.

Mr. Allen. The Senator is correct. I would not object even to aving other bills considered, or nongermane matters.

Mr. Javits. Mr. President, will the Senator yield?

Mr. Byrd of West Virginia. I yield.

Mr. Javits. Mr. President, there is only one qualification that should made. We have a right to amend the parts of the bill that would stricken. The words "second degree amendment" are not inclusive ough. It should include the amendments that we have a right to ake to those parts of the bill stricken, if any. I do not know of any this time.

Mr. Allen. Mr. President, would that mean amendments to any ction other than those to which the Dominick amendment is directed?

Mr. Javits. No. We could only move to amend what the Dominick nendment strikes. So the words "second degree" would include nendments to the Dominick amendment and amendments to those rts of the bill which the Dominick amendment strikes.

Mr. Allen. Mr. President, they would be perfecting amendments.

Mr. Javits. The Senator is correct.

Mr. Allen. With that understanding, I withdraw my objection.

The Presiding Officer. (Mr. Chiles). Is there objection to the nanimous-consent request? The Chair hears none, and it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) bill to further promote equal employment opportunities for Ameri- n workers.

Mr. Javits. Mr. President, I send to the desk an amendment to the nendment and ask that it be stated.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 3, of the Dominick amendment strike lines 1 through 8 and insert lieu thereof the following: "mission has been unable to secure from the re- ondent a conciliation agreement acceptable to the Commission, the Commis- n shall bring a civil action against the respondent named in the charge. If harge filed with the Commission pursuant to subsection (b) is dismissed by Commission, or if within one hundred and eighty days from the filing of h charge or the expiration of any period of reference under subsection (c) (d), whichever is later, the Commission has not filed a civil action under s section, or the Commission has not entered into a conciliation agreement which the person aggrieved is a party, the Commission shall so notify the rson aggrieved and within ninety days after the giving of such notice a civil ion may be brought against the respondent"

Mr. Javits. I yield myself 10 minutes.

Mr. President, as we go into the Dominick amendment, because the very odd situation in which we found ourselves yesterday, we

find things in it that even the author of the amendment himself wo
want to see changed—not that this is one of those, but, in any c
we do find that.

Yesterday, we were able to offer two amendments which really w
essential and just, and very materially bear on the rights which wo
be affected should this amendment be adopted and become part
our bill. Similarly with the amendment I have now called up.

It will be noted that this amendment deals with the right of
complainant in a job discrimination charge to bring an action in
own name, and this would obtain if the Commission did not choos
sue under this amendment. The way in which that happens is that t
amendment provides that if the Commission has been unable—I qu
from the top of page 3—

to obtain voluntary compliance with this Act, the Commission may bring a c
action against the respondent named in the charge.

So far so good.

If the Commission fails to obtain voluntary compliance and fails or refu
to institute a civil action against the respondent named in the charge wit
180 days from the date of filing the charge, a civil action may be brought af
such failure or refusal, within 90 days, against the respondent.

That means by whom? Then we go on. I have read only the wo
affected by my amendment. By whom? To wit, the respondent nam
in the charge, either by the person claiming to be aggrieved or,
the charge was filed, by an officer or employee of the Commission,
any person who the charge alleges was aggrieved by the alleged
lawful employment practice.

The missing link is this: if a complainant is cut off by the fact t
the Commission obtains voluntary compliance, then, what is volunta
compliance, and what does the complainant have to say about
Remember that you are cutting off his right to sue, and if you cut
his right to sue, does he have no voice in the matter whatever, or
he simply foreclosed by whatever the Commission decides is vol
tary compliance, whatever that means? No effort is made to defi
it, nor can it be defined; because if you deal with a negotiated sett
ment proposition or a consent proposition, you cannot very well defi
it into things.

One problem is that the words "voluntary compliance" are not wo
of art such as are used in this field. The words I have used in t
amendment are "conciliation agreement." Those are words of a
and they also are executive words, in the sense that an agreement h
to be entered into, signed, sealed, and delivered; whereas, "volunta
compliance" is a kind of amorphous proposition which may cons
of a combination of acts, letters, telephone calls, and so forth. S
in the first place, the amendment is desirable in terms of precision.

Second, the amendment will require that the conciliation agreeme
be one to which the complainant has consented. In short, if he d
not assent, he has a right to sue. If he does assent, he has no right
sue. It seems to me that that is the very least that should be provid
You would go further, if you really wanted to establish a complicat
procedure, and say that no agreement should be binding on the co
plainant unless a court proceeding was had in the absence of his co
sent and the court approved it as fair, because the party would not
a party to the agreement; whereas, the Commission would, havi
accepted it in lieu of a suit by it, under the Dominick amendme

That is what is done, for example, in derivative stockholder suits, where you face a somewhat similar situation. Should this prove to be a change which Senator Dominick would accept, I would be willing to revise the amendment in the alternative—that is, to provide that the complainant may sue or that the Commission may submit the agreement to a court of suitable jurisdiction; and if the court found it fair and equitable, the complainant would be bound.

Obviously, some element of consent, or what is tantamount to it, is urgently necessary in terms of common equity if you are not to get into a situation where you cut off a complainant's right and the complainant cannot do anything about it and the agency which cuts off his right is a party to the settlement. That is the distinction.

I, myself, have argued for the cease-and-desist order practice on the part of the Commission. But there it is not a party to any settlement. It is acting in a judicial capacity. Here, it would be a party to a settlement, and therefore something more than the sheer settlement should be required before the complainant is cut off from his right to sue. That is the essence of the agreement, Mr. President.

Again, I point out that this is not the only one that we have to face. I think it is only fair to point this out, because the majority leader yesterday talked in general terms of the fact that we are stalling or using dilatory tactics or offering amendments which may not be absolutely essential, and so forth. But I respectfully point out to the Senate that we have put in our amendments, I believe—and certainly the Senate showed it yesterday—meritorious amendments which relate to the substance of the amendment of the Senator from Colorado and which were, in a sense, overlooked in the sweeping anxiety to get on with the vote, which we did yesterday, in respect of the unanimous-consent agreement. But when put into the position where we had to examine this amendment in scrupulous detail in terms of its possibly becoming part of the bill, we found substantive matters which urgently need correction. I believe, in all decency and equity, that this is one of them; and I hope very much that the Senate will adopt this amendment.

I reserve the remainder of my time.

The Presiding Officer. Who yields time?

Mr. Dominick. Mr. President, according to the unanimous-consent agreement, if the manager of the bill is in agreement with the amendment, the time in opposition is under the control of either the minority leader or his designee, and he has so designated me.

Mr. Williams. Mr. President, I support the amendment of the Senator from New York. So, under the agreement, any speaking I would do would be on our time; and, under the agreement, the Senator from Colorado has the remainder of the time.

Mr. Dominick. Under those circumstances, I yield myself 10 minutes in order to ask some questions on this matter and to raise some precautionary warning signals.

I say to the Senator from New York that I can understand that he wants to use perhaps some different wording—namely, "conciliation agreement" instead of "voluntary compliance." I have no objection to that.

However, I should like to point out that under the amendment as presently written it now says that if within 30 days after a charge is

filed with the Commission within 30 days after the expiration of any period of reference under subsection (c) or (d), the Commission has been unable to obtain voluntary compliance, the Commission may bring a civil action.

Whereas the language of the present amendment gives the Commission the discretion to file an action, this language requires that the Commission "shall" bring a civil action.

Without trying to be too technical or too difficult about it, I believe that "shall" defeats the purpose of the 30-day delay which is simply designed to try to get, as they say in the delivery business, "a burr under the tail" of the parties. But I do not see why we should require them within 30 days to bring suit. They might be able to accomplish voluntary compliance within 40 days or it might take 32 days, but under the language of this amendment what happens if they do not file suit within 30 days? Then what do we do?

In other words, I think that the word "shall" in the second line of the Senator's amendment should be changed back to the word "may," as is the case, if the Senator will look through his amendment, to the question of whether the person aggrieved is going to sue or not going to sue.

I would therefore ask the Senator whether he would be amenable to changing that?

Mr. JAVITS. May I point out that the reason we included "shall" is, in a sense, that it goes with the original bill. If the Senator will be kind enough to refer to page 38 of the bill, subsection (f), which deals with this particular matter, he will see that it says:

(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon any respondent not a government, governmental agency, or political subdivision a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court.

In other words, having found reasonable cause, the Commission, according to the original bill, is required to serve a complaint, and so forth.

Mr. DOMINICK. May I continue to point out that what we are trying to do whenever we can is to have the unlawful employment practice charge solved by voluntary compliance. I think that all of us would prefer to see this rather than a commission filing a cease-and-desist order, or as in my amendment, having to go to court. I point out to the Senator that although the word "shall" is in subsection (f) on page 38 of the original bill, the difference between that situation and the one posed by the amendment which I have prepared is the fact that there is no time limit in subsection (f) in which the Commission has to determine when voluntary compliance is or is not possible. So that there is no 30 day limit. All I am saying is that we are putting a 30-day limit where we are saying, "OK. If you have not settled by that time, we have the right to go to court."

It would seem to me that in the interest of flexibility of the Commission's schedule, and in the interest of flexibility in working something out through voluntary compliance, it would be far better to put in the word "may."

If the Senator from New York will change that word "shall" to "may," I shall be happy to accept the amendment.

Mr. JAVITS. May I ask this of the Senator: If we do that, if we change the word "shall" to "may," do we not have to have some cutoff time as far as the Commission is concerned, with respect to its exercise of that discretion in bringing a civil action assuming, for example, of the Senator's amendment—if within 30 days after a charge is filed with the Commission or 30 days after a period of reference in subsection (c) or (d)—this relates to State and local governments references and the Commission has been unable to obtain compliance, the Commission may bring a civil action. Would not the Senator agree that if we are going to adopt that suggestion, that we leave it at "may," we have to put some termination date upon the Commission itself so that the complainant may sue without necessarily sitting around awaiting 6 months.

Mr. DOMINICK. I had thought that we then go on with the rest of the Senator's amendment. We can shorten the 180-day private filing restriction as far as I am concerned, but I think we should keep in mind that this is a Commission which has been appointed for the purpose of trying to solve any employment discrimination that there may be and, consequently, I do not think that we should assume they will not take action where there is a clear case. Problems will arise where there are gray areas, or where they are not sure whether they have substantial evidence to support a case. Under those circumstances, it would seem to me that we should give them more time. If we want to say 90 days from the filing of such a charge, or on the expiration of any period, instead of 180 or 120, that is all right with me. If the Senator would do that, then we are changing the timetable which the committee has already worked out in the process of trying to determine what should be done with enforcement procedures.

Mr. JAVITS. In view of the disposition of the Senator to come to some agreement on this amendment, so that we shall not proceed improperly, I should like to suggest the absence of a quorum, if that is agreeable, and we will take a short quorum break, with the time being charged to both sides, so that we can do our best to work out some language which will carry out our intentions, in view of the fact that, in principle, the Senator thinks there is equity to this amendment.

Mr. DOMINICK. That will be fine with me.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum with the time to be charged equally to both sides.

The PRESIDING OFFICER (Mr. Roth). Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I modify my amendment by changing the word "shall" in the second line to "may."

The PRESIDING OFFICER. The amendment is so modified.

Mr. JAVITS. Mr. President, the reason for the modification is that I do not feel, with an agency of this character, that the word "shall" would have any greater meaning than the word "may" and also because I feel the Commission shoud not, in view of its purpose, be under the kind of strict timetable within the parameters, of course, that the amendment sets out that it would otherwise be if we left the word "shall" which is mandatory. We assume that they must obey the law in the amendment.

We have retained the greater good for the interest of the person aggrieved the ability to sue, which is the main point. That is being retained in the amendment as modified and I think this is the desirable way in which to proceed.

If the Senator from Colorado is satisfied I am prepared to yield back my time and allow action to take place on this amendment to the amendment.

Mr. DOMINICK. Mr. President, I yield myself 2 minutes.

I appreciate the courtesy of the Senator from New York. I think this change is very meritorious, as I pointed out in my first statement. I do not think the Commission should be mandated on what date an agency should bring suit when we are trying to work out matters the best we can by conciliation.

As a result, with the word "may" instead of "shall" and having preserved the right to the Commission to file suit and the respondent if he does not feel the Commission acted properly, it would seem proper to proceed in this way. Therefore, I have no objection to the adoption of the amendment as modified.

I yield back my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from New York as modified.

The amendment, as modified, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read the amendment to the amendment of the Senator from Colorado (Mr. Dominick), as follows:

On page 3, line 3 of the Dominick amendment strike "the respondent named in the charge" and substitute in lieu thereof: "any respondent not a government, governmental agency, or political subdivision named in the charge. In the case

of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States District Court."

On page 3, line 7, insert after the word "section" the following: "the Commission or the Attorney General in a case involving a government, governmental agency or political subdivision."

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I yield myself such time as I may require.

The purpose of this amendment is to correct a very important oversight in the amendment offered by the distinguished Senator from Colorado. His amendment would substitute for the administrative hearing procedure permitting the Commission, after it is unable to obtain voluntary compliance, authority to bring a civil action against a respondent named in the charge.

The amendment of the Senator from Colorado appears to treat all respondents in the same manner. During discussions of this issue in the committee there was a strong feeling that respondents which were governments or governmental agencies or political subdivisions should be given special consideration in the handling of charges brought by employees of such agencies.

Mr. President, the amendment that I am offering started as an amendment in the executive session for the writeup of this bill. It was offered by the Senator from Missouri (Mr. Eagleton), and the Senator from Ohio (Mr. Taft) and it prevailed there. It is in the bill that is before us. I am now offering an amendment to have the same provision apply to the Dominick amendment.

The procedure worked out by the committee was to permit actions brought against State and local government agencies to be brought by the Attorney General in the U.S. district courts.

The PRESIDING OFFICER (Mr. Roth). Will the Senator suspend for a moment? In order to consider his amendment, unanimous consent is required, since it is an amendment to an amendment already agreed to.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the amendment be considered in order.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WILLIAMS. Mr. President, the amendment of the Senator from Colorado would allow actions against State and local government agencies to be brought in Federal district courts but would require the Commission to file the complaint.

I believe that this discussion in the committee and the intent of the committee in providing that the Attorney General bring such actions was basically twofold.

First, there was the strong feeling that cases of discrimination by State and local government agencies should be handled by the full force of the United States of America acting directly through the Attorney General. By placing the full weight of the U.S. district courts behind equal employment opportunity in State and local governments, the committee bill provided the necessary machinery to insure that State and local government agencies fulfill the promise of equal rights.

In addition, the special enforcement procedure when State and local government agencies are respondents provides the necessary power to

achieve results without the needless friction that might be created b a Federal executive agency issuing administrative orders to State and localities.

I will say, Mr. President, as further background, that sitting on th Labor and Public Welfare Committee we have men who have ha distinguished careers before coming to the United States Senate i State government, some as attorneys general of the States that the represent here. So we felt that they spoke with particular authorit about the possibility of friction that might be created by a Federa executive agency issuing administrative orders to sovereign States an their subdivisions.

Mr. President, it is for these reasons that I believe the amendmen of the Senator from Colorado should be amended to provide specia treatment for respondents who are governments, governmenta agencies, or political subdivisions. In those cases the Commissio should be required, after failing to obtain voluntary compliance, t refer the case to the Attorney General who would then be empowere to bring a civil action against a respondent in the appropriate Unite States district court.

Mr. President, further amplification is included in the committe report, and I ask unanimous consent that excerpts from the report con stituting a further discussion of the wisdom of this amendment b printed in the Record at this point.

There being no objection, the excerpts from the committee repor (No. 9–415) were ordered to be printed in the Record, as follows:

EXCERPTS FROM COMMITTEE REPORT

STATE AND LOCAL GOVERNMENTS

The bill would amend section 701 of the Act (section 2 of the bill) to broade the jurisdictional coverage of Title VII by deleting the existing exemptions fo State and local government employees. The Attorney General is given the author ity to bring civil actions involving unlawful employment practices committe by State and local governmental agencies.

The Committee believes that employees of State and local governments ar entitled to the same benefits and protections in equal employment as the em ployees in the private sector of the economy.

There are at present approximately 10.1 million persons employed by Stat and local governmental units. This figure represents an increase of over 2 millio since 1964, and all indications are that the number of State and local employee will continue to increase more rapidly during the next few years. Few of thes employees, however, are afforded the protection of an effective Federal forum for assuring equal employment opportunity. By amending the present section 70 to include State and local governmental units within the definition of an "em ployer" under Title VII, all State and local governmental employees would, unde the provisions of the bill, have access to the remedies available under the Act.

In a report released in 1969 by the U.S. Commission on Civil Rights, "Fo All the People * * * By All the People," that Commission concluded that:

* * * State and local governments have failed to fulfill their obligation t assure equal job opportunity * * * Not only do State and local government consciously and overtly discriminate in hiring and promoting minority grou members, but they do not foster positive programs to deal with discriminator treatment on the job.

The report's findings indicate that the existence of discrimination is perpetuate by both institutional and overt discriminatory practices, and that past discrim natory practices are maintained through *de facto* segregated job ladders, invali selection techniques, and stereotypical misconceptions by supervisors regardin minority group capabilities. The study also indicates that employment discrimina tion in State and local governments is more pervasive than in the private secto

In another report issued by the U.S. Commission on Civil Rights in 1970, "Mexican Americans and the Administration of Justice in the Southwest," the Commission found that in the five Southwestern states with the highest concentration of Spanish-speaking Americans, their representation in the vital area of law enforcement was significantly disproportionate to their demographic distribution. The report shows that in these five Southwestern states, Spanish-speaking Americans, who constitute approximately 12% of the population account for only 5.2% of police officers and 6.11% of civilian employees associated with law enforcement agencies.

This failure of State and local governmental agencies to accord equal employment opportunities is particularly distressing in light of the importance that these agencies play in the daily lives of the average citizen. From local law enforcement to social services, each citizen in a community is in constant contact with many local agencies. The importance of equal opportunity in these agencies is, therefore, self-evident. In our democratic society, participatory government is a cornerstone of good government. Discrimination by government therefore serves a doubly destructive purpose. The exclusion of minorities from effective participation in the bureaucracy not only promotes ignorance of minority problems in that particular community, but also creates mistrust, alienation, and all too often hostility toward the entire process of government.

The Constitution is imperative in its prohibition of discrimination by State and local governments. The Fourteenth Amendment guarantees equal treatment of all citizens by States and their political subdivisions, and the Supreme Court has reinforced their directive by holding that State action which denies equal protection of the laws to any person, even if only indirectly, is in violation of the Fourteenth Amendment. It is clear that the guarantee of equal protection must also extend to such direct action as discriminatory employment practices.

The Committee believes that it is an injustice to provide employees in the private sector with the assistance of an agency of the Federal Government in redressing their grievances while at the same time denying assistance similar to State and local government employees. The last sentence of the Fourteenth Amendment, enabling Congress to enforce the Amendment's guarantees by appropriate legislation is frequently overlooked, and the plain meaning of the Constitution allowed to lapse. The inclusion of State and local government employees within the jurisdiction of Title VII guarantees and protections will fulfill the Congressional duty to enact the "appropriate legislation" to insure all citizens are treated equally in this country.

The Supreme Court has further indicated that at least part of the extension of jurisdiction as contemplated by S. 2515 is a proper constitutional exercise of power under the Commerce Clause. In its decision in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), the Court upheld the extension of the Fair Labor Standards Act to certain classes of public employees as a legitimate exercise of congressional regulatory authority under the Commerce Clause. The Court rejected the argument that Federal regulation of the employment practices of State and local governments is an improper infringement upon the sovereignty of the States. Pointing out that the activities of State and local governments can affect commerce, it held:

"If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to Federal regulations."

A question was raised in the Committee concerning the application of Title VII in the case of a Governor whose cabinet appointees and close personal aides are drawn from one political party. The Committee's intention is that nothing in this bill should be interpreted to prohibit such appointments unless they are based on discrimination because of race, color, religion, sex or national origin. That intention is reflected in sections 703(h) and 706(w) of the law.

SPECIAL ENFORCEMENT PROCEDURE FOR CASES INVOLVING EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

In those cases involving a respondent which is a "government, governmental agency, or political subdivision," and in which EEOC has been unable to secure voluntary compliance as provided under section 706 (b) (f), the bill provides that the Commission shall refer the case to the Attorney General for filing of a civil action against the respondent in the appropriate U.S. district court. A person aggrieved is given the right to intervene in such civil actions.

The committee has no doubt of the need for strong enforcement of equal employment opportunity at all levels of government, and believes that governmental units should lead the way in providing equal opportunity.

Accordingly, the committee bill provides for coverage of State and local government employees and for a concomitant means of enforcement to make that coverage meaningful. By placing the full weight of the U.S. Attorney General and the authority of the U.S. district courts behind equal employment opportunity at the State and local government level, the committee believes that the machinery has been provided to insure State and local leadership in the area of equal employment opportunity.

This enforcement scheme provides the necessary power to achieve results without the needless friction that might be created by a Federal executive agency issuing orders to sovereign States and their localities. In short, the committee believes that the objective of equal employment opportunity can best be achieved by providing this particular means of enforcement where State or local governmental units fail to comply with the law.

Mr. Williams. I know that this amendment was supported when it was offered to the bill and supported in the committee by the Senator from Colorado, and I would hope that he might favorably consider it as an amendment to his amendment.

This again, Mr. President, is one of the amendments offered to the Dominick amendment now. It was not offered before the vote was taken yesterday. These amendments were discovered to be necessary when we were put to a more complete examination of the Dominick amendment, and we felt that it would be wise indeed to add those things that Senator Javits and I and other Senators felt would be constructive additions to the Dominick amendment. This is one of those amendments.

Mr. Byrd of West Virginia. Mr. President, I ask that staff people be instructed not to pass in front of Senators who are addressing the Chair.

The Presiding Officer. The Chair so instructs the staff. Who yields time?

Mr. Dominick. Mr. President, I yield myself 3 minutes.

Mr. President, I think this is an excellent amendment and I am very happy that the Senator from New Jersey brought it up. I think it is only fair for the purposes of the Record to remark that it is ironic that just yesterday the Senator from New York, backed by the Senator from New Jersey, eliminated the Attorney General or any of his staff from taking any case before the U.S. Court of Appeals, thereby limiting the Attorney General's office to appeals before the U.S. Supreme Court. This language provides fair representation for alleged aggrieved State, county, or local government employees in district court.

I, of course, heartily support that idea. I think it is very good; and, as the Senator from New Jersey has so properly said, it just does not seem right, and did not seem right in committee, that any agency of the Federal Government, as such, should have the right to sue, whether it be a State, city, town, school district, sanitation district, or whatever it might be, alleging that their employment practices were illegal.

It would seem to me, if we are going to provide grievance procedures for these employees it ought to be within the Justice Department so that the respondent governmental unit is dealing with one of the Federal Government's most respected and objective departments.

As a result, I am happy to endorse this particular amendment, and have it added on to mine.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. I yield back the remainder of my time.

Mr. WILLIAMS. Mr. President, I have no further speakers on behalf of this amendment. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WILLIAMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I again will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BEALL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Roth). Without objection, it is so ordered.

Mr. BEALL. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read as follows:

On page 5, line 7 of the Dominick amendment, insert the following after "appropriate." Back pay liability shall not exceed that which accrues from a date more than two years prior to the filing of a charge with the Commission.

Mr. BEALL. Mr. President, on this amendment I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. BEALL. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 minutes.

Mr. DOMINICK. Mr. President, will the distinguished Senator from Maryland allow me to be a cosponsor of his amendment?

Mr. BEALL. I am very happy to make the Senator a cosponsor and, Mr. President, I ask unanimous consent that the name of the Senator from Colorado (Mr. Dominick) be added as a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BEALL. Mr. President, in a brief explanation of this amendment, as is indicated in reading the amendment, that it goes to page 5, line 7, the Dominick amendment No. 611. It includes a provision that was already in the original legislation. We are interested in being fair to all parties, whatever the outcome of the current controversy as to whether this particular Dominick amendment should be agreed to; but should there be a finding in favor of the plaintiff in one of these cases, I want to make sure that the penalty is within the balance of fairness. In the committee, there was agreement that should there be a finding, any award of backpay liability should not go back further than 2 years prior to the time that the charges were brought before the Commission.

My amendment would amend the Dominick amendment so that w
there to be an award by the court, the backpay liability would
extend more than 2 years back on which the charges were brou
before the Commission again.

Mr. JAVITS. Mr. President, will the Senator from Maryland yie

Mr. BEALL. I yield.

Mr. JAVITS. Is it not a fact that the bill as we reported it on page
on lines 6 to 9, contains the same provision?

Mr. BEALL. That is correct.

Mr. JAVITS. This was fought out in committee. Those of us w
wished to sustain the committee bill insofar as we could, in all fairn
to what was given as well as what we received, would have to supp
this provision.

Mr. BEALL. Precisely. I agree with the Senator from New York
that.

Mr. President, this is a brief and I believe a sufficient explanation
my amendment.

Mr. DOMINICK. Mr. President, will the Senator from Maryla
yield me a few minutes time, since I am a cosponsor of his amen
ment and I do not have any time of my own?

Mr. BEALL. I would be happy to yield the Senator the remaind
of my time if he wants it.

Mr. DOMINICK. I will not take very long. I am very glad t
Senator brought this matter up. That would be our intention, in t
event my amendment is adopted, to offer this as a subsequent amen
ment to the bill because it was stricken in the amendment by ina
vertence. It is eminently fair, and I am glad the Senator brought t
matter up. I am happy to have it included in my amendment.

I hope, Mr. President, that the Senator from Maryland will
supporting my amendment as amended.

Mr. BEALL. I am making no commitments to to future action.

Mr. President, I am happy to yield back the remainder of my tim

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I support the amendment and
happy to yield back my time.

Mr. BYRD of West Virginia. Mr. President, I suggest the abse
of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous conse
that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator fr
Maryland.

On this question the yeas and nays have been ordered, and the cle
will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from N
Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. CANNON), t
Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alas
(Mr. GRUENING), the Senator from Oklahoma (Mr. HARRIS), the Senat
from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. Hughe

he Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from South Dakota (Mr. McGovern), the Senator from New Hampshire (Mr. McIntyre), the Senator from Minnesota (Mr. Mondale), the Senator from Maine (Mr. Muskie), the enator from Rhode Island (Mr. Pastore), the Senator from Alabama Mr. Sparkman), the Senator from Illinois (Mr. Stevenson), and the enator from Florida (Mr. Chiles) are necessarily absent.

I further announce that, if present and voting, the Senator from owa (Mr. Hughes), the Senator from Washington (Mr. Magnuson), he Senator from Rhode Island (Mr. Pastore), the Senator from llinois (Mr. Stevenson), the Senator from Minnesota (Mr. Humhrey), and the Senator from Washington (Mr. Jackson) would each ote "yea."

Mr. Scott. I announce that the Senator from New York (Mr. uckley) is absent on official business.

The Senator from Kentucky (Mr. Cooper), the Senator from Michin (Mr. Griffin), the Senator from Illinois (Mr. Percy), the Senator om Ohio (Mr. Taft) and the Senator from Connecticut (Mr. 'eicker) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because illness.

The Senator from New Hampshire (Mr. Cotton) and the Senator om Arizona (Mr. Goldwater) are detained on official business.

If present and voting, the Senator from Illinois (Mr. Percy) and e Senator from Ohio (Mr. Taft) would each vote "yea."

The result was announced—yeas 73, nays 0, as follows:

[No. 9 Leg.]

YEAS—73

ken	Ellender	Nelson
len	Ervin	Packwood
lott	Fannin	Pearson
ker	Fong	Pell
yh	Gambrell	Proxmire
all	Gurney	Randolph
llmon	Hansen	Ribicoff
nnett	Hart	Roth
ntsen	Hatfield	Saxbe
ble	Hollings	Schweiker
ggs	Hruska	Scott
ock	Inouye	Smith
ooke	Javits	Spong
rdick	Jordan, N.C.	Stafford
rd, Va.	Jordan, Idaho	Stennis
rd, W. Va.	Kennedy	Stevens
se	Long	Symington
urch	Mansfield	Talmadge
ok	Mathias	Thurmond
nston	McClellan	Tower
rtis	McGee	Tunney
le	Metcalf	Williams
minick	Miller	Young
gleton	Montoya	
stland	Moss	

NAYS—0

NOT VOTING—27

Anderson	Griffin	Mondale
Buckley	Harris	Mundt
Cannon	Hartke	Muskie
Chiles	Hughes	Pastore
Cooper	Humphrey	Percy
Cotton	Jackson	Sparksman
Fulbright	Magnuson	Stevenson
Goldwater	McGovern	Taft
Gravel	McIntyre	Weicker

So, Mr. Beall's amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by whi the amendment was agreed to.

Mr. BYRD of West Virginia. Mr. President, I move to lay that moti on the table.

The motion to lay on the table was agreed to.

[From the Congressional Record—Senate, Jan. 26, 1972]

QUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The PRESIDING OFFICER (Mr. Burdick). Under the previous order, he Chair now lays before the Senate the unfinished business, which is . 2515, with the pending question agreeing to amendment No. 611 of he Senator from Colorado (Mr. Dominick). Time between now and):45 a.m. will be equally divided between the Senator from Colorado Mr. Dominick) and the Senator from New Jersey (Mr. Williams), ith the vote occurring at 10:45 a.m. today. No amendments to the ominick amendment are in order.

The clerk will state the unfinished business.

The assistant legislative clerk read as follows:

S. 2515, a bill to further promote equal employment opportunities for American orkers.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 30 seconds.

The PRESIDING OFFICER. The Senator from Colorado is recognized r 30 seconds.

Mr. DOMINICK. Mr. President, in view of the fact that, with the exption of the Presiding Officer, there is not a single Member of the ajority party now in the Chamber, I suggest the absence of a quorum, th the time to be charged equally to both sides.

he PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order r the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, how much time remains and how is the ne divided?

The PRESIDING OFFICER. Twenty-eight minutes, 14 minutes to the le. Who yields time?

Mr. WILLIAMS. Mr. President, I yield such time to the Senator from w York as he requires.

Mr. JAVITS. Mr. President, will the Chair notify me when I have used minutes?

Mr. President, the absence of Members from the Chamber is obously attributable to the fact that Members are pretty well determined how they are going to vote. We have had enough practice in the t few days in view of this amendment and the various stages of it, elieve, to know our own minds. So, in the time allotted to me, I shall only two things. One is to note the changes which have been made

in the Dominick amendment in terms of what will be finally voted o as no further amendment is permitted. Second, I shall summarize t arguments and the side of the opponents to the Dominick amendme as I see it.

Mr. President, first, as to the changes, we have given authority to t Commission to send its own lawyers into the courts in terms of litig tion, should the Dominick amendment carry, up through the Court Appeals, leaving only the Supreme Court to the Attorney General, a leaving also pattern and practice suits to the Attorney General as w as suits involving government employees at the State and local leve Those are three items that relate to the Attorney General.

Second, we have assured a government employee who is a complai ant of the same treatment in respect of counsel and counsel fees as do nongovernmental employees.

Third, we have given the respondent who is denied the right to su because the Commission sues, the right to agree or disagree to a co ciliation agreement or a settlement of his particular case which t Commission might make. If he is going to be cut off, he has to agree the settlement.

Also, we have limited backpay recovery to 2 years, which was in t original bill and somehow or other it was left out of the pendi amendment inadvertently, as the Senator from Colorado explained.

Now, Mr. President, those are all desirable changes. Obviously the are important changes in the amendment. I believe they improve t amendment, but I believe the amendment should be defeated, notwit standing the precautions that the Senator from New Jersey (M Williams) and I, and others, have taken to "clean it up," which we h the opportunity to do in the last day and a half.

The reasons I believe the amendment should be rejected are six. shall list them, and I do not list them necessarily in order of impo tance because I think they all rank equally in importance.

The first reason is that this is a usual power for Government agenci which we intend to have power. Most analogous, of course, to this situ tion is the National Labor Relations Act. I have submitted a long li of agencies, led off by the National Labor Relations Board, so bo commissions and Government departments have cease-and-desi powers.

The second point is that 32 of the 50 States which give authority respect of fair employment practice activities, led by my own Sta of New York, which passed the Ives-Quinn bill bearing the name Irving Ives who served with distinction in this Chamber, have enforc ment powers in the State agency or commission, or the local attorn general, to wit, a cease-and-desist order. So there is nothing unusu in granting the authority.

All the fears expressed by the Senator from Colorado (Mr. Don nick) and those who support him that the authority would be used an inquisitorial way, or in an arrogant or arbitrary way, were voic 26 years ago in New York. Those fears have all come to naught. It h been an entirely satisfactory statute where the cases going to court ha been few and the conciliations have been many. It has kept the wor load within reasonable bounds and that has been possible also in oth States.

The third point is that the cease-and-desist power is important b cause it gives agencies some teeth—even a little teeth because any

spondent can take a case into court. But it gives the agency some teeth because the agency can proceed with finality. It gives the agency a greater likelihood of getting a conciliation than would otherwise be possible.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. I thank the Senator.

The fourth point is that the backlog in the courts is extremely heavy. In the district courts, where under the Dominick amendment suits would have to be filed, it is the heaviest, being around a 20-month period in the major industrial States where most of these cases would be carried on. Again, to relieve that congestion, a minimization of cases flowing to the courts would go to the Circuit Courts of Appeal, which is of great importance in terms of the cease-and-desist power.

Fifth, we want the law enforced. We passed the law in terms of the Civil Rights Act of 1964 so we should want it enforced and it is not being adequately enforced as evidenced by the thousands of cases in the backlog.

The sixth point is that the best way to cut the workload is to give the cease-and-desist power: one, to encourage conciliation agreements, and that is the experience of Federal and State agencies; and second, and critically important because so few cases, and that is the experience, go from these cease-and-desist powered commissions or other agencies to the courts.

Mr. President, for those six reasons I hope very much that the amendment will be rejected. I thank the Senator for yielding to me.

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, we have been over and over most of these arguments, but there are some Members in the Chamber today who have not been able to hear all of the arguments. I particularly refer to my good friend and very distinguished colleague from Ohio (Mr. Taft), who was the original author of the independent counsel amendment, which was unanimously agreed to and supported by me and everyone else last Thursday.

It is important to note in considering this matter that although the independent counsel is a good idea, it was unanimously agreed to not because it solved all the problems presented by the bill but because everyone here recognized the enormous amount of problems the bill created. But the adopted amendment fails to accomplish the separation of adjudicatory functions from investigatory and prosecutorial functions.

In answer to my distinguished friend from New York (Mr. Javits), it is worth while pointing out that the Commission has a backlog of some 32,000 cases; that they anticipate 32,000 cases to be filed this fiscal year, and that they expect it to expand to 47,000 new cases next year. Also, the backlog problem is exacerbated by the 21 million additional people who were put under the Commission's jurisdiction.

As pointed out by the Senator from New York, we have some 34 States with some kind of fair labor employment commissions to take care of discrimination cases. Out of that, 32 of those have cease-and-desist power, including my State and the State of New York.

If the cease-and-desist powers are so effective, why is it that ove and over again those States with those commissions are the ones creat ing the backlog in the Federal Commission? Quite obviously, the Stat cease-and-desist enforcement procedures are not working.

Let me just point out what the New York Times said in its editoria of January 25. I might add this is quite exceptional because ver seldom do I quote from the New York Times, but this is an interestin position they have taken. I will ask to have the entire editorial printe in the RECORD later but for the moment I would like to bring to you attention language which states:

In the past, The Times has favored giving the Commission this power to enforce its own findings.

That is cease-and-desist power.

We are still convinced that such an arrangement would represent a vast im provement over the present ineffectual method.

It probably would. It would be better than not having anything The editorial continues:

But a strong case can be made for the idea that effective, nonpartisan en forcement of the law may in the long run be more certain through reliance upon the courts than upon a politically appointed Commission whose members change with each administration.

Because the backlog issue is so important, for the sake of emphasis I will repeat figures which indicate that over-loading of forums wi more likely occur under cease-and-desist enforcement. It is my under standing that the 93 Federal district courts, with 398 judges, have a average backlog of about 12 months. The EEOC now has a backlog o 20 months, not counting the additional backlog. They will receive a such time as they get jurisdiction over 21 million additional employees

So it seems to me perfectly apparent that it is going to be fa quicker to go through the Federal court system in order to get enforce ment of the orders which the Commission feels are legitimate——

The PRESIDING OFFICER. The time of the Senator has expired

Mr. DOMINICK. I yield myself 3 minutes.

It is going to be far more expeditious to go through the court syste than it is to have cease-and-desist orders, where in addition to the back log problems, enforcement of cease and desist orders will actually en tail a lengthy trip through the U.S. Court of Appeals. This is a poin most people overlook. If the orders are to be enforced—effectively under the bill language as it is now written, without my amendment requires a procedure through the investigatory process, through th hearing process, through a cease-and-desist order, and then throug the U.S. Court of Appeals.

Under our proposal, once the Commission decides there is reason able cause to support a claim of discrimination, one can go immedi ately to the Federal district court. The order is then immediately en forceable by the judge who issued the order through the court's con tempt powers.

We have modified our amendment. I may say to the Senator fro Ohio (Mr. Taft), to make sure that it does not conflict in any wa with the independent counsel provision. We have taken great car to make sure we fit the two together, so that they will work together as an integral part of the machinery.

As the Senator from New York has pointed out, we have also accepted, with delight—in fact, I cosponsored it—an amendment putting in the provision for the back pay limitation of 2 years. We have also accepted most of the amendments which were suggested to my amendment by the Senator from New Jersey and the Senator from New York.

I really believe that what we are doing here is of enormous significance. We are going to be setting the precedent, perhaps for the first time in many, many years, as to whether or not we are going to accept the principles established by Justice Jackson and Mr. Landis and most of the persons who have examined agencies, which recommend repeatedly that the functions of these agencies must be separated so that there will no longer be a star chamber type of proceeding similar to what we had in the past.

Many persons think that the idea of cease and desist is a new idea in the executive agencies. It came about in the 1930's. It is not a new idea. What we need now is to try procedures which will give those who have claims that they have been discriminated against, and those who maintain that discrimination has not taken place, due process. The system must see that each side is protected, and to do that in an impartial tribunal like the Federal court system seems to me to be far and away the best way of accomplishing it.

The Presiding Officer. The time of the Senator has expired.

Mr. Dominick. I yield myself 2 minutes.

Let me say only one thing more. We have been fighting this issue for a considerable period of time. We will have a vote very shortly now. It is my hope that this debate will lay the basis for a similar type of discussion and debate when we consider other agencies and their procedures. I think it is a principle of overwhelming importance deserving our closest scrutiny.

Mr. President, I reserve the remainder of my time.

The Presiding Officer. Who yields time?

Mr. Williams. Mr. President, I yield 4 minutes to the Senator from Illinois (Mr. Percy).

Mr. Percy. Mr. President, the issue we have been debating, that of equal employment opportunity enforcement, is one in which I have had a deep personal interest and concern for many years. In 1963, as a fairly large employer in Illinois, I was both credited and blamed with the final testimony before the State legislature that broke the back of resistance and enabled us to pass the first State FEPC law in Illinois. I think that law has worked extremely well.

I was a cosponsor of the Equal Employment Opportunities Enforcement Act of 1970 which was approved by the Senate, but failed to receive favorable passage in the House prior to adjournment of the 91st Congress. When Senator Williams decided last year to reintroduce the bill as S. 2515, I was, of course eager to lend my support again.

There have been numerous occasions during my first term in the Senate in which we have debated and voted on measures aimed at insuring the civil rights and equal opportunities of all Americans. These measures, important as they are, have not fulfilled the one important responsibility we have of protecting the employment rights of the individual. The Civil Rights Act of 1964, through Title VII, was aimed at the

elimination of discrimination in employment practices. For the m
part, employers have tried to comply. Yet, some employers, both in t
private and public sectors, continue to violate the Civil Rights A
through blatant as well as frequently concealed methods. We rec
nize now that the primary failing in 1964 was in not authorizing
effective enforcement power at the Federal level. The Equal Emplo
ment Opportunity Commission has received more than 81,000 co
plaints since its beginning in 1965, and has been able to present sat
factory conciliation in less than half of those cases. It simply does n
have the power to enforce affirmative action by employers who ha
been found to practice discriminatory employment. Furthermo
other Federal offices having responsibilities in this area have ma
significant strides in protecting the rights of the employee, yet the
is no unified, coordinated approach to this all important aspect of civ
rights enforcement.

In the last 8 years since enactment of the Civil Rights Act, we ha
been able to mass some enlightening, though disturbing, statistics
employment trends in the United States through certain progress h
been made, employment surveys and census records show continui
discrimination in employment for minority groups. For a variety
reasons, including discussion in origin, minority group members, pa
ticularly black and Spanish-speaking workers, are clearly relegat
to lower paying, less prestigious positions. Advancement is slow, a
in too many cases does not exist at all. The median family income f
black families is only slightly over $6,000, while white workers ha
a median income of over $10,000. Unemployment among black worke
was over 9 percent in 1970.

Spanish-speaking Americans are in a similar situation. As wi
black workers, unemployment rates among the Spanish-speaking a
significantly higher than among the rest of the Nation. There are mo
than 7.5 million Spanish-speaking Americans in this country—ov
686,000 are in Illinois—and more than 17 percent of them have i
comes below $3,000. Again, we see that Spanish-speaking citizens a
found in the lower paid jobs—58 percent in blue-collar occupations
and with little opportunity for advancement. With unemployme
high and wages low, it is little wonder that many Spanish-speakin
people find themselves depending on welfare assistance and swept
in the poverty cycle of an urban ghetto.

Discrimination on the basis of race is an undeniable fact in 197
Minorities have seen little reason for optimism when the Federal Go
ernment has refused to formulate and fund adequate job training pr
grams for improving their skills and to eliminate employment bias
where they exist. The poor, inarticulate blue collar worker of wha
ever race, who has been discriminated against will have little hope f
bringing his case to the attention of his employer or the courts f
affirmative action. He does not have a true advocate.

I must hasten to add that many businesses in the private sector ha
learned from experience that it is not only the right thing to do, b
good economics to hire on a nondiscriminatory basis. My own exper
ence as chief executive officer of a company in the Midwest points th
out. We established an early policy of fair employment practices a
at one time we had virtually 50 percent of one large and importa
assembly department who were from minority groups.

Finally, though I should not be making this point last, are the gla
ing inequities of employment patterns among women. Female worke

who constitute almost 40 percent of our work force, continue to earn lower salaries than men for comparable positions, and are frequently discriminated against in terms of advancement. I believe that it is inconsistent and unrealistic for us to talk about reducing welfare rolls by encouraging mothers to work but not to provide them with the job training, equitable wages, or day-care centers so that they can earn for themselves and their families. Many women, who have been out of the work force, are eager to find employment but are discriminated against if there are other male candidates vying for the same position.

These illustrations undoubtedly come as no surprise to anyone. We experience them every day, and they are a sad commentary on the effectiveness of our Federal civil rights effort.

The bill, S. 2515, which is before us now will not be the final, all inclusive solution to the problems of discrimination in employment. But I firmly believe that it is part of a correct approach to the situation. By giving the EEOC the authority, through cease-and-desist powers, to enforce the objectives of Title VII, we can begin to realize the promises set forth in the Civil Rights Act of 1964.

Mr. Williams. Mr. President, I yield myself 1 minute.

The Senator from Colorado quoted the editorial which appeared in the New York Times of yesterday. So that that great newspaper will not be wholly condemned by those of us who feel that the cease-and-desist procedure is the best method of enforcement of these human rights, I would like to read from the New York Times of Sunday. Mr. Wicker says:

> The cease-and-desist procedure obviously is preferable. It would offer relatively rapid relief against discrimination, while court actions are time-consuming at best and subject to an infinite variety of appeals and other delays, during which the discriminatory practice could continue. Where an individual is bringing the complaint, moreover, he or she is likely to be less than affluent, and the cost of action before the E.E.O.C. ought to be considerably less than that of bringing a suit in Federal court.

The editorial was written by lawyers for lawyers. Mr. Wicker writes about human values, human rights for human beings.

Mr. Javits. Mr. President, I shall be very brief.

I think it is important to answer two arguments of the Senator from Colorado. First, as to star chamber proceedings. This is just not true, and it is ancient history that "star chamber" means secret. The Administrative Procedure Act applies to this Commission as it would apply to any other commission, and that act guarantees due process. If we did not have it, if we had a star chamber, the courts would not let a cease-and-desist order stand for 30 seconds. So that is completely irrelevant, and indeed somewhat misleading. There is no star chamber involved.

Second, as to the backlog: History shows that if you want to correct such a backlog, you can only do it if you give the agency some power. If you do not, everyone bedevils them, and the cases last forever. This agency is now completely inundated for that precise reason.

As to the point of the time of the courts being involved, the Senator from Colorado does not note that in the districts where many of these cases will be brought, to wit, in Massachusetts, the southern district of New York, the northern district of Illinois, and the northern district of California, the delays are now 20 to 28 months, and in New York 25 months. It is rural and agricultural areas, where we are not going to have too many of these cases, that bring down the averages. We are

talking now about already clogged courts that cannot try cases, an it is proposed to load them here with thousands of cases that it is u necessary to load them with, because the number of cases that go the court of appeals from the commissions with cease-and-desist a thority is so small.

For all those reasons, I hope the amendment will be defeated.

Mr. DOMINICK. Mr. President, I yield 2 minutes to the Senator fro Connecticut.

Mr. WEICKER. Mr. President, I rise in support of the amendme of the Senator from Colorado. There is something that I think shou be very clear before we vote.

This is not an anticivil rights amendment. There is not anticiv rights group and a procivil rights group. The Senator from Colorad and those who support his amendment are just as procivil right in the desire to see enforcement go to the EEOC as the Senator from Ne York and the Senator from New Jersey. It is a question of metho

I think it should be made clear that both sides of this argument ar for civil rights and for giving enforcement powers to the EEO What the Senator from Colorado speaks for and what I support is tha this should be a two-step process.

Those of use who believe in civil rights feel that a two-step proces guarantees those rights far more than a one-step process. To my goo friend the Senator from New York I can only say this: That just a I am against one-step processes in deciding whether we are going t make military commitments, so I am against one-step processes a to civil rights decisions. Let us make no mistake about it, the du process of law concept is better served through the proposition of th Senator from Colorado than through what is being proposed in th bill.

Mr. DOMINICK. Mr. President, I yield myself the final 2 minutes: i that what I have left?

The PRESIDING OFFICER. Yes.

Mr. DOMINICK. Mr. President, I was extremely interested in the ver keen analysis that the Senator from Connecticut just made. He wa telling me that when he was coming to work today, he heard som radio station saying that the anticivil rights forces were massing e forts to do something about this bill and knock off the cease-and-desis authority. If nothing else, I had hoped that my floor arguments ha dispelled such simplistic reasoning.

My amendment provides access to those forums where we have gotte civil rights enforced in this country in the Federal district courts an in the Supreme Court. To the extent that we can avail these peopl of an opportunity to present their cases in the courts, we have a opportunity at that point to be able to establish precedents whic can be not only the law in that case, but to provide precedents for sub sequent employers and employees throughout the country.

It seems to me that where you have, as we do in this bill, the proc ess of investigation, of adjudication, and of enforcement all in on agency, whether you call it a star chamber or whether you do not, th result is that one bureaucratic agency, responsible to no one but them selves, possess all the powers that we used to refer to as the sta chamber.

I think that we desperately need a change into a two-process syste utilizing not only the expertise of the EEOC in investigating and co

riliating cases but also the expertise of the Federal district courts in impartially adjudicating cases so that the constitutional rights of everyone are protected.

The PRESIDING OFFICER (Mr. Burdick). All time having expired, the question is on agreeing to the amendment of the Senator from Colorado (Mr. Dominick).

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Colorado (Mr. Dominick) as amended. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada (Mr. Cannon), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), and the Senator from Illinois (Mr. Stevenson) are necessarily absent.

On this vote, the Senator from Nevada (Mr. Cannon) is paired with the Senator from Washington (Mr. Magnuson).

If present and voting, the Senator from Nevada would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Washington (Mr. Jackson) is paired with the Senator from New York (Mr. Buckley).

If present and voting, the Senator from Washington would vote "nay" and the Senator from New York would vote "yea."

I further announce that, if present and voting, the Senator from Illinois (Mr. Stevenson) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. Buckley) is absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

On this vote, the Senator from New York (Mr. Buckley) is paired with the Senator from Washington (Mr. Jackson). If present and voting, the Senator from New York would vote "yea" and the Senator from Washington would vote "nay."

The result was announced—yeas 46, nays 48, as follows:

[No. 10 Leg.]

YEAS—46

llen	Dole	Long
llott	Dominick	McClellan
nderson	Eastland	Miller
aker	Ellender	Roth
elmon	Ervin	Saxbe
ennett	Fannin	Smith
entsen	Fulbright	Sparkman
ible	Gambrell	Spong
rock	Goldwater	Stennis
yrd, Va.	Griffin	Talmadge
yrd, W. Va.	Gurney	Thurmond
hiles	Hansen	Tower
ook	Hollings	Weicker
ooper	Hruska	Young
otton	Jordan, N.C.	
urtis	Jordan, Idaho	

NAYS—48

Aiken	Hughes	Packwood
Bayh	Humphrey	Pastore
Beall	Inouye	Pearson
Boggs	Javits	Pell
Brooke	Kennedy	Percy
Burdick	Mansfield	Proxmire
Case	Mathias	Randolph
Church	McGee	Ribicoff
Cranston	McGovern	Schweiker
Eagleton	McIntyre	Scott
Fong	Metcalf	Stafford
Gravel	Mondale	Stevens
Harris	Montoya	Symington
Hart	Moss	Taft
Hartke	Muskie	Tunney
Hatfield	Nelson	Williams

NOT VOTING—6

Buckley	Jackson	Mundt
Cannon	Magnuson	Stevenson

So Mr. Dominick's amendment was rejected.

Mr. JAVITS. Mr. President, I move that the vote by which the amend ment was rejected be reconsidered.

Mr. WILLIAMS. Mr. President, I move to lay that motion on th table.

Mr. ALLEN. Mr. President. I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the motion t table the motion to reconsider.

On this question the yeas and nays have been ordered and the cler will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Ne vada (Mr. Cannon), the Senator from Washington (Mr. Jackson) the Senator from Washington (Mr. Magnuson), and the Senator fro Illinois (Mr. Stevenson) are necessarily absent.

On this vote, the Senator from Washington (Mr. Jackson) is paire with the Senator from New York (Mr. Buckley).

If present and voting, the Senator from Washington would vot "yea" and the Senator from New York would vote "nay."

On this vote, the Senator from Washington (Mr. Magnuson) i paired with the Senator from Nevada (Mr. Cannon).

If present and voting, the Senator from Washington would vot "yea" and the Senator from Nevada would vote "nay."

I further announce that, if present and voting, the Senator fro Illinois (Mr. Stevenson) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from New York (Mr Buckley) is absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because o illness.

The Senator from Arizona (Mr. Goldwater) is absent by leave o the Senate, and if present and voting, would vote "nay."

On this vote, the Senator from New York (Mr. Buckley) is paire with the Senator from Washington (Mr. Jackson). If present an voting, the Senator from New York would vote "nay" and the Senato from Washington would vote "yea."

The result was announced—yeas 54, nays 39, as follows:

[No. 11 Leg.]

YEAS—54

iken	Hart	Nelson
nderson	Hartke	Packwood
ayh	Hatfield	Pastore
eall	Hughes	Pearson
ellmon	Humphrey	Pell
oggs	Inouye	Percy
rooke	Javits	Proxmire
urdick	Kennedy	Randolph
yrd, W. Va.	Mansfield	Ribicoff
ase	Mathias	Schweiker
hurch	McGee	Scott
ook	McGovern	Stafford
ranston	McIntyre	Stevens
agleton	Metcalf	Symington
ong	Mondale	Taft
ravel	Montoya	Tunney
riffin	Moss	Weicker
arris	Muskie	Williams

NAYS—39

len	Dominick	Long
lott	Eastland	McClellan
ker	Ellender	Miller
nnett	Ervin	Roth
ntsen	Fannin	Saxbe
ble	Fulbright	Smith
rock	Gambrell	Sparkman
rd, Va.	Gurney	Spong
iles	Hansen	Stennis
oper	Hollings	Talmadge
tton	Hruska	Thurmond
rtis	Jordan, N.C.	Tower
le	Jordan, Idaho	Young

NON VOTING—7

ckley	Jackson	Stevenson
nnon	Magnuson	
ldwater	Mundt	

So the motion to table the motion to reconsider was agreed to.

AMENDMENT NO. 822

Mr. SAXBE. Mr. President, I call up amendment No. 822.

The PRESIDING OFFICER (Mr. Hollings). The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Ohio (Mr. Saxbe) proposes the following amendment:

Section 10, of page 61, line 24 through page 62, line 17, is struck and sections and 12 are redesignated as sections 10 and 11, respectively.

Mr. SAXBE. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. SAXBE. Mr. President, I am willing to agree on a time limitation n this amendment if the manager of the bill is. If the Senator from ew Jersey wants to set a time certain on voting on this amendment 12 o'clock, it would be agreeable to me.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I am authorized by the mover of the amendment, the distinguished Senator from Ohio (Mr. Saxbe), and the manager of the bill, the distinguished Senator from New Jersey (Mr. Williams)—having consulted also with the distinguished Senator from New York (Mr. Javits)—to ask unanimous consent that the vote on the pending amendment occur at 3 p.m. today; provided further, that time for the debate on the amendment begin at 2 p.m. today, the time to be equally divided between and controlled by the distinguished Senator from Ohio (Mr. Saxbe) and the distinguished manager of the bill (Mr. Williams); provided further, that time on any amendment in the second degree be limited to 20 minutes and time on any motion, appeal, point of order, or non-debatable motion be limited to 20 minutes, such time to be divided equally and controlled by the mover of such and the manager of the bill, except that, in instances in which the mover is in favor of such the time in opposition shall then be under the control of the minority leader or his designee.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. I should merely like to explain the reason for this proposal, because it comes suddenly in the middle of an important part of the bill. The Senator from New Jersey (Mr. Williams) and I are urgently needed at the hearing on the west coast dock strike bill, which I have introduced for myself and the Senator from Oregon (Mr. Packwood).

I thank the Senator for yielding.

Mr. BYRD of West Virginia. I thank the Senator from New York. In further explanation, it is the intention of the leadership—and I make this statement with the approval of the majority leader, I am sure—to take a recess shortly until 2 p.m., today.

Mr. ERVIN. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD of West Virginia. I yield.

Mr. ERVIN. I should like to propound an interrogatory to my friend the distinguished Senator from West Virginia. As I understand the unanimous consent request, it applies only to the amendment offered by the able and distinguished Senator from Ohio.

Mr. BYRD of West Virginia. And to any amendment thereto.

Mr. ERVIN. It does not apply to any amendment that I may desire to offer?

Mr. BYRD of West Virginia. The Senator from North Carolina is preeminently correct.

Mr. ERVIN. I have no objection.

The PRESIDING OFFICER. Is there objection. The Chair hears none, and it is so ordered.

Mr. Saxbe. Mr. President, the amendment I offer concerns a most ifficult legislative decision involving the area of equal employment pportunity, specifically the Executive order program of the Depart- ent of Labor, insuring equal employment by Federal contractors nd subcontractors.

We shall soon be asked to vote upon S. 2515, which would provide, mong other things, for the wholesale removal of the Department's xecutive order program, which is now competently administered y the Office of Federal Contract Compliance, to the already over- urdened EEOC. The amendment would strike section 10, which is he transfer section of the bill we are considering.

I believe that the significance of our decision in this matter warrants brief explanation of the nature of the Executive order program ad- inistered by the Department's OFCC and how well the Department Labor's OFCC has executed the President's mandate.

As Senators undoubtedly know, the "affirmative action" concept is e mainstay of the Executive order program, having had its im- ortance first recognized by then Vice President Richard M. Nixon, ho observed that "overt discrimination" was not the principal ob- acle to achieving equal employment opportunity for today's genera- on of citizens. The affirmative action concept was thereafter adopted President John F. Kennedy in 1961 by Executive Order 10925. It as since been reaffirmed by President Johnson in Executive Order 246 and by President Nixon through several Executive orders, the umbers of which I shall supply.

The OFCC's affirmative action programs have tremendous impact nd require that 260,000 Government contractors in all industries lopt positive programs to seek out minorities and women for new mployment opportunities. To accomplish this objective, the OFCC as utilized the proven business technique of establishing "goals and metables" to insure the success of the Executive order program. It as been the "goals and timetables" approach, which is unique to the FCC's efforts in equal employment, coupled with extensive re- orting and monitoring procedures that has given the promise of ual employment opportunity a new credibility.

The Executive order program should not be confused with the dicial remedies for proven discrimination which unfold on a limited nd expensive case-by-case basis. Rather, affirmative action means at all Government contractors must develop programs to insure that l share equally in the jobs generated by the Federal Government's ending. Proof of overt discrimination is not required.

The success of the OFCC's affirmative action program is clearly ident among the Nation's leading industries. As a result of OFCC rograms for the construction industry, 46 voluntary and imposed ans have been created to bring more than 30,000 minority workers to the skilled construction trades. Special efforts in the textile in- ustry resulted in an increase of minority employment rate from .8 percent in 1968 to 18.4 percent of the total 1971.

In education, 101 monitored universities had established a goal of .784 new hires for minorities and women and actually hired 17,889, d in the banking industry, the 2,400 largest banks covered by the xecutive order increased minority employment from 8 percent in 66 to 14 percent in 1970.

The critical OFCC mission to insure equal employment opportun
can continue to register such successes only if performed within
executive branch, and within that branch, the Department of La
is clearly the most appropriate agency to further that mission. T
is so because, to be effective, the contract compliance program must
an integral part of the procurement process. The process of procur
goods and services, as I am sure you recognize, is peculiarly a funct
of the executive branch.

Equal employment opportunity, is of course, a workplace stand
much like the many other employee protections which are now offe
employees, as minimum wage and safety standards. The Departm
of Labor is the Government's expert administrator of workpl
standards.

Moreover, occupational training programs are the keys to succe
ful employment and the Department's Manpower Administrati
plays a critical role in the implementation of the Executive order p
gram. Further and of particular moment, the Department has be
a leader in developing programs designed to assist women in the wo
force; namely, the Department's vigorous enforcement of the Equ
Pay Act and the functioning of the Women's Bureau within the D
partment are examples of its total commitment to EEO for wom
Cooperation between OFCC and the Women's Bureau was an esse
tial aspect of OFCC's recent issuance of revised Order No. 4 requiri
Government contractors to develop goals for new hire and upgradi
opportunities for women. Further, the presence of Cabinet-level dir
tion has achieved the vital program coordination necessary to progra
success and funding and staffing of the OFCC through the Depa
ment of Labor enables the OFCC to draw upon the full range of st
and resources of a Cabinet agency.

The proposed transfer of functions under Executive Order 112
from the OFCC to the EEOC would jeopardize the contract comp
ance program. The EEOC is ill equipped to assume the responsibi
ties for the implementation of the Executive order progra
Chairman Brown of the EEOC has stated that the assumption
Executive order responsibilities by the EEOC is administratively i
practicable and has given four reasons: First, there is an ever-incre
ing number of cases pending before the EEOC which has alrea
resulted in a 2-year backlog; second, the incompatibility of age
functions: EEOC is a regulatory agency under Title VII—OFCC
is a procurement program manager under the Executive order; thi
new and different responsibilities would disrupt coordination in Ti
VII and its administration would suffer, and perhaps most impo
tantly there might be serious problems of conflict in both the area
remedies and this area of investigation.

There is a great potential conflict in the assumption by EEOC
the assumption by EEOC of the Executive order program respon
bility. For example, Chairman Brown described a situation where
violation of Title VII might be found but where a violation of t
contract compliance standards would be evident.

The affirmative action concept as innovatively and successfu
employed by the OFCC has been challenged as a violation of Ti
VII the courts have responded by stating that the Executive ord
program is independent of Title VII and not subject to some of
more restrictive provisions.

Section 10 of the proposed bill would place the entire Executive rder program under Title VII and might well result in renewed halleges to the many important programs established thereunder—or instance, the Philadelphia plan. Further, the proposed bill would ndanger the survival of the contract compliance program by making s resources dependent upon the EEOC—an independent, hybrid gency with limited manpower and economic resources.

For these reasons, I ask that you vote for the amendment to S. 2515 triking that provision of the bill—section 10—which would transfer he Office of Federal Contract Compliance to the EEOC.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) bill to further promote equal employment opportunities for Ameri-n workers.

Mr. Williams. Mr. President, I suggest the absence of a quorum.

The Presiding Officer. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Williams. Mr. President, I ask unanimous consent that the rder for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Mr. Williams. Mr. President, I oppose the amendment offered y the Senator from Ohio (Mr. Saxbe). I have supported every meas-re to expand the ability to cope with problems of discrimination. I upported continuation of the U.S. Commission on Civil Rights. I am ehind the efforts of the Equal Employment Opportunity Commis-on to do its best. I have continually urged increased appropriations or every department of Government to help meet the need for ending iscrimination in this country.

In particular, I am a longtime advocate of the Federal Govern-ent's contract compliance program. I believe that the Government, bove all people, must be pure and above reproach in its relationship ith the minority community.

Consequently, I have supported in the past, the Office of Federal ontract Compliance to implement the so-called Philadelphia plan. felt strongly that it was entitled to a full and fair opportunity and at it would have been unwise for congressional action to thwart this fort toward assisting the minority community.

Most regrettably, I have concluded after long consideration that the ffice of Federal Contract Compliance is a severe disappointment. It oes not provide adequate assistance to minorities under the existing xecutive order. I am not alone in my judgment.

As early as the fall of last year, the Civil Rights Commission in its onumental assessment of the Federal civil rights efforts condemned he Office of Federal Contract Compliance as one of the worst civil ghts operations in the Federal Establishment, and recommended that be transferred to the Equal Employment Opportunity Commission. gain in April of 1971, in a 6-month review, the Civil Rights Com-ission could find very little of redeeming effort by the office and gain recommended its consolidation with EEOC.

In testimony before the subcommittee, the Reverend Theodore Hes-urgh, Chairman of the Civil Rights Commission, reiterated the need or consolidating these civil rights efforts, and finally, just a few weeks go, the Commission on Civil Rights issued a 1-year report on the

Federal civil rights effort. While stating that the Office of Fede
Contract Compliance had accomplished some things during the p
year, it nonetheless continued to receive low marks for its work.

As a result of this latest report of the Civil Rights Commissi
I asked the chairman for his views on the consolidation matter. I
response to me which I would offer for the record was that the n
for consolidation is greater than ever and that he would reaffirm wi
out qualification or hesitation his statements before the committee.

I ask unanimous consent that the excerpts from the Civil Rig
Commission reports, the testimony of Father Hesburgh, and the
change of correspondence be printed in the Record at the conclusi
of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.
(See exhibit 1, p. 922.)

Mr. WILLIAMS. But, Mr. President, it is not just the view of t
Commission on Civil Rights that has persuaded me personally th
the program of the Office of Federal Contract Compliance should
implemented by the Equal Employment Opportunity Commissio
The testimony before the committee of representatives from the Lea
ership Conference on Civil Rights which encompasses almost
of the civil rights organizations, agreed with the views of the Civ
Rights Commission and the committee bill calling for th
consolidation.

There are at least two major problems which I believe neces ita
this consolidation. The first is that the legal obligations of Title V
of the Civil Rights Act and the legal obligations under the Executi
order requiring equal employment opportunity to Government co
tracts are so closely related that the enforcement by separate agenci
of these requirements leads to confusion among the business comm
nity and uncertainty with respect to the operation of collective ba
gaining agreements, seniority systems, and other business-relate
matters dealing with personnel.

At one time, it was thought that the arsenal of weapons approach-
utilizing a broad range of tools to secure equal employment oppo
tunity—was the most effective procedure. I believe that there is roo
for, and a need for, a wide range of tools, and it is for this reason th
I would not abolish the Executive order program itself. Nonetheles
the use of these remedies and weapons requires very careful coordin
tion and a close relationship. The failure of the Government agenci
to engage in this necessary coordination is described by Father He
burgh in his letter to me. I read from his letter:

> In the section of the report dealing with the Equal Employment Opportuni
> Commission (EEOC), we included a separate evaluation of the efforts at "Intr
> Government Coordination." We concluded that all of the major attempts
> improved coordination between OFCC, EEOC, and the Department of Justi
> appeared to have failed. The OFCC EEOC complaint referral system appea
> to have broken down and was to be revised or improved. Furthermore, the Inte
> agency Staff Coordinating Committee, consisting of representatives of OFC
> EEOC and the Department of Justice, has met rarely and then only to disen
> ad hoc problems. Thus, we found no overall coordinated Federal effort to co
> bat employment discrimination. In summation, we stated:
>
> The lack of coordination among OFCC, EEOC and the Department of Justi
> was one reason this Commission recommended in its report of October, 1970, th
> transfer of OFCC to EEOC and the transfer of section 707 suit power fro
> the Department of Justice to EEOC. It appears that this reason is even mo
> pressing today since existing mechanisms of coordination appear to hav
> atrophied.

The 7 years' experience of Title VII of the Civil Rights Act and the Executive order program reflects numerous situations where the three agencies now charged with the employment effort on civil rights have not adequately coordinated their activities and have neither provided adequate remedy to the aggrieved minorities nor an understandable solution to the confused businessman.

The second problem causes me severe distress. A careful staff inquiry not only supports the feeling of the Civil Rights groups and the Commission on Civil Rights that the OFCC is inadequate, but also established that the OFCC is performing a disservice to the minority community. The simple truth is that the overblown rhetoric and unsupported claims of success of the Office of Federal Contract Compliance has misled the public and the Congress. The kind of misstatement, overstatement and spurious claims made by the Department were aptly described at our hearing on October 6, where Clarence Mitchell, speaking for the Leadership Conference on Civil Rights, described the Department's efforts:

> I would like to take this opportunity to express my personal objection to the misleading and divisive testimony presented by the U.S. Department of Labor here before this subcommittee on Monday, October 4. That testimony reminds me of the professional rainmaker who could produce plenty of wind, a great deal of thunder and impressive displays of lightning, but no rain. The Department of Labor attempts to create the impression that it is only organized labor that is pushing for the transfer of the Office of Contract Compliance to the EEOC. That is simply not the truth—indeed, I go further and say that it is a conscious effort to conceal the truth. I would like to point out that I have already given to one of the staff members a reproduction of a portion of the first report of the Fair Employment Practices Committee from July 1943 to December 1944. Page 6 of that report clearly points out the jurisdiction of the original FEPC, and that original FEPC had jurisdiction over Government agencies and defense contractors.
>
> So from the beginning it was the concept of this whole program that these operations be carried on together. Indeed, it is ridiculous to try to carry them on in any other kind of way.

I do not make these statements lightly. I was disturbed by the implications of the Civil Rights Commission report. I was even more disturbed by the claims of the Department of Labor of success that appeared to fly in the face of my own understanding of that compliance operation.

In questioning before the committee, the departmental spokesman claimed a number of successes in the equal employment area for which they were asked to provide backup data and materials.

I shall use but one example, and that is the Philadelphia plan. The Department of Labor has been in confrontation with the U.S. Congress, and the Comptroller General, as well as the private sector over the establishment of the so-called Philadelphia plan which provided goals and timetables for the employment of minorities on Federal construction jobs in the Philadelphia area.

The Department of Labor was asked to furnish some very simple and specific data about the results of that plan. They were asked to tell me how many minority employees and minorities who were now employed, had not been employed when the Philadelphia plan started. That is, how many new jobs resulted.

I regret to say that the Department, despite months of requests, was not able to answer my questions. We learned about the number of minorities who were working on Federal construction jobs at any

given time in Philadelphia, and the increased number of those wor
ing on Federal construction jobs. We learned something of the nu
ber of minorities that have left non-Federal construction jobs to go
Federal construction jobs, and we found out about situations whe
contractors transferred minority workers from job to job, one st
ahead of the compliance officers—a device known as motorcycle co
pliance, because that was the means used to transfer the workers. B
we have not been able to learn the number of new jobs made availal
to minorities.

Even the local civil rights groups have acknowledged the Depar
ment's failure in Philadelphia. I ask unanimous consent to ha
printed at this point of my statement a newspaper interview of t
executive director of the Philadelphia Urban League reflecting th
view.

There being no objection, the interview was ordered to be printe
in the Record as follows:

PHILADELPHIA PLAN IS JUDGED A FAILURE

PHILADELPHIA.—The "Philadelphia plan," a federal program designed to g
more Negroes into skilled construction jobs, appears to have failed so far.

It has won all its legal battles—the latest in the Supreme Court Tuesday—b
it has lost most tests where it really counts—on the building sites.

The high court turned down an appeal by a group of contractors contestin
the plan's legality. Some observers believe the decision was a shot in the ar
for the program.

IN AREAS OF BIAS

The plan originated here three years ago and was aimed at finding jobs i
construction trades that had discriminated against Negroes. It requires co
tractors in U.S.-assisted projects exceeding $500,000 to hire a specified pe
centage of Negroes and other minorities.

Last year, the plan spread into other big minority markets such as Chicag
Pittsburgh, Cleveland and Detroit. But it has not had much of an impact.

The plan in Philadelphia—where a third of the population is Negro—wa
designed to bring the ranks of six trade unions to 20 percent minority membe
ship by 1974. With official figures unavailable, estimates put the number
Negroes at less than 5 percent of the total employed as iron workers, plumber
and pipefitters, steamfitters, sheetmetal workers, electrical workers and elevato
builders.

"It has been a failure," said Andrew Freeman, executive director of th
Philadelphia Urban League. A year ago, he reported "only a handful of me
have gotten jobs."

Robert Robinson, director of training for the Negro Trade Union Leadershi
Council, said he did not know anyone "who has been put to work directly be
cause of the Philadelphia plan."

A U.S. Department of Labor spokesman disagreed.

He said in Washington that the administration was "quite pleased by th
[illegible] action" and promised figures on hiring soon, hopefully by the end of th
week.

"We have just completed a survey of employment activity under the plan tha
indicates minority goals are being met," the spokesman said.

To date, 71 contracts totaling $249 million have been let under the plan i
the five-county Philadelphia area. The total probably is more than $1 billio
across the nation.

"STILL A FLOP"

"The plan is still a flop," said Andrew Antonucci, executive secretary of th
[illegible] Association of Eastern Pennsylvania, "because there just aren
don't enough minority people available who are trained, so we can't fill the slots th
[illegible] should."

It was Mr. Antonucci's group that filed the Supreme Court suit.
Government and minority leaders anticipate gains on the strength of the
ıpreme Court decision.
Charles Bowser, executive director of the Philadelphia Urban Coalition, and
r. Freeman said there were indications that the government now would deal
ore harshly with recalcitrant contractors and unions.
Mr. Freeman said he hoped more community groups in Negro neighborhoods
pecially will "recruit and refer to unions and contractors more and more
inority workers."
"The few black people who have been hired do not represent the full potential of
e black community," Mr. Freeman said. "It has been little more than tokenism.
must be complete acceptance by the industry."

Mr. Williams. Mr. President, Senators may ask, why harp on one ilure out of a major program; why concentrate on this one area and y because you failed in this, you really should be transferred? Well, is really quite simple. The Department of Labor, the Equal Employ- ent Opportunity Commission, and the Department of Justice all ree that the basic requirement of nondiscrimination in Government ntracting, the so-called antidiscrimination provisions, are the same der Executive Order 11246 and Title VII of the Civil Rights Act. ıe key to the Office of Federal Contract Compliance's approach is irmative action. It is not a situation, although it could well be called e, of correcting persisting discrimination in its most well understood rm. It involves an effort regardless of the past history of the em- oyer to upgrade and improve its minority work force. In the affirma- e action program, the concept of improving the quality of minority ıployment is commendable. It is necessary, and it is urgent. In the partment of Labor it has not worked well and should be transferred. ıe contract compliance program is necessary and important.

I conclude by quoting from the committee report at pages 30 and 31:

The question raised last year was whether the program has had substantive sults. Unfortunately, the paucity of credible achievement cited last year is ll the rule. The successes described in the testimony suffer from an inability the program managers to furnish reliable data to support their claim. The ogram looks good on paper, but despite many opportunities vary minimal in- rmation was furnished to the Committee that would support the contention at significant results have been achieved. To the contrary, in the history of Contract Compliance Program, until two days after introduction of this l, no sanction had ever been imposed for violation of the Executive Order. ıce then, only one small contractor, having 10 employees, has been subjected to ıctions.
In 1969, then Secretary of Labor Shultz, testifying before this Committee, ked for time for the new administration to get its House in order. The Depart- ent's testimony this year suggested that real success is just around the corner. The rights of minorities and women are too important to continue this im- rtant function in an agency that has not really been able to achieve the prom- d results. The contract compliance program is an important and viable tool the government's efforts to achieve equal employment opportunity. It should ve a chance to operate in a fresh atmosphere with an agency that has Equal ıployment Opportunities as its sole priority.

Mr. President, if the occasion arises later, I will submit a list of the rious agencies under the Department of Labor's umbrella and also ıer departments of Government so as to spell out and indicate the peless diffusion, and why we need consolidation, coordination, and ıre effectiveness.

I yield the floor.

EXHIBIT 1

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., January 10, 1972.

HON. HARRISON A. WILLIAM, JR.,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to thank you for indicating in your Decemb 10 letter to me that your Committee valued my testimony in support of S. 251 the "Equal Employment Opportunities Enforcement Act of 1971." Further, would like to take this opportunity to reaffirm the Commission's position wi regard to the consolidation of the Federal Government's equal employme activities.

You were correct in stating that our report "The Federal Civil Rights Enforc ment Effort -One Year Later," found that the mechanisms utilized by the Offi of Federal Contract Compliance (OFCC) to direct the enforcement of Executi Order 11246 had improved. Our evaluation of the actions taken directly by OFC and the actions taken by the compliance agencies at the urging of OFCC indica that in the last year some progress has been made in developing the ty of structures and processes necessary to mount an effective attack on the proble of employment discrimination. It is important to note, however, that our repo on OFCC did not deal with substantive progress, nor was it an all encom passing study. Rather, it evaluated only structure and mechanism.

This is not to say, however, that the Commission was satisfied with the ste taken by OFCC. Quite the contrary; we rank the performance of OFCC "Marginal." Further, the degree of progress depicted is not substantial, and that rate of progress is not increased, OFCC's operation probably will not deemed "Adequate" for some time. Yet, in the statement of the Commission i troducing the report, we stressed that time is of the essence when the rights people are being denied to them.

There is one additional factor which I would like to point out to you. In th section of the report dealing with the Equal Employment Opportunity Commi sion (EEOC) we included a separate evaluation of the efforts at "Intra-Gover mental Coordination." We concluded that all of the major attempts at improve coordination between OFCC, EEOC, and the Department of Justice appeared have failed. The OFCC EEOC complaint referral system appears to have broke down and was to be revised or improved. Furthermore, the Interagency Sta Coordinating Committee, consisting of representatives of OFCC, EEOC, and th Department of Justice, has met rarely and then only to discuss ad hoc problem Thus, we found no overall coordinated Federal effort to combat employment di crimination. In summation, we state:

"The lack of coordination among OFCC, EEOC and the Department of Justi was one reason this Commission recommended in its report of October 197 the transfer of OFCC to EEOC and the transfer of Section 707 suit powe from the Department of Justice to EEOC. It appears that this reason is eve more pressing today since existing mechanisms of coordination appear to hav atrophied."

Nothing we discovered in the investigations on which we based our report ha led us to change our earlier conclusion that the pattern and practice functions the Department of Justice and the contract compliance functions of the Depar ment of Labor be transferred to EEOC. We are pleased that your Committee reporting S. 2515 provided for such consolidation.

I hope that I have clarified any ambiguity which may have been created as result of our "One Year Later" report. If you have any further questions, would be pleased to have them answered for you.

Sincerely,

THEODORE M. HESBURGH,
Chairman.

DECEMBER 10, 1971.

REV. THEODORE HESBURGH,
Chairman, Commission on Civil Rights,
Washington, D.C.

DEAR FATHER HESBURGH: I am sure that you are aware of the great respe that the Committee had for your testimony in support of S. 2515, the "Equa Employment Opportunities Enforcement Act of 1971." The message that y

resented to the Committee was indeed an eloquent presentation of the urgent eed for this bill.

One of the elements of this bill concerns the consolidation of Federal Governent equal employment activities. The Civil Rights Commission recommended hat the pattern and practice functions of the Department of Justice and the ontract Compliance functions of the Department of Labor be transferred to he Equal Employment Opportunity Commission. The Committee in unanimously eporting S. 2515 provided for just such a consolidation. The views of the Comittee on making such a judgment were set forth in the report on the bill, a opy of which is enclosed for your information.

Since the bill was reported on October 28, 1971, the Commission on Civil ights issued a supplementary report entitled, "The Federal Civil Rights Enorcement One Year Later." In its discussion of the Federal Civil Rights Enorcement Effort, the Commission in evaluating the Contract compliance funcions of the Department of Labor, suggested that the Office of Federal Contract ompliance, while still a marginal operation had improved from the original valuation. To be precise, in evaluating the Office, the Commission made the folowing judgment:

Evaluation

"OFCC has made progress in the areas of:

"1. initiating sanction actions;

"2. launching a new attempt at monitoring the implementation of the comliance review process;

"3. issuing minority employment 'bid conditions' for certain construction conractors;

"4. increasing significantly the number of compliance reviews.

"There is also reason to hope that improved monitoring tools, an automated anagement information system, and new programs such as the 'national conruction plan,' when operational, will result in a more comprehensive compliance enforcement effort.

"At the present time, however, the uncertainty of OFCC staffing, and the unnown consequences of the new organization of contract compliance responsibilies in DOL are of paramount concern. Moreover, the inability of OFCC to move eyond experimental monitoring steps, the meager results of construction comliance efforts, and the continued lack of final sanction action also represent sigificant inadequacies in OFCC's program."

I would appreciate if you could clarify the meaning of this supplementary eport and the extent to which the judgments made in that report would have ny effect on the overall recommendation for consolidation of these activities.

With every good wish,

Sincerely,

HARRISON A. WILLIAMS, Jr.

From Equal Employment Opportunities Enforcement Act of 1971 Hearings]

STATEMENT OF HON. REV. THEODORE HESBURGH, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS

The Commission has issued two reports that recommended transfer of the ffice of Federal Contract Compliance from the Department of Labor to EEOC. 'e believe that this transfer would improve both contract compliance and the nforcement of Title VII. Unnecessary duplication and overlap would be elimiated, and the two programs would complement each other under the direcon of a single agency.

The danger of placing direction of the contract compliance program in an gency primarily responsible for noncivil rights programs has been dramatically nderscored by the reorganization now underway at the Department of Labor. nder the reorganization, OFCC field staff will report directly to the regional rector of employment standards rather than to the OFCC Director in ashington.

True, regional directors will have access to OFCC technical information and licy guidance from the Washington office. However, our experience is that vil rights enforcement suffers when those who carry out a policy do not report the official responsible for making the policy. Further, we fear that OFCC being downgraded. The solution lies in transferring OFCC to EEOC.

The Federal Civil Rights Enforcement Effort 7 Months Later

(A report of the U.S. Commission on Civil Rights, May 1971)

OFFICE OF FEDERAL CONTRACT COMPLIANCE (OFCC)

Commission findings

1. OFCC has failed to provide adequate guidance to compliance agencies an Federal contractors concerning the rate of progress expected in eliminating em ployment discrimination and in remedying the effects of past discrimination.

2. OFCC, hampered by a lack of adequate staffing, has confined its monitorin of compliance agency enforcement activity to a series of *ad hoc* efforts that hav not had lasting effects.

3. OFCC has failed to assure that compliance agencies maintain enforc ment machinery capable of monitoring compliance.

4. OFCC and the compliance agencies have failed to impose the sanctions o contract termination or debarment on noncomplying Government contractors which has lessened the credibility of the Government's compliance program.

5. Contract compliance in the construction industry, which has been imple mented primarily by federally imposed plans in Washington and Philadelphi and locally developed "hometown" agreements, has been ineffective and limited.

Commission recommendations

1. OFCC, with the assistance of 15 compliance agencies, should establish on a industry-by-industry basis numerical and percentage employment goals, wit specific timetables for meeting them.

2. OFCC should strength its capacity to monitor performance by compliance agencies through increased staff, systematic racial and ethnic data collection and compliance agency reporting.

3. Uniform compliance review systems should be developed for use by all 1 compliance agencies.

4. OFCC should promptly impose these sanctions where noncompliance i found and not remedied within a reasonable period of time.

5. Goals and timetables for minority employment should be applied through out the industry and systematic enforcement mechanisms should be created.

Response

Action Completed

1. None.

2. The compliance operations of seven agencies have been reviewed for pur poses of discovering basic deficiencies in agency compliance activity.

3. a. The number of onsite compliance reviews projected to be completed b compliance agencies during FY 71 will be nearly double the number conducte during 1970.

b. Through OFCC intervention, organizational changes have been made in th compliance programs of General Services Administration (GSA) and the De partment of the Interior.

4. In 250 cases, procedures have been instituted, in the form of "show-cause" notices, which can lead ultimately to debarment or contract cancellation. I six cases, notices of proposed debarment or contract cancellation have bee issued. But no contractor yet has been actually debarred nor has any contrac been cancelled.

5. Minority employment plans with hiring goals and timetables covering al employment of Federal or federally assisted construction contractors were im posed in three major cities in early May.

Action Planned

1. OFCC, which has established "opportunity estimates," comprising nearly 600,000 new hires and promotions of minority employees under the contrac compliance program, expects that these estimates will reflect goals and timetable by the end of FY 72.

2. The President's budget request for FY 72 calls for a substantial increas in OFCC and compliance agency staff resources. OFCC is currently developin

a system for the collection of racial data and plans to develop report and evaluation forms for contractors and compliance officers for purposes of monitoring compliance reviews.

3. a. OFCC is preparing a compliance manual which will set forth uniform compliance review procedures. An improved management information system is also being developed.

b. A joint OFCC–CSC training course is planned for compliance agency personnel.

c. With OFCC's support, substantial increases for compliance agency staffs have been proposed for FY 72.

4. None.

5. The goals and timetables approach will be applied to the practices of all contractors utilizing construction trade unions which are not parties to a "hometown" agreement.

Action Under Study

1–4. None.

5. A national construction compliance plan with goals and timetables related to minority concentrations is being considered.

Evaluation

The contract compliance program continues to suffer from the failure of OFCC to provide adequate guidance concerning the setting of specific goals and timetables for achieving increased minority employment and establishing criteria for compliance. In the absence of such guidance, neither compliance agencies nor contractors are in a position to know what is expected in terms of the rate of progress required in eliminating discrimination and remedying the effects of past discrimination. While the Philadelphia Plan concept of federally imposed minority hiring goals and timetables has been extended to three more cities, a national industrywide construction compliance plan with goals and timetables has yet to be developed. Minority unemployment and underemployment are continuing at a substantially higher rate than for majority workers.

A variety of improvements in reporting procedures are planned, but their full implementation lies in the future. OFCC has conducted a number of needed reviews of compliance agencies' performance, but their impact is unknown and systematic reporting procedures still have not been established. The contract compliance program has suffered from a lack of sufficient staff resources. The President's FY 1972 budget calls for a substantial increase in resources for OFCC and the compliance agencies, which should enable them to carry out their responsibilities with increased effectiveness.

Finally, although OFCC has implemented a large number of procedures that can lead ultimately to the sanction of contract termination or debarment, the fact that these sanctions have never been imposed continues to weaken the contract compliance effort.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Commission findings

1. EEOC's effectiveness has been impaired by weak enforcement powers, limited by statute to enforcement through "conference, conciliation, and persuasion."

2. EEOC has lacked sufficient staff to carry out its responsibilities with maximum effectiveness.

3. EEOC has further restricted its effectiveness by placing heavy emphasis on the processing of individual discrimination complaints, making relatively little use of its initiatory capabilities such as public hearings and Commissioner-initiated charges, to broaden its attack against job bias.

4. EEOC has failed to establish the mechanisms necessary to process complaints with dispatch.

5. EEOC has not developed a system of priorities for complaint processing by which cases of greater importance are handled on an expeditious basis.

Commission recommendations

1. Congress should amend Title VII of the Civil Rights Act of 1964 to authorize EEOC to issue cease and desist orders to eliminate discriminatory practices through administrative action.

2. EEOC staff should be increased to a level commensurate with the scope of i civil rights responsibilities.

3. EEOC should emphasize intiatory activities, such as public hearings a Commissioner charges, to facilitate elimination of industrywide or regional pa terns of employment discrimination.

4. EEOC should amend its procedures to make more effective use of t complaint processing system.

5. EEOC should assign priority to complaints of particular importance a emphasis should be placed on processing complaints involving classes of co plaints rather than individuals.

Federal Civil Rights Enforcement Effort

(A report of the U.S. Commission on Civil Rights 1970)

CONTRACT COMPLIANCE

There is a 29-year history of ineffective efforts to require Federal contracto to be nondiscriminatory in their employment practices. Lack of success of Exec tive Order 11246, the most recent of operative Executive Orders on the subject, directly related to inadequate executive leadership provided by the Office Federal Contract Compliance (OFCC), which is charged with responsibility f coordinating and overseeing the entire Federal contract compliance program.

OFCC, until recently, had failed to adopt and implement policies and pr cedures that would produce vigorous compliance programs in the Federal agenci immediately responsible for contract compliance. Recent actions taken in e fectuating OFCC's three current priorities—defining the affirmative action r quirement of the Order, monitoring compliance programs of the agencies, an structuring a Government-wide construction compliance program—give promis of leading to a more effective effort. Their implementation, however, lies in th future.

The importance of explaining in detail the meaning of affirmative action t contractors and compliance agencies has been clearly recognized and OFC earlier this year, took the significant step of expanding its regulations to de specifically with the nature of the affirmative action requirement. The extent t which these expanded regulations will be implemented by compliance agenci depends upon OFCC capabilities and determination. Until recently, OFCC activities did not offer encouragement. For example, OFCC was unable to su cessfully require adequate enforcement of similar affirmative action requirement in the past.

Monitoring of agency Executive Order enforcement is a key ingredient in a effective Federal contract compliance program. Establishment of uniform policie and the assurance that those policies are carried out are the chief responsibilitie of OFCC. In the past OFCC monitoring has been haphazard—a series of *ad ho* efforts that did not appear to have lasting effect. A recent OFCC reorganizatio the new development of an industry target selection system and the redistribu tion of compliance agency contractor responsibilities, appears to have improve OFCC's monitoring capability, but no procedures for monitoring have bee developed. The value of these structural changes is totally dependent upo actions yet to be taken.

After several false starts, OFCC has finally established the firm basis for Government-wide construction compliance program and has adopted a strateg for its application. The Philadelphia Plan approach of requiring minority grou percentage employment goals for specific construction trades provides the basi standard of construction compliance. OFCC has indicated that it is prepared t impose Philadelphia-type plans in 91 additional cities unless those cities devis plans of their own to increase minority utilization in the construction trade These community developed plans, or "hometown solutions," however, have bee forthcoming in only a few cities and their viability has not yet been established nor has provision been made for their enforcement.

Of the 15 departments and agencies assigned compliance responsibility, th Department of Defense (DOD), which, in terms of dollar amount, is responsibl for more than half of Federal contracting, is the most important. The Depart ment's performance has been disappointing. For example, in two recent contrac compliance matters involving southern textile mills and a large aircraft manu facturer in St. Louis, DOD initially failed to follow its own procedures. Thoug

some changes have been made to prevent recurrence of these failures, the compliance program of the Department still has serious structural defects. In addition, its staff is too small and its compliance review efforts have not proved adequate.

The 14 other agencies, responsible for contract compliance in some important industries, have failed to assign sufficiently high priority to this responsibility. These agencies have limped along with inadequate staffs and cumbersome organizations which have produced a variety of inadequate compliance efforts.

The use of sanctions and the collection of significant racial and ethnic data by OFCC and the compliance agencies are two essentials of a successful contract compliance program that have been missing to date. The use of sanctions is necessary to make the enforcement program credible. Yet, no contract has ever been terminated nor any company debarred for Executive Order violation. Rarely have any hearings been held concerning non-compliance.

The collection of data would permit compliance agencies and OFCC to adequately evaluate their efforts and the total effect of the entire program. Currently, however, few data are collected and they are inadequate to inform the agencies of the extent of progress in minority employment, or indeed, whether any progress is being made. Though future plans contemplate extensive data collection and analysis these efforts are only in their initial stages.

* * * * * * *

D. Coordination

The President should issue a reorganization plan transferring the contract compliance responsibilities of OFCC and the litigation responsibilities of the Department of Justice to EEOC, so that all responsibilities for equal employment opportunity will be lodged in a single independent agency.

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT: 1 YEAR LATER

(The U.S. Commission on Civil Rights, November 1971)

EVALUATION

OFCC has made progress in the areas of:

1. initiating sanction areas;
2. launching a new attempt at monitoring the implementation of the compliance review process;
3. issuing minority employment "bid conditions" for certain construction contractors;
4. increasing significantly the number of compliance reviews.

There is also reason to hope that improved monitoring tools, an automated management information system, and new programs such as the "national construction plan," when operational, will result in a more comprehensive compliance enforcement effort.

At the present time, however, the uncertainty of OFCC staffing and the unknown consequences of the new organization of contract compliance responsibilities in DOL are of paramount concern. Moreover, the inability of OFCC to move beyond experimental monitoring steps, the meager results of construction compliance efforts, and the continued lack of final sanction action also represent significant inadequacies in OFCC's program.

Mr. SAXBE. Mr. President, I yield myself 5 minutes.

I have listened with interest to the statement concerning the effectiveness of the present setup. I think the thrust of most of the statements is that the agencies cannot get adequate evaluation. I do not think that because successful figures cannot be obtained is a reason for transfer. I believe the program has been a success. Most of all, I like the affirmative approach. In other words, it is the Department of Labor whose area it is to supervise Government contracts; and having within their grasp some 240,000 contractors, they can make them agree to certain goals before they begin those contracts. The Department of

Labor is an agency that has an affirmative approach, one which says the person, "When you take this contract, you have to make certa agreements."

This arrangement should not be changed to make it an embryón enforcement agency where the plan is not so fully enforced, which wi go to the contractor and say, "We will go after you if you have n done what you should."

I think the pressure still has to be affirmative action. But I thin most important, is the question of how the EEOC would handle t program if the provision at present in the bill were adopted.

I think we can best determine that by what the chairman had say, and I think his testimony before the committee last October shou be considered, when he testified that EEOC is not prepared to assu these new duties under Executive Order 11246, especially at a tin when it will be assuming new cease-and-desist order enforceme powers.

William A. Brown, the Chairman of the EEOC, who should hav a pretty good idea of how well equipped his agency would be to exerci the Secretary of Labor's responsibilities, opposed the transfer of t Secretary of Labor's responsibilities under Executive Order 1124 and he did this actively before the Senate Labor Subcommittee la October 4. He gave the following four reasons why, in his expe judgment, it would be administratively impracticable to transfer thes functions of this agency:

First. EEOC has an ever-increasing number of cases pending b fore it which have already resulted in a 2-year backlog.

Second. The functions of EEOC and those of the Secretary of Labo under the Executive order would be incompatible. EEOC is a regul tory agency under Title VII, and OFCC, the agency within the Labo Department which the Secretary of Labor has established to administe the Executive order, is a procurement program manager under t Executive order.

Third. The new and different responsibilities would disrupt coord nation in Title VII and its administration would suffer, and perha most importantly, there might be serious problems of conflict in bot the area of remedies and the area of investigation.

Fourth. There is a great potential conflict in the assumption b EEOC of the Executive order program responsibility. Chairma Brown described a situation where no violation of Title VII might b found but where a violation of the Executive order would be eviden

At this time I would like to submit, and ask unanimous consent t have printed in the Record, the full testimony in regard to the transf that was made before the committee at that time.

There being no objection, the testimony was order to be printed i the Record, as follows:

TESTIMONY OF WILLIAM H. BROWN III

Mr. Chairman and distinguished members of the subcommittee: It is indee a pleasure to appear before you again and to present my views, as Chairman o the Equal Employment Opportunity Commission, on S. 2515, a bill designed t strengthen the prohibitions against employment discrimination of Title VII, an to grant enforcement procedures to the Equal Employment Opportunity Com mission.

I am greatly encouraged by the fact that one House of the Congress has a ready acted on this matter, and I am very hopeful that the Senate too will act o

his important matter as soon as is reasonably possible. It will be a great personal oy to me, and I am sure to many of you, if the Congress can finally act this year o grant the EEOC its much-needed enforcement powers.

I believe that the major provisions of this bill were contained either in S. 2453, which this Committee and the Senate acted upon during the 91st Congress, or in the original version of H.R. 1746, the Hawkins-Reid bill, which was reported earlier this year by the House Education and Labor Committee. Many of the proposed changes would have a significant effect on the Commission and its operations, and I will be glad to reiterate my views on them for the Committee.

However, before doing so, I feel that I should briefly address myself to the central question today, as it has been since Title VII went into effect in 1965. I am, of course referring to the need for granting the EEOC the strongest possible enforcement powers. In this the seventh year since historic enactment of the Civil Rights Act of 1964, and the sixth year since the establishment of the EEOC, it is no longer possible to deny effective enforcement of one of the major provisions of the Act, the right for all people in this Nation, regardless of race, color, religion, sex, or national origin to have equal rights to jobs for which they are qualified. And it is clear, as I have stated before this Committee in prior testimony, that employment discrimination continues widespread throughout the country. One need only look to the position of minority groups in this country to confirm the insidious presence of this basic injustice.

In a special report released this year by the Bureau of the Census, *The Social and Economic Status of Negroes in the United States*, it is clear from the statistics presented that while Negroes have made strides toward bettering their position, the goal of social and economic equality is not yet to be seen. For example, the report shows that the median family income for Negroes in 1970 was $6,279 while the median income for whites for the same period was $10,236. This earnings gap between the races is obviously largely attributable to disparate employment policies. This conclusion is supported by statistics which show that Negroes are concentrated in the lower-paying, less prestigious positions in industry, and are largely precluded from the higher-paid more prestigious positions. For example, as cited by the Bureau's report, while Negroes constitute about 10% of the labor force, they account for only 3% of all jobs in the high-paying professional, technical and managerial positions. In the nine industries with the highest earning capabilities (printing and publishing, chemicals, primary metals, fabricated metals, non-electrical machinery, transportation equipment, air transportation, and instruments manufacture), Negroes account for only 3% of these higher-paying positions. On the other hand, in the lowest paying laborer and service worker categories, Negroes account for 24% of the total positions.

This disparity is further reinforced by the fact that the rate of unemployment for Negroes is considerably higher than the rate for whites. The figures for 1970 show that while 4.0% of white males were unemployed, the unemployment rate for whites was 5.4% while for Negroes it was 9.3%. Even in managerial and professional positions, the area with the lowest unemployment rate, Negro unemployment was 2.1% while white unemployment was 1.7%.

While the statistics on Spanish-speaking Americans are not nearly as current or as complete, available data indicates that this, the second-largest ethnic minority group in the Nation with approximately 7.5 million members, faces a similar plight. In 1969, the median family income for Spanish-speaking American families was $5,641. About 17% of these families had incomes of less than $3,000. Both male and female Spanish-speaking American workers are concentrated in the lower-paying occupations. Only 25% of employed males are in white-collar jobs compared to 41% for men of all other origins. On the other hand 58.8% of Spanish-speaking American males are concentrated in blue-collar occupations. The statistics for Spanish-speaking women workers indicate a similar distribution. Also, as with Negroes, the unemployment rate for Spanish-speaking workers is very high. In 1969, 3.0% of Spanish speaking Americans were unemployed, compared to 3.5% for the rest of the Nation.

The other major group which is subject to blatant discrimination in employment are the approximately 30 million employed women in the Nation. While these women constitute approximately 38% of the total work force they encounter most of the same discriminatory practices as are applied to employees because of race, color, religion, or national origin. This close relationship, for example, between sex and race discrimination has been the subject of increasing study

in recent years. The results of these studies have shown that the similaritie between sex and race discrimination are striking. Both classifications crea large, natural classes in which membership is determined by circumstanc beyond the individual's control, and both are highly visible characteristics which it has been extremely easy to draw gross, stereotyped distinctions. As matter of fact, the historical legal position of black slaves was justified analogy to the status of women at that time, and the arguments justifying th "happy homemaker" were applied equally to the "happy slave." The prese day legacy of this kind of analogy is the persistence of an inherent belief by ma that both groups are, by definition, less equal than the rest of the Nation.

While it is true that the extreme aspects of sex-discrimination as it existed the early part of the twentieth century have now been granted the right to vo and may serve on juries, in the area of employment their status is still fa from equal. Despite a common misconception, women in the labor market do n work to enjoy some extra consumer luxuries or to provide themselves with som thing with which to pass the time. Statistics compiled by the Department Labor's Women's Bureau show that 60% of all employed women work in orde to provide primary support for themselves or to supplement the incomes of the husbands which may be inadequate for household needs. However, within esta lished occupational categories, women are paid less for doing the same jobs done by men. For example, in 1968, the latest year for which extensive data presently available, the median salary for all scientists was $13,200; for wom scientists the median salary was $10,000. Similarly, the median wage for a ful time male factory worker was $6,738 while his female counterpart could on expect to earn $3,991. This disparity becomes glaring when we see that 60% women but only 20% of men earned less than $5,000 per year, while only 3 of women but 28% of men earned $10,000 per year or more. Working wom also remain heavily concentrated in a small number of well-defined sex-stere typed occupations and their mobility to other, better paying positions is severe limited by either overt sex restrictions or by established company promoti policies which make it exceedingly difficult to move to other, better-payi positions.

This kind of disparate treatment is particularly objectionable in light of th specific prohibition in Title VII against discrimination on the basis of sex. recent years, the courts have, however, handed down a series of decisions whic have negated many of the practices used to perpetuate sex-discrimination an have made the use of sex based job classifications legally suspect. It is, howeve the primary responsibility of the EEOC to enforce *all* the provisions of Title VI and with the enactment of effective enforcement procedures, the Commission wi be able to effectively move against all these different areas of employment di crimination.

The pervasiveness of employment discrimination becomes all too obvious, n only from the statistics which I have mentioned above, but from the increasin caseload received by the EEOC. Since its inception in 1965, the Commission ha received 81,004 charges. This number, though large when considered by itsel becomes even more significant when we consider the fact that each year th number of charges filed with the Commission continues to increase. For exampl in FY 1970, 14,129 charges were filed with the Commission; in FY 1971, 22,92 charges were filed; and our current estimate is that during the current fisca year more than 32,000 charges will be filed. These figures indicate that the nee for effective enforcement powers for the Commission is in no way diminishe with the passage of time. If anything, the exact opposite is the case.

This need for effective enforcement powers is also reinforced when we look t the disposition of these charges. As the Committee well knows, the EEOC is a this time limited to seeking settlement of claims only through the voluntar conciliation and persuasion route. This has not proved at all satisfactory. O the 81,004 charges that I mentioned, we were only able to achieve a totally o even partially satisfactory conciliation in less than half of these cases. Thi means that in a significant number of cases, the aggrieved individual was n able to achieve any satisfactory settlement through the EEOC and was force either to give up his or her claim, or, if they had the necessary funds and time to pursue the case through the Federal courts. I submit to the Committee tha the EEOC is not without effective enforcement provisions, be any more success ful in resolving those complaints which it continues to receive than it has bee in resolving those complaints which it has received so far. We are, therefore left with the unpleasant prospect that, unless effective enforcement is enacte

on, an ever-increasing number of aggrieved persons will be left without an equate remedy for violations which are clearly prohibited by existing law. This is not a healthy situation for any society. In a society such as ours, sed upon the democratic principles of equality and the rule of law, this kind a failure to provide relief becomes particularly acute. Under the present provi- ns of Title VII, not only are minorities and women locked out of effective edies by the very law which was established to once and for all end such nomic deprivation, but the very governmental process which created the law alled into question and its credibility undermined. While we have established principle that the resources of the State should be made available to an ividual for protecting his collective bargaining rights under the National bor Relations Act, we have failed repeatedly to enact the same kinds of rights individuals to protect their prerogative to a job as determined only upon stantive qualifications.

When I testified before this Subcommittee two years ago regarding the leg- ation that was actually pending before the Committee, I indicated my prefer- e for a court enforcement approach, as opposed to a cease and desist approach. e full Committee amended that bill and presented to the Senate a cease and ist mechanism embodying self-enforcing orders and temporary court enforce- nt for cases pending before the Commission at the time of passage of the Act. at was the version which ultimately passed the Senate on October 1, 1970. When I testified before the House General Subcommittee on Labor during rch of this year, that Subcommittee had before it a bill embodying cease and ist enforcement, but without the self-enforcing and temporary court enforce- nt provisions. At that time, I indicated that I still felt that court enforce- nt was preferable to the form of cease and desist in the original version of R. 1746. I also indicated to the Committee that I believed that the Hawkins- d bill could be substantially strengthened by adding the self-enforcing mecha- m and the temporary court enforcement approach. In my view, the combined ct of these two provisions would probably produce the strongest form of orcement power which could be granted to the Commission.

note, however, that S. 2515, while including the self-enforcing cease and ist orders, does not contain a provision for temporary court enforcement of ding cases. If it pleases the Committee, I would hope that you would con- er adding the temporary court enforcement provisions to the bill again this r as you did in S. 2453 last year. This type of a provision would provide us h a very valuable tool. As I testified before this Committee last year, and in my testimony before the House Committee this year, the Commission, ause of its rapidly increasing workload, has not been able to resolve all the plaints before it on a timely basis and, as of June 30, 1971, had a backlog of ost 32,000 cases. Also, as I mentioned in my testimony here in 1939, to insti- e cease and desist procedures will require a certain amount of time to estab- the new regulations under which the enforcement procedures will operate; ring examiners have to be recruited, and the Commission's internal structure to be modified. It is, therefore, important that the EEOC be given the porary court enforcement procedures to be applied to these pending cases, to those cases which may arise before the cease and desist provisions ome operational.

TRANSFER OF OFCC

s I have indicated on many occasions, both before the Congress and in public eches, the Commission desperately needs the strongest possible enforcement ers. I urge the Committee, however, to carefully consider the proposal em- ied in S. 2515 to transfer the Office of Federal Contract Compliance to the OC. Given the tremendous backlog of cases which I already mentioned, the itional work that would be required of the Commission when it gets the en- ement provisions, the difficulty the Commission has had in obtaining adequate ding, and the myriad of administrative difficulties embodied in such a transfer, not feel that it is desirable or practical to transfer the OFCC functions at time.

nder the proposal in S. 2515, the EEOC would be assuming the dual role of, the one hand, the regulatory function of processing complaints of employ- t discrimination and, on the other hand, of contract compliance enforcement. ny estimate, these two functions are not as compatible as a first glance may eate. I think, for example, that the rules and regulations which the Commis- adopts with regard to the cease and desist enforcement functions of Title would not be appropriate for enforcement of the type of functions currently

under OFCC operations. Accordingly, I feel the EEOC would thereby be forc to operate under two separate and distinct sets of standards and procedu authorities.

Further, as a direct result of this dichotomy, I can foresee serious proble arising as regards to investigations, remedies, and open conflicts with provisi of Title VII. The transfer of OFCC is not the same as setting up separate burea within an administrative agency, like say, for example, in the FCC which ma tains separate bureaus and separate provisions to regulate two major differ segments of the communications industry—common carriers and broadcast While the FCC can maintain, in one agency, two separate and distinct bure for regulating the respective segments of the industry, the same ease of ope tion is not available to the EEOC under the proposed transfer. While bro casters and common carriers represent totally different companies with differ interests and separate legal entities, the companies subject to OFCC regulati are the same companies subject to Title VII jurisdiction.

I can envision numerous conflicts in cases where the same company becom subject to differing procedures from the same agency. For example, while individual may sue under Title VII to have an individual grievance redress under the provisions of the executive order the proper remedy is contract debi ment, not individual redress. Also, the differences between the two remedies w probably necessitate different burdens of proof and differing emphasis on pr ticular kinds of violations. I can readily foresee a situation where EEOC o cials responsible for the debarment procedure determine that a contractor in compliance and those responsible for Title VII investigation that a violati exists.

Similarly, conflicts exist in the area of determining when an investigation a particular company may be commenced. Under Title VII, the EEOC can i tiate an investigation only after a filing of a charge of discrimination, and t company is entitled to judicial review whenever they feel that the investig tion is unwarranted. Under the executive order provisions, contract reviews c be conducted at will and are not subjected to judicial review.

I could cite the Committee many more examples of conflicts which are bou to arise under the transfer, but I do not want to take the Committee's valua time to list all of them now. I would like to add, however, that the transfer OFCC to the Commission will not improve coordination in the administrati of Title VII as has been urged. It is my belief that the reverse would probab occur. The very nature of contract compliance and use of the government pu curement power is particularly well-suited to the operations of the Depa ment of Labor's manpower programs. This interrelationship between contra compliance and government manpower programs is a particular field of experti in which the Department has become proficient and for which it has develop the necessary technical procedures. Were the EEOC to be made responsible f enforcing contract compliance, it would be dependent upon the Departmen decisions and procedures and would probably be forced to use Departme computer facilities to administer the program.

TRANSFER OF SECTION 707 POWERS OF THE ACT

Section 5 of S. 2515 would transfer the functions of the Attorney General bring pattern or practice suits under Section 707 of Title VII to the EEOC feel that such a transfer would not, at this time, be in the best interests of t Commission and would not promote the most effective administration of Ti VII. I defer to the Justice Department to provide the Committee with speci details on the operations of the Department and further explanation of the ben fits of the program as currently administered.

I would like to suggest, however, that should the Committee determine th the transfer is necessary, the transfer of the 707 functions should not be ma subject to the Commission's administrative remedies as proposed. In S. 251 as presently written, the power of the Attorney General to bring pattern practice suits, once transferred, becomes subject to the administrative remedi provided in Section 4 of the bill. This, in effect, minimizes the effectiveness pattern or practice suits since they would become no different than any oth charges submitted to the Commission. The effectiveness of pattern or pra tice litigation is the result of the ability of the Justice Department to bri these large, far reaching, and often very complex suits directly in the court The importance of these suits has largely been the decisions which have result and which have set the precedents for subsequent lesser Title VII actions. T

llify this powerful and effective means whereby the courts can interpret and rity the provisions of Title VII, while at the same time establishing new judicial ecedents applicable to other courts and administrative agencies alike, would t, in my judgment, serve to promote the most effective administration of equal ployment.

EXPANSION OF TITLE VII JURISDICTION TO INCLUDE SMALL EMPLOYERS

The expansion of the reach of Title VII to include employers with 8 to 24 em-yees would indeed be an asset to the existing law. Discrimination should be acked wherever it exists, and small establishments have frequently been the st flagrant violators.

However, since any expansion of Commission operations into new areas raises ministrative and procedural problems due to the increased paper work and seload, I would again like to suggest a gradual expansion of the jurisdiction to ow the Commission to make the necessary adjustments with a minimum of erference to existing enforcement provisions and data compilation. I would to suggest the same schedule which I proposed to this Committee in my testi-ny last year on S. 2453. That schedule was as follows:

First Year: Employers of 20 or more persons.
Second Year: Employers of 16 or more persons.
Third Year: Employers of 13 or more persons.
Fourth Year: Employers of 10 or more persons.
Fifth Year: Employers of 8 or more persons.

With this schedule, I feel that the Commission would be able to absorb the isdictional expansion, provided, of course, that the corresponding additional ff and monetary resources are also made available, while preserving organiza-nal stability and procedural integrity.

EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

The single largest group of employees in the nation are those employees who employed by State, county and local governments. The latest statistics indi-e that there are approximately 10.1 million such employees, and yet this rep-ents the only large group of employers in the nation whose racial employ-nt practices are almost entirely exempt from any non-discrimination require-nts, except the general prohibition contained in the Fourteenth Amendment ch, as I'm sure the Committee is well aware, prohibits discrimination by te and local authority. Yet Title VII presently exempts State and local em-yees from its coverage and thereby, paradoxically, withholds a Federal pro-ion from these employees to whom the government owes a constitutional ob-tion, while granting it to employees in the private sector, to whom there is comparable constitutional duty. It seems to me that this unreasonable action uld not be allowed to continue. Accordingly, I strongly urge the Committee adopt the provision of S. 2515 which extends the coverage of Title VII to this s of employees.

Discrimination in State and local employment is as blatant and as widespread in any section of private business. In a report released in 1969, *For All the ple . . . By All the People*, the U.S. Commission on Civil Rights examined the loyment policies of State and local government agencies and concluded that: The basic finding of this report is that State and local governments have ed to fulfill their obligation to assure equal job opportunity. . . . Not only do te and local governments consciously and overtly discriminate in hiring and moting minority group members, but they do not foster positive programs to l with discriminatory treatment on the job."

his failure of State and local agencies to accord equal employment to their loyees is particularly distressing in light of the importance that these agen-play in the daily lives of the local communities. From local law enforcement ocial services, each citizen in a community comes in constant contact with ny local agencies. The importance of equal rights in these agencies is, there-, self-evident. In our democratic society, participatory government is a cor-stone of good government; discrimination by government, therefore, serves a bly destructive service. The exclusion of minorities from effective participa-in the bureaucracy not only promotes ignorance of minority problems in that ticular community or political subdivision, but also creates mistrust, aliena-, and occasionally hostility toward the entire process of government.

The Fourteenth Amendment not only promised, but guaranteed equal tr
ment to all citizens of States and their political subdivisions. Unfortunately,
often the last sentence of that Amendment, enabling Congress to enforce
article's guarantees "by appropriate legislation," is overlooked and the p
meaning of the Constitution allowed to lapse. We now have before us the
propriate legislation," and any further delay in insuring adequate protection
this vital area of employment should be avoided.

The EEOC and its enabling legislation in Title VII provide the existing
chinery for realization of the guarantees of the Fourteenth Amendment. T
mechanism will become even more significant with the enactment of the requi
enforcement powers so that the defect of Title VII is cured. I would add, h
ever, that the necessary funding and personnel must also be granted to make
administration of this provision effective.

FEDERAL EMPLOYEES

Equal job opportunity in the Federal Service is of the highest importance un
our system of participatory government. The Federal Government, as the m
powerful and most extensive bureaucracy in the nation, has an affirmat
obligation to keep its "own house in order" while requiring the same degree
compliance with national objectives from other sectors.

Presently the equal employment responsibility of the Federal Service is loca
in the Civil Service Commission under the provisions of Executive Orders 112
issued in 1965, and 11478, issued in 1969. These two orders have established c
prehensive coverage of equal employment in every area of the government. T
policy, as stated in Section 2 of Order 11478, clearly provides for a continu
emphasis on equal employment in all areas of government service:

"The head of each executive department and agency shall establish and ma
tain an affirmative program of equal employment opportunity for all civili
employees and applicants for employment within his jurisdiction in accorda
with the policy set forth in Section 1. It is the responsibility of each departm
and agency head, to the maximum extent possible, to provide sufficient resour
to administer such a program in a positive and effective manner; assure t
recruitment activities reach all sources of job candidates; utilize to the full
extent the present skills of each employee; provide the maximum feasible opp
tunity to employees to enhance their skills so that they may perform at th
highest potential and advance in accordance with their abilities; provide tra
ing and advice to managers and supervisors to assure their understanding a
implementation of the policy expressed in this Order; assure participation
the local level with other employers, schools, and public or private groups
cooperative efforts to improve community conditions which affects employabil
and provide for a system within the department or agency for periodica
evaluating the effectiveness with which the policy of this Order is being carri
out."

Although I will defer explanation of the specific programs that are adm
istered by the Civil Service Commission to carry out the provisions of the afo
mentioned section to officials of that Commission, I can see no benefit deriv
from a transfer of those functions to the EEOC at this time. Particularly
light of the many other administrative burdens that will be placed on the EE
by S. 2515, I feel that the transfer would unnecessarily overburden these adm
istrative functions which the EEOC will have to assume. It would, in effe
only transfer the responsibility from one administrative agency to another.

INDIVIDUAL RIGHT TO SUE

Before closing I would like to comment on a very important provision
S. 2515. I am, of course, referring to the private right of action which has be
retained in the bill. Individual initiative, though costly and not the preferab
form of enforcement, has historically furnished the major impetus for progre
in the field of civil rights. It is, in the same manner, indispensable as a co
plementary tool in building an effective body of Title VII Law.

This is as true in the area of equal employment as it has been in the areas
school and housing desegregation.

Similarly, access to the judiciary should not be reduced to a *parens patri*
type of right accessible only by the government acting on behalf on an aggriev
individual. Every individual deserves his day in court whether an administrati
agency thinks his cause is just or not. Particularly in the area of a violati

volving civil rights, the causes should be attacked wherever and in any nner they can. The Congress, which has set the national goal of equal ployment should not place itself in a position where it begins to restrict e means that an individual has at his disposal to gain satisfaction of a lation of his civil rights.

I would again like to urge the Committee, as I have done here and in the House Representatives on other occasions, to remedy the defects of Title VII as soon possible, and to grant the EEOC the most effective enforcement powers pos-le so that the promises made in 1964 can become realities in 1971.

I wish to thank the Committee for its time in allowing me to present my views this vital subject. I will be willing to answer any questions that the Com-ttee may have.

Mr. SAXBE. The Office of Federal Contract Compliance, under the rection of the Secretary of Labor, has made important progress in e development of a self-propelled, result-oriented equal employment portunity program.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. SAXBE. I yield myself 1 minute.

It would be a tragedy to interrupt this progress by transferring this ogram to an agency unprepared to continue it. The EEOC will have hands full setting up its new procedures to handle its newly granted se-and-desist powers.

I, therefore, urge that the amendment be adopted so that Senate bill 15 will truly advance the cause of civil rights.

I have, I believe, pointed out the basic reasons why EEOC does not nt this transfer. Primarily—and this is supported by a number of il rights leaders—that agency believes that progress has been made ler the present contract compliance, and that this progress will be errupted if the transfer is made.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. SAXBE. Mr. President, I suggest the absence of a quorum, the ie for the quorum call to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The rk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, will the Senator withhold that request so an have a minute's time?

The PRESIDING OFFICER. A quorum call is in progress.

Mr. SAXBE. Is the Senator opposed to or for the amendment?

Mr. JAVITS. I will get time from the Senator from New Jersey.

The roll call was resumed.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yield 2 minutes?

Mr. WILLIAMS. Certainly.

Mr. JAVITS. Mr. President, I have expressed grave reservations ut the transfer, and I am now in the process of coming to a deter-nation as to what to do about this very vexing matter. In the mean-e, in order to help Senators who may be similarly troubled by the ciencies as well as the attractions of the proposed transfer, I would to submit for the Record, and ask unanimous consent to have uded in the Record, a letter addressed to me, which I think Mem-s of the Senate should have, and both the manager of the bill

and the proponent of the amendment, from the Secretary of La in which he wishes us to believe that his recent action to shift Rich Grunewald to the position of Assistant Secretary for Employm Standards was a calculated move to really shake up the OFCC to see to it that its management be made more aggresive than it been, which implies that whatever other shifts are necessary in p sonnel will be made in order to give it backbone, and is undertaken the Secretary to have that effect.

For whatever effect it may have, I believe each Member of Senate should have that letter available to him, and I have as unanimous consent that it be printed in the Record as a part of remarks.

There being no objection, the letter was ordered to be printed in Record, as follows:

U.S. DEPARTMENT OF LABOR,
Washington, D.C., January 25, 197

HON. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: The Senate this week resumed its consideration S. 2515, the Equal Employment Opportunities Act. I am taking this opportunity register my strong support for Senator Saxbe's amendment which deletes t language in Section 10 of the Bill transferring the Office of Federal Contr Compliance from the Department of Labor to the EEOC. I firmly believe t the transfer of the Office of Federal Contract Compliance would be a ma setback to equal employment opportunity efforts.

I urge you to consider very carefully the impact which the passage of S tion 10 of S. 2515 would have upon the thousands of men and women in nation who benefit from affirmative action programs designed to remedy crimination in employment.

Last October 4, Under Secretary Laurence Silberman stated before t Subcommittee on Labor, "I firmly believe that the contract compliance progr is, at long last, well on the road. We all recognize, however, that much rema to be done before the goal of equal employment opportunity is achieved. T program is clearly capable of improvement, and the Department of Labor w continue to strive to improve the quality and magnitude of our efforts."

We know full well that a successful OFCC compliance program requi aggressive and imaginative leadership. My recent action to shift Richard Gru wald to the position of Assistant Secretary for Employment Standards wa calculated move to assure that sound management principles be applied to t operation of the Office of Federal Contract Compliance.

Grunewald's years of experience in management, along with his personal r ord in Urban Affairs designed to better the living and working conditions minority citizens constitute the necessary background for "getting the job do in the compliance field.

I am confident that he and a competent and aggressive OFCC manageme team will build on the improving record of compliance efforts initiated by t department.

Sincerely,

J. D. HODGSON,
Secretary of Labor

Mr. WILLIAMS. Mr. President, will the Senator yield for a questio

Mr. JAVITS. I yield.

Mr. WILLIAMS. Will that be his only assignment?

Mr. JAVITS. No, he has other assignments. If the Senator w be kind enough to read the letter, he will see that he makes so pretty strong promises on what he proposes to do.

I yield back my time.

Mr. SAXBE. Mr. President, I suggest the absence of a quorum, t time to be equally divided.

The Presiding Officer. Without objection, it is so ordered. The erk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Saxbe. Mr. President, I ask unanimous consent that the order r the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Mr. Saxbe. Mr. President, I yield to the Senator from New York ch time as he may require.

Mr. Javits. Just 1 minute.

Mr. President, again to help Senators decide how they vote, I in- nd—because of the parliamentary situation I cannot do it now—if e Saxbe amendment is acted on and it should succeed, to propose an nendment to establish an Equal Opportunity Coordination Council be composed of Secretary of Labor, the Chairman of the Equal nployment Opportunity Commission, the Attorney General, and e Chairman of the U.S. Civil Service Commission.

I hope that that will result in meeting what seems to be the main mplaint, that is, that it will coordinate the activities of the various dies concerned, and I shall offer it for that purpose. For the infor- ation of Senators, the amendment will be at the desk.

I thank my colleague.

Mr. Saxbe. Mr. President, I suggest the absence of a quorum, the ne to be equally divided.

The Presiding Officer. Without objection, it is so ordered. The rk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Saxbe. Mr. President, I ask unanimous consent that the order r the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Mr. Saxbe. Mr. President, how much time do I have remaining?

The Presiding Officer. The Senator has 5 minutes remaining.

Mr. Saxbe. I yield to the Senator from Illinois.

Mr. Percy. Mr. President, I rise in support of the amendment fered by Senator Saxbe to delete section 10 from S. 2515, because my enduring commitment to the cause of civil rights.

Section 10 would cut the equal employment program for Govern- nt contractors by transferring the Secretary of Labor's respon- ilities under Executive Order 11246 to the Equal Employment pportunity Commission.

Administration of the Executive order program by the Depart- nt of Labor facilitates coordination with other complementary ograms which are vitally important to the success of the Executive der.

The availability of manpower training assistance has been critical the accomplishments of the Executive order program, particularly regards the construction industry. Very often an employer will not in a position to undertake a necessary "affirmative action" program insure equal employment opportunity unless there exists an ade- ate pool of trained applicants. Close coordination between Federal npower and equal employment opportunity programs by Govern- nt contractors is essential. Both of these programs are now centered the Department of Labor.

During the past 2 years, the resources of the Manpower Adminis- tion have been focused with increasing effectiveness in assisting

equal employment opportunity programs involving Government co
tractors. At the direction of the Secretary of Labor, the Manpow
Administration and the Office of Federal Contract Compliance—t
agency within the Department of Labor to which the Secretary h
delegated his responsibilities under the Executive order—have be
working closely together so that their activities and special expert
will complement one another in the development of meaningful affir
ative action programs. The coexistence of the OFCC and the Ma
power Administration—including the U.S. Training and Emplo
ment Service and the Office of National Projects—within the Lab
Department makes program coordination and direction more efficie
and responsive. To split the equal employment opportunity progra
from the Manpower Administration would impair coordination a
imperil a program whose value is inestimable.

The Executive order program has also drawn upon the expert
of the Labor-Management Services Administration within the D
partment of Labor. This expertise—and the unique understanding
the Department of Labor as to questions that arise in the context
labor-management laws and collective bargaining agreements—h
contributed significantly to the solution of some of the difficult pro
lems of bringing together employers, unions, and representatives
the minority community in a common effort.

Other programs within the Department of Labor also impinge
those of the OFCC and it is important to the success of its mission th
the OFCC's program remain in close proximity to them. For examp
the OFCC deals primarily with inspection and enforcement of wor
place standards. Thus, the OFCC program is similar to such oth
workplace standards programs administered by the Labor Departme
as minimum wage, maximum hours, safety and health, age and equ
pay programs. Of course, all these labor standards programs are i
timately connected with labor and management as well as on collecti
bargaining contracts.

I urge, therefore, that the amendment of my esteemed colleag
from the State of Ohio be adopted. Due to the coordination of the
multifaceted and related programs within the Department of Labo
significant progress has been made in the employment of minoriti
and women. It would be a grievous setback to the equal employme
opportunity program for Government contractors if the Office of Fe
eral Contract Compliance were to be served from these other progra
which are vital to its success.

Mr. President, I ask unanimous consent to have printed in t
Record a brief summation of the important reasons for retaining t
OFCC in the Department of Labor and a discussion of the maj
achievements of that office.

There being no objection, the material was ordered to be print
in the Record, as follows:

SUMMARY ON RETAINING OFCC IN THE DEPARTMENT OF LABOR

THE OFCC CONTRACT COMPLIANCE PROGRAM IS UNPARALLELED IN THE EQUAL EMPLOYMENT OPPORTUNITIES FIELD

A. The need for affirmative action was first recognized by then Vice Presid
Nixon in 1953 as Chairman of the President's Committee on Government C
tracts who observed that "overt discrimination" was not the principle obsta
to achieving equal generation of citizens.

The affirmative action concept was adopted by President John F. Kennedy in 961 (E. O. 10925) and has since been reaffirmed by Presidents Johnson (E. O. 1246) and Nixon (41 C.F.R. 60–2, etc.).

B. The OFCC's affirmative action programs require that 260,000 government ntractors in all industries adopt positive programs to seek out minorities and omen for new employment opportunities.

The OFCC has utilized the proven technique of establishing "goals and time- bles" to ensure the success of the Executive Order program.

The "goals and timetables" approach, which is unique to the OFCC's efforts in EO, coupled with extensive reporting and monitoring procedures has given the romise of EEO a new credibility.

C. Affirmative action means that all Government contractors must develop rograms to ensure that all share equally in the jobs generated by the Federal overnment's spending. Proof of overt discrimination is not required. The suc- ss of the OFCC's affirmative action program requirement is evident among the ation's leading industries.

As a result of OFCC requirements for construction industry, 46 voluntary and posed plans have been created to bring more than 30,000 minority workers to the skilled construction trades.

Special efforts in the textile industry resulted in an increase of minority em- yment rate from 12.8 percent in 1968 to 18.4 percent of the total 1971.

In education, 101 monitored universities had established a goal of 10,784 new es for minorities and women and actually hired 17,889.

The 2,400 largest banks covered by the Executive Order increased minority ployment from 8 percent in 1966 to 14 percent in 1970.

E OFCC MISSION TO INSURE EQUAL EMPLOYMENT OPPORTUNITY CAN BE ADEQUATELY PERFORMED ONLY WITHIN THE EXECUTIVE BRANCH —AND WITHIN THAT BRANCH, THE DEPARTMENT OF LABOR IS CLEARLY THE MOST APPROPRIATE AGENCY TO FUR- THER THAT MISSION

A. To be effective the contract compliance program must be an integral part the procurement process. The process of procuring goods and services is culiarly a function of the Executive Branch.

B. Equal employment opportunity is a workplace standard—the Department Labor is the Government's expert administrator of workplace standards. Occupational training programs are the keys to successful employment and Department's Manpower Administration plays a critical role in the imple- ntation of the Executive Order program.

The Department has been a leader in developing programs designed to assist men in the work force—witness the Department's vigorous enforcement of the ual Pay Act and the functioning of the Women's Bureau within the Depart- nt. Cooperation between OFCC and the Women's Bureau was an essential ject of OFCC's recent order to contractors requiring development of goals for w hire and upgrading opportunities for women.

Cabinet level direction by the Secretary of Labor has achieved the vital pro- am coordination necessary to program success.

The OFCC is funded and staffed through the Department of Labor and may aw upon the full range of staff and resources of a cabinet agency.

E PROPOSED TRANSFER OF FUNCTIONS UNDER EXECUTIVE ORDER 11246 FROM THE OFCC TO THE EEOC WOULD JEOPARDIZE THE CONTRACT COMPLIANCE PROGRAM

A. The EEOC is ill-equipped to assume the responsibilities for the implementa- n of the Executive Order program. Chairman Brown of the EEOC has stated t the assumption of Executive Order responsibilities by the EEOC is adminis- tively impracticable.[1] He has given four reasons:

. An ever increasing number of cases pending before the EEOC which has eady resulted in a two-year backlog.

. The incompatability of agency functions: EEOC is a regulatory agency ler Title VII—OFCC is a procurement program manager under the Executive ler.

. New and different responsibilities would disrupt coordination in Title VII l its administration would suffer, and perhaps most importantly there might

[1] Testimony of William A. Brown III, Chairman, EEOC, before the Senate Labor Sub- mmittee, October 4, 1971.

be serious problems of conflict in both the area of remedies and the area of investigation.

4. There is a great potential conflict in the assumption by EEOC of the Executive Order program responsibility. Chairman Brown described a situation where no violation of Title VII might be found but where a violation of the contract compliance standards would be evident.

B. The affirmative action concept as innovatively and successfully employed by the OFCC has been challenged as a violation of Title VII—the courts have responded by stating that the Executive Order program is independent of Title VII and not subject to some of its more restrictive provisions.

The proposed bill would place the entire Executive Order program under Title VII and might well result in renewed challenges to the many important programs established thereunder—e.g., the "Philadelphia Plan."

C. The proposed bill would endanger the survival of the contract compliance program by making its resources dependent upon the EEOC—an independent hybrid agency with limited manpower and economic resources.

* * * * * * *

OFCC HAS ADMINISTERED A RESULT-ORIENTED, HIGHLY PROGRESSIVE AND SUCCESSFUL PROGRAM

A. Chronology of Recent Major Administrative and Management Achievements

1. The Philadelphia Plan imposed on September 22, 1969, and followed by imposed plans in Washington, Atlanta, San Francisco, and St. Louis, set forth definite affirmative action standards for construction.

2. Compliance responsibility for individual contracts revised on October 24, 1969. Compliance responsibility divided among 15 agencies on the basis of standard industrial classification codes.

3. Order No. 4, first promulgated on February 5, 1970, defined in specific terms the affirmative action obligations of non-construction contractors.

4. Minimum standards for voluntary area-wide construction plans were issued on February 9, 1970, and have been implemented in approximately 40 cities throughout the country by the development of "hometown" plans in those areas.

5. Sex discrimination guidelines issued on June 2, 1970.

6. A policy statement on religious and national origin discrimination issued on May 20, 1971.

7. On June 7, 1971, precise standards for the conduct of construction compliance review were sent to the agencies.

8. A new testing order was issued on October 2, 1971.

9. Order No. 4, was substantially revised on December 1, 1971, to provide *inter alia*, for the development of affirmative action programs to deal specifically with the problem of sex discrimination.

10. Specific religious and national origin guidelines published in the Federal Register on December 29, 1971.

11. Bid Conditions incorporating "hometown" solutions to minority under utilization in construction crafts continue to be issued. In excess of twenty sets of Bid Conditions have been issued.

12. New reporting procedures for agencies and contractors are now being devised to facilitate program management.

13. OFCC has developed a program budget system which unifies the entire contract compliance program for budgetary purposes. OFCC reviews the agencies' budget estimates in light of anticipated requirements and projected workloads and recommends budget levels for each agency. It then works closely with OMB throughout the budget cycle.

14. A target selection system under which nationwide minority employment and promotional opportunities are estimated for purposes of scheduling enforcement activity, projecting agency workloads, and evaluating program efforts has been implemented by OFCC.

15. Agencies are now required to report their compliance activities, including the initiation of reviews made, affirmative action programs accepted, and show-cause notices issued, to OFCC on a quarterly basis.

16. Systems for reporting minority man-hours worked on construction sites covered by imposed and voluntary plans have been devised and recently issued.

17. Final Draft of Compliance Officer's Manual in clearance—printing arrangements underway.

18. Target city selection programs, to assist contracting agencies to direct their resources toward areas with special problems (or where large numbers o

achievable opportunities exist for members, minority groups and women) has been developed and is already underway.

19. OFCC is cooperating with the Manpower Administration in a National Planning Association study to develop a system for projecting employment, and upgrading opportunities generated by Government contracts.

B. OFCC's Progress in Administering the Executive Order is Apparent from the Following Data which also Highlights the Direct Correlation between Compliance Activity and the Funding Provided for the Contract Compliance Program.

	Compliance reviews conducted	Budget
Fiscal year:		
1969	7,000	$10,600
1970	8,000	11,600
1971	31,265	16,045
1972	44,203	24,226

During FY '71, the 31,265 compliance reviews conducted included on-site reviews of contractors with a total employment of over 14 million persons. These contractors have committed themselves to goals for approximately 280,000 minority hires and promotions.

If, as a result of an on-site compliance review, a contractor's affirmative action program is found to be unacceptable, a notice to show why sanctions should not be instituted is issued. The following table sets forth the number of show cause notices issued by each compliance agency through September 1971, and indicates how many notices were issued against construction contractors.

Agency	Total	Construction
Department of Defense	109	13
Department of Commerce	2	0
Veterans' Administration	0	0
Small Business Administration	8	8
Department of Health, Education, and Welfare	120	97
Postal Service	0	0
Department of Interior	1	0
Agency for International Development	1	1
Department of Agriculture	21	0
General Services Administration	90	43
Environmental Protection Agency	0	0
Atomic Energy Commission	7	0
Department of Housing and Urban Development	253	253
Department of Transportation	33	29
Treasury Department	0	0
National Aeronautics and Space Administration	4	4
Total	649	448

The import of these figures becomes clear when one considers that from the inception of the Executive Order Program thru August 1970, only 15 contractors had been sent thirty-day notices to show cause why sanctions should not be imposed.

C. There Has Been an Increased Readiness on the Part of the Agencies to Resort to Formal Proceedings as a Means of Assuring Compliance Although Most Contractors in Receipt of a Show Cause Notice Choose to Come into Compliance.

1. The Matter of Edgely Air Products, Inc., HEW Dkt. No. CC–71, resulted in a decision by the Secretary of HEW holding that the contractor had failed to make good faith efforts to meet its goal under the Philadelphia Plan and terminating the contract in question and debarring the contractor from the award of future Federal contracts and subcontracts.

2. The Matter of ARO, Inc., OFCC Dkt. No. 71–100, resulted in a decision by the Secretary of Labor ordering the adoption of a specific seniority remedy.

3. The contractors performing on construction contracts in the Philadelphia area have been served with formal notices of HUD's intent to terminate their contracts and debar them from future contract awards on October 15, 1971; they were afforded ten days in which to request a formal hearing. The two contractors

involved are Randeb, Inc., and Russell Associates, both identified as "persiste violators" of the Philadelphia Plan. Randeb defaulted in appearing at the he ing which it requested and formal hearings are scheduled to begin in late Ja ary regarding the compliance of Russell Associates.

4. Additionally, the Director OFCC has assumed jurisdiction in two cases volving possible violations of the Executive Order; in one case involving air carrier, a compliance review was begun on January 3, 1972. The oth matter is currently being investigated.

5. Investigations are also being conducted by the OFCC in several cases arisi under the Philadelphia and Washington Plans, Order No. 4 and the Execut Order Program generally. The contractors involved include a major steel fab cator, an elevator constructor and contractors in both the railroad and airli industries.

D. These Activities on the Part of OFCC and the Contracting Agencies Co plement the Important Preaward Program for Obtaining Compliance.

1. The compliance postures of prospective contractors are evaluated pri to award and a determination made whether they are capable of complying wi the Executive Order. A prospective contractor having an inadequate affirmati action program is categorically unable to comply and is in danger of being d clared nonresponsible under Order No. 4. OFCC's use of the preaward mechanis apart from the use of this devise by the agencies, has resulted in the tempora suspension of many billions of dollars in contract awards pending the submi sion of acceptable affirmative action program and a large number of the mo far-reaching commitments for compliance have been obtained in this fashion.

2. No fewer than thirty-six preaward notices have been issued by OFCC again firms with poor compliance postures.

E. Preaward and Post-Award Conciliation Efforts on the Part of OFCC a the Contracting Agencies Backed by the Awesome Contract Suspension, Te mination and Debarment Powers, Have Been Successful in obtaining Full Co pliance with the Executive Order.

The following cases in which OFCC was the moving party are illustrative those dealth with in the contract compliance program.

1. Integration of company-owned housing (3 cases).

2. Elimination of discriminatory seniority systems to allow competition f promotion, layoff and recall by minority employees on the basis of their full co pany seniority (12 cases).

3. Elimination of discriminatory qualification criteria, such as tests, educati and experience requirements (8 cases).

4. Elimination of direct recruitment, hiring or promotional discrimination (cases).

F. In Cases Based Upon a Failure to Take Affirmative Action Rather than Finding of Discrimination, OFCC Required the Establishment of Goals and Tim tables for All Job Classifications Which Resulted in a Sharp Increase in Minorit Employment Opportunities.

1. OFCC completed negotiations with a large aircraft manufacturer in Januar 1971. Since that time, the contractor has employed 2,396 new employees, of whe 636 were minority group members. This 26.5 percent minority hiring rate exceede the goals and timetables established during negotiations.

2. A prominent brewing company, maintaining eight facilities across th country, committed itself to goals requiring a 35 percent minority hiring ra following conciliation with OFCC on February 11, 1971. These goals are bein met by all facilities, and the contractor is ahead of his timetable for thei achievement.

3. A multi-purpose corporation entered into a national agreement with OFC covering over 200 separate facilities. During the year ending October 1, 197 the ratio of minority to total hires at virtually all establishments is equivale to the percentage of minorities in the population within commuting distance each facility.

4. After committing itself to an affirmative action program containing goals an timetables, a large shipbuilder increased its minority employment from 11.8 pe cent to 17.7 percent over a 2.5 year period. A large percentage of this growt occurred in white collar jobs: The employment of black males in white colla jobs rose from 3.2 to 6.1 percent, while the employment of black females in thes jobs rose to 15.4 from 5.3 percent.

G. These Examples of Large Cases, Processed to a Successful Conclusion wit OFCC's Assistance, Do Not Represent OFCC's Total Effort Let Along the Routine But More Important Activities of the Compliance Agencies.

The Defense Department's Los Angeles Region recently completed reviews of 79 contractors who had submitted affirmative action plans during 1970. All of hese 279 contractors were meeting their goals and timetables. Since January 1, 971, they have employed a total of 26,131 persons, of whom 6,049 were minority roup members (2,401 blacks, 3,034 Spanish-Americans, and 614 orientals).

H. The Continued Success of this Program is assured by the Augmentation f OFCC's Capabilities by OMB.

1. OFCC will have a staff of 119 in FY '72, as compared to 26 in FY '69, about 500 percent increase.

2. It will develop a capability of handling over 400 conciliations and 25 hearings er year itself.

3. It will be amply equipped to monitor effectively the programs of the com- liance agencies, and its Operations Office will provide close communications ith, and technical assistance to, the compliance agencies.

4. In FY '72, the total compliance program will involve 1,504 individuals and a rojected expenditure of $24,000,000—a dramatic increase of more than 200 per- nt over the 643 individuals and $9,766,000 committed to the program in FY '70.

5. The 1971–72 compliance program has set targets of 580,000 new minority res and promotions by Government contractors and subcontractors.

6. The reorganization recently effected within the Department of Labor will ve a direct and beneficial impact upon the OFCC in its administration of the xecutive Program.

THE PURPOSE AND EFFECT OF THE OFCC'S PROGRAM HAS BEEN TO PROMOTE CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITIES

The purpose and effect of the OFCC's program has been to promote civil rights d equal employment opportunities. Because of the many successes which the FCC has had in the implementation of the Executive Order Program, it is parent that the transfer of its functions and responsibilities to the EEOC ould be detrimental to the cause of civil rights.

From an administrative, management and legal standpoint, persons concerned th the cause of civil rights should show great pause and reluctance in voting the proposed Section 715, of S. 2515 and its contemplated transfer of OFCC nctions to the EEOC. Even one of the strongest advocates of civil rights, Con- esswoman Shirley Chisholm, has stated:

"We must recognize this move to put the functions of OFCC under EEOC for hat it is: a building trades amendment which was generated by their outrage er the Philadelphia Plan." *National Journal*, November 13, 1971, at 2251.

The Presiding Officer (Mr. Brock). All time has now expired.

The question is on agreeing to the amendment of the Senator from nio (Mr. Saxbe).

On this question the yeas and nays have been ordered and the clerk ll call the roll.

The legislative clerk called the roll.

Mr. Chiles (after having voted in the affirmative). On this vote have a pair with the distinguished Senator from Minnesota (Mr. umphrey). If he were present and voting, he would vote "nay." If were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. Byrd of West Virginia. I announce that the Senator from vada (Mr. Cannon), the Senator from Washington (Mr. Jackson), e Senator from Washington (Mr. Magnuson), the Senator from inois (Mr. Stevenson), the Senator from Rhode Island (Mr. Pell), e Senator from Rhode Island (Mr. Pastore), the Senator from aine (Mr. Muskie), and the Senator from Minnesota (Mr. Hum- rey) are necessarily absent.

I further announce that, if present and voting, the Senator from ode Island (Mr. Pastore), the Senator from Rhode Island (Mr. ll), the Senator from Washington (Mr. Jackson), the Senator from inois (Mr. Stevenson), and the Senator from Washington (Mr. agnuson) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (M Buckley) is absent on official business.

The Senator from Arizona (Mr. Goldwater) is absent by lea of the Senate.

The Senator from South Dakota (Mr. Mundt) is absent becau of illness.

The Senators from Colorado (Mr. Allott and Mr. Dominick) a necessarily absent.

The result was announced—yeas 49, nays 37, as follows:

[No. 12 Leg.]

YEAS—49

Aiken	Fong	Randolph
Allen	Fulbright	Roth
Anderson	Gambrell	Saxbe
Baker	Griffin	Schweiker
Beall	Gurney	Scott
Bellmon	Hansen	Smith
Bennett	Hatfield	Sparkman
Boggs	Hollings	Stafford
Byrd, Va.	Hruska	Stennis
Byrd, W. Va.	Javits	Taft
Cooper	Jordan, Idaho	Talmadge
Cotton	Long	Thurmond
Cranston	Mathias	Tower
Curtis	McClellan	Weicker
Dole	Packwood	Young
Ellender	Pearson	
Fannin	Percy	

NAYS—37

Bayh	Harris	Mondale
Bentsen	Hart	Montoya
Bible	Hartke	Moss
Brock	Hughes	Nelson
Brooke	Inouye	Proxmire
Burdick	Jordan, N.C.	Ribicoff
Case	Kennedy	Spong
Church	Mansfield	Stevens
Cook	McGee	Symington
Eagleton	McGovern	Tunney
Eastland	McIntyre	Williams
Ervin	Metcalf	
Gravel	Miller	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—

Chiles, for.

NOT VOTING—13

Allott	Humphrey	Pastore
Buckley	Jackson	Pell
Cannon	Magnuson	Stevenson
Dominick	Mundt	
Goldwater	Muskie	

So Mr. Saxbe's amendment was agreed to.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for Ameri can workers.

Mr. JAVITS. Mr. President, I send an amendment to the desk and sk that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that further ading of the amendment be dispensed with. I will explain the mendment, and I would appreciate it if the clerk would return the mendment to me.

The PRESIDING OFFICER (Mr. Saxbe). Without objection, it is so rdered. The amendment will be printed in the Record.

The amendment reads as follows:

On page 61, after line 23 add the following:

SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this paragraph as the Council) mposed of the Secretary of Labor, the Chairman of the Equal Employment pportunity Commission, and the Attorney General, and the Chairman of the nited States Civil Rights Commission, or their respective delegates. The uncil shall have the responsibility for developing and implementing agreeents, policies and practices designed to maximize effort, promote efficiency, d eliminate conflict, competition, duplication and inconsistency among the erations, functions and jurisdictions of the various departments, agencies d branches of the Federal government responsible for the implementation and forcement of equal employment opportunity legislation, orders, and policies. r or before July 1 of each year, the Council shall transmit to the President d to the Congress a report of its activities, together with such recommendations legislative or administrative changes as it concludes are desirable to further omote the purposes of this section.

Mr. JAVITS. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The time is not under control unless the nator wants to make an agreement for control.

Mr. JAVITS. I shall only take a few minutes. I do not think it is cessary for a control of time.

Mr. President, this amendment proposes to establish an Equal nployment Opportunity Coordinating Council composed of the cretary of Labor, the Chairman of the Equal Employment Opportnity Commission, the Attorney General of the United States, and e Chairman of the U.S. Civil Service Commission, or their respective delegates. The Council will have the responsibility of deloping and implementing agreements, policies, and practices deigned to maximize the efficiency and effectiveness of the whole equal nployment opportunity program of the Federal Government, inuding, of course, the program covering Federal contractors under xecutive Order 11246.

On or before July 1 of each year, the Council is required to report the President and to the Congress.

Mr. President, when we were debating the amendment which was st agreed to, I said that I would submit an amendment. It seemed me to be a balance of equity. I voted for the Saxbe amendment with-t any particular joy in my heart. I know how deeply how many ople, including the civil rights organizations, felt about the trans- of OFCC, and I am all for the bill, as is well known. However, this particular situation, I felt that the backlog was such that in rency to my own argument that cease and desist was necessary break the backlog, I should not add to it. This is a totally new reonsibility and would add to it. Therefore, as we can make this

transfer at any time. I felt that in sustaining that point of view a
in sustaining my own feeling——

Mr. Byrd of West Virginia. Mr. President, may we have ord
in the Chamber?

The Presiding Officer. The Senate will be in order.

Mr. Javits. Therefore, since we can make this transfer at any tim
I felt that in sustaining that point of view and in sustaining my ow
feelings about the so-called Philadelphia plan, for which I fought a
bled successfully on this floor, I felt consistently that we had to lea
this particular office at this time where it was. But it was a legitima
point made by Father Hesburgh in the testimony and report whi
the Senator from New Jersey (Mr. Williams) so very properly call
to our attention, that there is an inadequacy of coordination betwe
this effort and the efforts of the Equal Employment Opportunity Co
mission. And in view of the fact that the Chairman of the Civil Righ
Commission himself made this point, I thought that the best way
handle it if the amendment succeeded, as it has, was to create so
kind of high-level agency, not in a money sense or an institutional sen
but as a body to ride herd on this particular proposition.

So I announced during the debate on the amendment of the Senat
from Ohio (Mr. Saxbe) that I would make this proposal. I hope ver
much that under the circumstances of the amendment having bee
adopted it will be found acceptable to both sides. I do not feel that
is an oppositional thing at all; I think it will help both sides to de
with the situation.

Finally, all of us are, I think, agreed on the question whether th
administration of this particular office by the Department of Labo
has left very much to be desired. The Secretary of Labor himse
recognizes that. I read into the Record the letter which he wrote
me, in which he proposes really to shake up this whole office. I thin
that may have been a matter of influence in respect of how Senato
voted. I believe that the office of a high-level council, accountable
the country, will give us a greater sense of assurance that the def
ciencies which the office has admittedly had may be more likely to b
corrected by the composition of the Council, because of the equal voi
of the Secretary of Labor, in whose office it now is, as well as of th
coordinating functions of the Chairman of the Equal Employmen
Opportunity Commission and the corrective functions of the Attorne
General and of the Chairman of the U.S. Civil Rights Commissio
who did recommend the transfer.

For all these reasons, I hope very much that the amendment, in vie
of the adoption of the previous amendment, will be adopted with th
consent of both sides; I yield the floor.

Mr. Randolph. Mr. President, will the Senator yield?

Mr. Javits. I yield.

Mr. Randolph. As I understand, the able Senator from New Yor
is saying, in essence, that in no wise would this be a competitive ap
proach; it would be an approach of coordination, with certain func
tions allotted to the several agencies mentioned.

Mr. Javits. I would take the first statement completely—that it
in no wise a competitive approach; it is a question of coordination. I
is not even an allotment of functions. The functions will stay with th
office in the Department of Labor. But at least we will have the securit

knowing, first, that it is effectively tied into the Equal Employment
pportunity Commission; and second, that someone on a high level
ll be riding herd, to see to it that the office is really effective where
is.

Mr. Randolph. I think the purpose of the amendment is excellent.
one who supported the Saxbe amendment, I certainly intended to
pport the effort of the distinguished Senator from New York.
It is critical that employers be in a position to rely on a coordinated
vernment position on all matters, not the least of which is equal
ployment opportunity. It is just as vital to employees who feel that
y have been subjected to discriminatory employment practices that
relevant agencies of government coordinate their efforts. It is also
ar that the Government's effectiveness can be improved significantly.
elieve the amendment offered by the distinguished Senator from
w York (Mr. Javits) will help achieve these objectives.

Ir. Javits. I thank the Senator from West Virginia very much. I
e the amendment will be accepted, because I think it is almost
ically dictated by what we have previously done.

Ir. Williams. Mr. President, will the Senator from New York
ld?

Ir. Javits. I yield.

Ir. Williams. The amendment would create an Equal Employment
portunity Coordinating Council made up of the Secretary of La-
, the Chairman of the Equal Employment Opportunity Commis-
n, the Attorney General, and the Chairman of the U.S. Civil Rights
mmission.

Ir. Javits. The Senator is correct.

Ir. Williams. Or their respective delegates.

Ir. Javits. The Senator is correct.

Ir. Williams. I merely wanted to inquire about the term "their
pective delegates." I am wondering whether we should name the
ncy or department and require that a delegate be the representa-
of the office. The delegation at this point somewhat disturbs me.
ave the feeling, frankly, that I would rather not see someone out-
of the Civil Rights Commission be the delegate of the Chairman
he U.S. Civil Rights Commission.

Ir. Javits. There are no hidden motives in the amendment. I would
as soon strike that part. My purpose was to use my best recollec-
n, because I had to write the amendment rather quickly. I had no
portunity to use what we consider "boilerplate." If the Senator's
stant or mine can give us the usual "boilerplate" in this regard, I
uld be glad to use it. There is no desire to add another dimension
he amendment. We do not do it in other cases of high level inter-
artmental committees.

The amendment will be in conference, and the Senator from New
sey and I will be conferees. My suggestion is that we work out there
atever is agreeable and convenient to the officials concerned. The
pose and intent of the amendment is to have attendance at the
hest level. Unless the officials object very seriously, it would be
with me if they are required to attend.

am just concerned about doing this in the first instance, as I just
not know. But I would assure the Senator that I will join with
in conference in making it entirely agreeable to the officials. If
y are willing, we will strike out the reference to any delegation.

Mr. WILLIAMS. Of course, the Senator from New York has put finger on my concern. It should be focused at the highest level.

Mr. JAVITS. I thoroughly agree, and I will join with the Senator doing whatever is necessary for that purpose.

Mr. WILLIAMS. That is agreeable to me.

Mr. JAVITS. I am ready to yield back my time.

Mr. WILLIAMS. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. EASTLAND. I ask for the yeas and nays.

The yeas and nays were not ordered.

Mr. JAVITS. Mr. President, may I ask the Senator from Mississip a question? I shall not take more than 2 minutes.

Does the Senator from Mississippi desire the yeas and nays? Th will be fine with me, although I do not think there is any real disagre ment. I am willing to let the question be decided on a voice vote.

Mr. EASTLAND. I simply wanted to be recorded as voting "No."

Mr. JAVITS. Then, I think, the Senator is so recorded.

The PRESIDING OFFICER. The question is on agreeing to the amen ment of the Senator from New York (putting the question).

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by whi the amendment was agreed to.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quoru

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous conse that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SAXBE. Mr. President, I ask unanimous consent that the vote which my amendment was agreed to be brought up for reconsideratio

The PRESIDING OFFICER. Without objection, the Senate will consid the motion to reconsider.

Mr. BYRD of West Virginia. I move to lay that motion on the tab

The PRESIDING OFFICER (Mr. JAVITS). Is there objection? The Cha hears none. The motion to reconsider is in order, and the Senat from West Virginia has moved to table that motion. The question on agreeing to the motion to table (putting the question).

The ayes appear to have it; the ayes have it, and the motion to tab is agreed to.

Mr. BYRD of West Virginia. Mr. President, why was unanimous co sent needed to enable the distinguished Senator from Ohio to move reconsider the vote on this amendment?

The PRESIDING OFFICER. The Chair understands that it was n needed.

Mr. BYRD of West Virginia. Mr. President, in support of the pre dents, I should like, with the Chair's help, to clarify that matter: it my understanding that only if another amendment to the pending b is before the Senate at the time is unanimous consent required.

The PRESIDING OFFICER. The Senator from West Virginia is corre and that is the rule.

Mr. BYRD of West Virginia. I thank the Chair.

Mr. JAVITS. Mr. President, apparently the amendment which I pro-sed, and which was adopted, requires a technical correction, in that section to which it had reference had been stricken by the Saxbe endment, and my amendment did not refer to that.

I ask unanimous consent that, preceding the action on the amend-nt which I have just had adopted, the following words be inserted:

ection 10. Section 715 of the Civil Rights Act of 1964 is amended to read as ows:

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) ill to further promote equal employment opportunities for Amer-n workers.

AMENDMENT NO. 597

Mr. ERVIN. Mr. President, I call up my amendment No. 597.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk proceeded to read amendment No. 597.

Mr. ERVIN. Mr. President, I ask unanimous consent that further ding of the amendment be omitted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I modify my amendment so that it will d as follows:

On page 61, after line 23, insert the following new section:

EC. 10. No Government contract, or portion thereof, with any employer, shall lenied, withheld, terminated, or superseded, by any agency or officer of the ed States under any equal employment opportunity law or order, where such loyer has an affirmative action plan which has previously been accepted by Government, without first according such employer full hearing and adjudi-on under the provisions of 5 U.S.C. section 554 and the following pertinent ion: *Provided, however*, That if such employer shall deviate substantially n such previously agreed to affirmative action plan, this section shall not apply.

The PRESIDING OFFICER. Does the Senator request that this modifi-on be made?

Mr. ERVIN. Mr. President, I believe I can modify my own amend-nt.

The PRESIDING OFFICER. That is correct.

Mr. ERVIN. I modify my amendment to read as I have stated, and d the amendment to the desk in that form.

I have had many complaints from employers seeking Government tracts that, after long negotiations with the Office of Contract Com-ance of the Department of Labor, they have filed affirmative action ns in full compliance with all of the suggestions made by the Office Contract Compliance and that such affirmative action plans have n approved by the Office of Contract Compliance, and that after all se procedures have been complied with, the Office of Contract Com-ance, without any warning or any notice of any further opportu-y to be heard, has refused to approve the contract sought by those loyers.

This amendment would merely give some semblance to fair play in es where employers had filed and had approved by the Office of ntract Compliance an affirmative action plan, and provide that er it had approved it the Office of Contract Compliance could not

reject that plan without giving the employer an opportunity to
heard under the Administrative Procedure Act.

The amendment safeguards the Office of Contract Compliance
providing that if there is a substantial deviation from the approv
affirmative action plan, this section, which gives the employer in su
cases the right to a hearing and adjudication under the Administ
tive Procedure Act, does not apply.

It seems to me this is a fair amendment and that it ought to be su
ported by any Senator who believes in fair play under those circu
stances. I sincerely hope the Senate will adopt it.

Mr. WILLIAMS. Mr. President, as I heard the amendment stated
thought I heard the word "superseded," so that the amendment wo
read:

No Government contract, or portion thereof, with any employer, shall be
nied, withheld, terminated, or superseded, by any agency . . .

I believe the word should be "suspended."

Mr. ERVIN. Suspended. I will modify the amendment and chan
the word from "superseded" to "suspended."

Mr. WILLIAMS. Then, as I understand the amendment, it brings t
Administrative Procedure Act due process provisions to bear wh
there is an action to cancel a contract and an affirmative action pl
is already in effect with that employer.

Mr. ERVIN. That is the objective.

Mr. WILLIAMS. That is the objective of the amendment.

Frankly, it strikes me as an eminently fair requirement where
employer is working under an agreement for affirmative action. T
kind of suspension could sweep away his contract even though
thought he was complying.

Mr. ERVIN. That is correct. It affords an escape value for the Offi
of Contract Compliance by providing that this provision is not bin
ing on the Office of Contract Compliance in the event the employ
substantially departs from the agreed to affirmative action plan.

Mr. WILLIAMS. That is the objective—provided, however, that
such employer shall deviate substantially from such previously agre
to affirmative action plan, this section—which is the amendment
shall not apply.

It strikes me on its face as a fair procedure.

We have no testimony on it, I will say to the Senator from Nor
Carolina, and no opinions from departments or agencies or otherwi
So it comes de novo, but as it comes de novo, it comes with some effe

I know the Senator from New York, with the best of his good leg
mind, is at work on this amendment at the moment, and so I will yie
to the Senator from New York.

Mr. JAVITS. The Senator can practically see my wheels turning.
he can see the wheels of the Senator from North Carolina turning.

There are a few questions I would like to ask the author of t
amendment, if he will indulge me. By the way, we are checking up
the question of whether this may not be attributable to the very sa
section I dealt with, but that will not matter. I will agree with t
Senator about writing it so that it will conform to the amendme
which was offered by me.

Mr. ERVIN. I tried to conform it. It may be that it deals with t
same section. I think we can straighten that out by applying it to t
same subsection.

Mr. Javits. We do not have any problem, but I wanted to ask the nator a couple of questions.

There are two things which strike me at first impression, and again, the Senator from New Jersey (Mr. Williams) said, it is new mat-, first impression, so I hope the Senator will not feel I am just en-ging in supererogation. I really do not know.

The Senator speaks, in line 5, of an affirmative action plan. It would m to me that in order to have it appropriate, the words "in effect" ould appear after the word "plan." I do not know whether these ns are limited in time or what is the situation, just off the top of my d, but I certainly believe that it would be necessary to have a plan going at the time, rather than merely qualifying under this section ause at one time there was an agreement.

Mr. Ervin. If they have a plan that has been approved by the Office Contract Compliance, it has been approved and there it is, it would in effect.

Mr. Javits. Not necessarily, because if it had a time limit, and that e limit had expired, it would still be an affirmative plan which had n approved, but might not be in effect.

t just strikes me as a lawyer that we ought to include the fact that as been an ongoing plan.

Mr. Ervin. I think it is implied that it is in effect, but the trouble it is, if we put that word in there, it may be construed to give them right to repudiate, and get them back to the very position that the endment is intended to safeguard the man against.

Mr. Javits. I do not see how that could happen, because the initia-y action is on the part of the employer; he can demand a hearing.

n other words, the Government is in a position where, if he gets a ring, that operates this section. But all I am saying is, I think we ght to be protected against that situation.

Mr. Ervin. Well, here is the difficulty: The Office of Contract Com-nce has been approving plans, time after time they approve a plan l then, after approving the plan, they refuse to give a man a con-ct based on the plan that they have approved.

The objective of the plan is to prevent discrimination, and all this s is that after they have approved a plan, they cannot deny the n the contract as long as he is willing to comply with it, and it gives man the right to go into court and let the court decide whether plan that has been approved by the Office of Contract Compliance, ich they seek to repudiate, complies with the provisions of the Ex-tive order or the provisions of the law outlawing discrimination.

The trouble is that under the present circumstances you cannot sue the courts because when you offer to give a contract it is not ap-ved; and this is an effort to give some legal remedy where the com-nce contract has been approved by the agency, and then the agency ks to repudiate it. It is to try to get out from that arbitrary prac-which they now have.

have many complaints about this. The trouble with the Office of ntract Compliance, so I have been informed by many employers, is t they will never put in writing what they require, but they make employer come and put his plan in action, and then they either ept it or repudiate it. This ends repudiating it after they have ac-ted it, and gives him a legal remedy, and allows the court to say

whether the contract complies with the Executive order and the l
instead of leaving that matter to be determined solely by the O
of Contract Compliance.

Mr. JAVITS. Well, Mr. President, there is nothing which the Sena
has stated which, it seems to me, answers the point which I make,
less he says that by implication, though I do not know where it ari
it must be a plan, to wit an affirmative action plan, which is in effe
because if the contracting agency, in making and approving the pl
has limited the time of its approval—suppose, for example, that
making and accepting the plan and approving the plan, they s
"We approve it for 1 year" or "We approve it for 2 years," after
expiration of that time, certainly, I would expect that the mover
the amendment does not expect this section to be effective if the ti
of approval given to the plan has expired.

That is all I am asking. In other words, that it is an affirmative act
plan that is in effect.

Mr. ERVIN. The trouble of it is, since the Office of Contract Co
pliance is the one that makes the contract, they can say, "We have
cided that we have changed our mind, and although we have appro
this in the past as a sufficient compliance, we now change our mind a
demand that you submit another plan"; and if we have "in effect."
is implied that this whole arbitrary power of changing the rules
compliance will be perpetuated.

Mr. JAVITS. As I understand the Senator, then, he expects that g
ernment agencies will be forever bound, without any opportunity
change any kind of plan with any contractor, once they have act
Under those circumstances, they would never approve a plan; th
would be foolish if they did.

Mr. ERVIN. Well, they have to approve a plan.

Mr. JAVITS. If they would approve something more permanent th
the Constitution of the United States, which is what the Senator
arguing for; if, once they approve the plan, that is the end of it forev
and ever, I just cannot see that.

Mr. ERVIN. No; the amendment does not provide that. It says th
once they have approved a plan, the Office of Contract Complian
cannot repudiate its approval, but, instead of having them repudi
it, once they have approved it, the matter is for the courts to deci

Mr. JAVITS. I am glad to get that construction. Then the amen
ment says that once they have granted approval, it is approval f
ever and ever unless otherwise ordered by the courts. I could not a
prove it on that ground.

Second, Mr. President, I asked the Senator whether it is his int
tion, and I gather from the language that it is, that nothing may
done about the contract whatever under such a plan—which is, incide
tally, a "forever plan"—without an extended court proceeding, o
court proceeding, no matter how long it takes, even if successful a
peals to the U.S. Supreme Court may take years—no limitati
whatever upon the time taken in respect to court adjudication a
hearing, et cetera. Is that not true?

Mr. ERVIN. Yes; if you have a legal remedy afforded a man. I
not know how you can take it away.

Mr. JAVITS. That is all right. I understand.

Mr. ERVIN. I just do not believe in arbitrary action. Under the sent circumstances, the Office of Contract Compliance has the ar- rary power to deny a man a Government contract, even though the n is complying fully with the Executive order and the law. It de- s access to the courts, and gives to the Office of Contract Compliance rbitrary power which any absolute eastern potentate would envy.

Mr. JAVITS. Mr. President, I do not see that the amendment of the ator gives the courts an opportunity to review an affirmative action n, that is, make a judicial review of an affirmative action plan, at time that such a plan takes effect, or at any time that it is effective. What I see is that there is an absolute mandate, without any possi- ty of it even being changed by the court itself, that so long as e are legal proceedings pending, no matter how dilatory they be in the conduct of them, nothing may be done about that con- t.

n that basis, Mr. President, I think the prejudice is very strongly nst the enforcement of the law; it gives any contractor an oppor- ty just to make the claim, he need prove nothing else; then he into court, and just as long as he takes, he takes, and no penalty tever ensues.

hat is a pretty easy deal for anybody who wants to break his mative action plan, or has a disagreement about what it means, there is no penalty whatever—to just take it to the courts and keep it there. We certainly have a great deal of experience with court cases. If that is the construction of the amendment, I ld feel, in conscience, that I would have to be very strongly nst it. I would have no reason to be against an amendment to give cial review.

o simply suspend any possibility of action of any kind during the duct of legal proceedings—I cannot conceive of that as being con- ve to fair enforcement of the law, and I shall oppose the amend- t.

r. ERVIN. Mr. President, if this amendment is not adopted, the e of Contract Compliance of the Department of Labor has arbi- y, tyrannical power that cannot be reviewed by any court on the of the earth. If they can deny due process, they can deny hearing, no power on the face of this earth can interfere with them, even gh the affirmative action plan which the office has approved is in compliance with the law and would be so adjudged by a court of under the Administrative Procedure Act.

think that every Member of the Senate who does not think the thouse door should be totally nailed shut and the Office of Con- t Compliance given power which nobody on earth can review, as whether it is in compliance with the law, ought to vote for this ndment.

r. WILLIAMS. Mr. President, will the Senator yield for a question?

r. ERVIN. I yield.

r. WILLIAMS. On line 5 of the Senator's amendment, it reads ere such employer has an affirmative action plan." The word "has" gests the present tense to me, and that suggests an affirmative ac- plan that is in effect.

r. ERVIN. That is right.

Mr. WILLIAMS. I thought that was one of the questions that
Senator from New York asked. I thought he was suggesting that th
was a possibility that under this amendment there could have be
former affirmative action plan but one that was not in effect at the
ment when a contract might have been denied or suspended.

Mr. ERVIN. I think the Senator's interpretation is absolutely corr
It must have been approved by the Office of Contract Compliance
must be in existence.

Mr. WILLIAMS. That clarifies that part of it for me.

The other question I have is as to the impact of the words "un
the provisions of Title 5, United States Code, section 554, and the
lowing section thereto." The Senator from New York was develop
the suggestion that action on a contract could be held up follow
long, long court procedures. Is this a procedure going to court o
this the hearing——

Mr. ERVIN. It would go to the court on the record already made
the Office of Contract Compliance.

Mr. WILLIAMS. These are the Administrative Procedure Act p
visions of an administrative hearing?

Mr. ERVIN. Yes; all the court would have the power to co
sider would be the record already made in the Office of Contr
Compliance.

Mr. WILLIAMS. On another matter, we were on other sides of
issue of the dignity of an administrative hearing, and I wanted
clarify that. But that refers to the Administrative Procedure A
agency hearing, with all its provisions.

Mr. ERVIN. Yes; so there cannot be anything very long about th
They already have in writing all the evidence that can be consider

Mr. JAVITS. Mr. President, the section 554 hearing, which I have
even had a minute to check out, assuming even what the Senator sa
which is set up in the appendix to our own report—I do not kn
whether it is complete or partial here—represents an adjudicati
which relates to an agency proceeding.

Those cases can take years, and there is no way, if we adopt th
amendment and leave it this way, in which that process can
changed. A man might be able to go on violating as much as he lik
so long as he claims he is not.

Mr. President, I have just stood with leaving OFCC in the Depa
ment of Labor, and that is why it is my duty to question this amen
ment. I want to find out if it would nullify or put in the hands of a
contractor the ability to nullify any effort to really get a remedy. O
other thing: The proviso at the end says:

Provided, however, that if such employer shall deviate substantially fr
such previously agreed to affirmative action plan, this section shall not apply.

In other words, if the agency is trying to penalize him becau
he has deviated, then he is home free under this amendment, and t
only time he can be dealt with is if he shall deviate after he says
did not deviate; and the previous transaction is completely ov
looked, if you follow the words of this amendment.

So, Mr. President, under these circumstances, I respect the Senat
from New Jersey—he has had this matter under first impression,
have I; but I could not be a party to accepting the amendment wit
out further study, especially in view of the good faith involved

just having adopted an amendment which leaves the authority in the Department of Labor. I certainly could not see my way clear to, in my judgment, just emasculate it by this amendment.

Mr. ERVIN. Mr. President, I can understand the Senator from New York favoring nailing the courthouse door shut. But it would mean injustice because of nonreviewable arbitrary exercise of power by a public official. It is a very peculiar position for a lawyer of his distinguished record to take.

These contracts are referred to the Office of Federal Contract Compliance for only one purpose. Otherwise, the contracts are worked out by the other agencies of the Federal Government. They are referred to the Office of Federal Contract Compliance merely for the purpose of affording that office an opportunity to determine whether the affirmative action plan which is required is in compliance with the laws, the Executive order, and the regulations prohibiting discrimination in employment. That is the only function of the Office of Federal Contract Compliance in the matter. Here they approve an affirmative action plan. They say it is in compliance with the laws, the Executive order, and the regulations. All this says is that after they have approved, they cannot repudiate the approval without affording the employer who has satisfied the other agencies of Government with the terms of the contract the opportunity to have the question determined, not by arbitrary action on the part of an executive office but by a court of justice.

With all due respect to my good friend from New York, the contention that there will be any protracted litigation in a case of this kind is absurd. That is so because that court hears the matter and determines whether there is sufficient compliance with the laws, the Executive order, and the regulations prohibiting discrimination. It has to hear it and determine it on the record. Otherwise the Office of Contract Compliance can dictate and lay down terms that are absolutely inconsistent with the laws, terms which are inconsistent with the Executive order, and inconsistent with their own regulations on the subject. American citizens who have supported this Government by their taxes are powerless and have no remedy this side of heaven.

Thus, Mr. President, I hope that the Senate will adopt the amendment and I suggest the absence of a quorum so that we can get a roll-call on it.

The PRESIDING OFFICER (Mr. Schweiker). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, in my judgment, the import of the amendment—and that is the reason I oppose it at this time and perhaps will propose a substitute to it—will not have the effect of fairly and equitably getting a judicial review of a contested situation where an individual government contractor feels that he is being imposed on notwithstanding the fact that he is complying with the affirmative action plan which is in effect.

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Now the distinguished Senator from North Carolina (Mr. Ervin) argued that the words which he used, "has an affirmative plan which has previously been accepted by the Government," complies in effect with what was told the distinguished Senator from New Jersey (Mr. Williams), but with me, he denied that. He says, once there had been affirmative action, then there was affirmative action forever. That is one of the things I cannot accept.

Second is the proviso which is tacked on at the end here which says that "if such employer shall deviate substantially from such previously agreed to affirmative action," thereby reiterating the point which the Senator certainly would not concede, in my judgment, but which I think has to be conceded in language, in view of the argument about it—to wit, that once the plan is previously agreed to, it remains forever, the plan to which the Government is bound, even though the Government may not wish further to be bound and the plan itself might have a definite time limitation on it which the parties would have a perfect right to insert. The words "shall deviate" also may indicate that whatever has been the violation with which the contractor is charged is forgiven.

It only means that he shall not have the advantage of this section for any future violation. I certainly think that would vitiate the intent of fairness, especially if there is no limitation whatever in the power of any court to terminate this immunity which is granted to the individual contractor once he makes the claim—that is all he has to do. It seems to me that we can then completely nullify the whole enforcement scheme which is incorporated in the Executive order simply by making a complaint that the Government is penalizing us unduly in respect of the affirmative plan that was approved—God knows when—and whether it is still in effect, and then there is no penalty whatever on the contractor of any kind or character and he can get all the Government contracts he wants.

That certainly is making a real mockery of the whole idea that the Government will have any authority to enforce its Executive order. It is entirely possible—and I do not say that it is not—perhaps to put this particular proposition—although it is one of first impression—into shape, because we do not even know right now, and I do not know and I cannot represent to the Senate whether it is or is not any right of judicial review in respect of this matter at this time. This is a very important question so that we may at least juxtapose the remedy which is sought here with the remedy now in effect. Therefore I really want a little while to have a good look at this. It may be possible to work out an amendment, or by amending the amendment, or by agreement with the Senator from North Carolina which will make a fair disposition of this matter. I have every desire to do so, but I am not going to be rushed into acting on this matter up or down without having some opportunity to see what should be done about it.

For that reason, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. LEHMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I ask unanimous consent that amendment No. 957 be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I call up amendment No. 819, offered by the senior Senator from North Carolina (Mr. Ervin) and myself, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 59, strike out lines 23, 24, and 25.

On page 60, strike out lines 1 and 2; and reletter subsections (f), (g), and (h) of section 8 appropriately.

Mr. BYRD of West Virginia. Mr. President, will the distinguished Senator from Alabama yield?

Mr. ALLEN. Yes, I am glad to yield.

Mr. BYRD of West Virginia. It is my understanding that the distinguished Senator from Alabama is willing to enter into a limitation of 40 minutes on the amendment, to be equally divided between the mover of the amendment and the manager of the bill. Is that agreeable?

Mr. ALLEN. Yes.

Mr. BYRD of West Virginia. Mr. President, I shall withhold my request momentarily. I thank the Senator from Alabama for yielding.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, the amendment seeks to strike from the bill words that were added by the committee to the bill as a proposed addition to the present law. These are the words which the committee seeks to enact and the amendment seeks to prevent from becoming law. The Commission is given the authority—

And to accept voluntary and uncompensated services, notwithstanding the provisions of Section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

What is that section of the code from which the committee substitute seeks to exempt the EEOC? The present law, going back to the year 1870, in the section cited:

No officer or employee of the United States shall accept voluntary service for the United States or employ personnel service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property.

I was not on the committee which brought forth this substitute, but I have read some of the hearings, and I did not come across any testimony in the hearings. I am not saying that some testimony was not there that I did not see, but I would invite the manager of the bill to cite to me those pages. I do not see one single bit of testimony in favor of this language that seeks to give the Commission the authority to accept voluntary and uncompensated service from individuals.

What is the purpose of this language? Why should the EEOC come out from under the law that applies to every other Federal agency in the country? So far as the junior Senator from Alabama knows, no agency, no branch of the Government, is authorized to call in hordes of individuals off the streets and, in effect, to accept their services and give them the power, the authority, and the indicia of office as Federal employees. Obviously, there would be no volunteers unless the persons volunteering were biased or prejudiced or had some ax to grind. Why would they come forward and volunteer to work for the EEOC? There

is no reason in the world, except that they would have an ax to grind. They would have a prejudice or a bias, or else they would not offer their services. They would not offer their services to any other branch of the Government, so far as the junior Senator from Alabama is concerned.

Furthermore, Congress is supposed to have the power to circumscribe or to limit the power, the authority, and the scope of the work of any agency of Government by controlling the amount of money appropriated to that department or agency. But in this instance the EEOC would have the authority, unless this amendment shall be adopted, to accept the voluntary and uncompensated services of hundreds of thousands of people—people with prejudices, people with biases, people subsidized by interested organizations, people subsidized by foundations which have an interest in carrying on this work.

So, Mr. President, the EEOC might have 1,000, 2,000, 3,000, or 4,000 Federal employees on the payroll, but there would be nothing whatsoever in the absence of this amendment, to prevent the EEOC from availing itself of the services of tens of thousands of individuals who would be sent out over the country like a swarm of locusts to harass business and industry—small business, persons employing as few as eight people.

So since the year 1870, according to the footnote to this section, this provision of law has applied to the agencies of the Federal Government—that they shall not have the authority to reach out and get voluntary employees, uncompensated employees, and put them to work.

Does that make sense, Mr. President? Is it not necessary for a Federal employee to pass a civil service examination? Is it not necessary that some check be made as to his reputation, his loyalty to the Government, his educational qualifications, his personality, his fitness for Government employment?

But, under this committee substitute, Mr. President, which we are seeking to change by this amendment, no check need be made, and the agency could become a colossus, a Frankenstein, of volunteer and uncompensated employees, uncompensated so far as the Government is concerned.

Who would be paying these uncompensated employees and volunteer employees? Not the Federal Government, but someone having an interest in seeking harassment of business and industry and of employees and employers.

Mr. Prsident, all the amendment seeks to do is to take out the language that has been added by the committee. I showed this language to a distinguished member of the committee just the other day. He said:

I was on that committee and heard the hearings. I did not know we had a section like that in the bill.

A very learned member of the committee, a very able Member of the Senate, said:

I had no idea such a section was in the bill.

I hope the manager of the bill will accept the amendment; that he will not insist on taking out the provisions of law which prohibit the use of uncompensated and voluntary employees with respect to this one agency of Government.

Why should it stand on any basis higher than the Justice Department? Do they accept volunteer employment? Can any zealous person

come to the Justice Department and say, "I am interested in this activity of the Federal Government and I want to go out as a volunteer worker for the Government"? What would be the liability of the Government for the acts of such employees? Who would be responsible for what they did? Would the Government be liable or responsible for the act of such employees? What would it be?

There must be some reason—and I think we have suggested some of them—why for 100 years there has been a prohibition against the use of volunteer and uncompensated employees by any branch of the Federal Government, and the bill before the Senate would take the EEOC out from under this very fine safeguard against such a practice.

I would be interested in learning from the manager of the bill why this section was put in. Is not the EEOC going to be satisfied with the appropriations made by the Congress? Is it not going to be satisfied to limit its activity to the scope envisioned by the Congress in setting the appropriation? The machinery set up in the committee substitute would give the EEOC the authority to enlarge this department, to enlarge the scope of its activities, 50 percent, 100 percent, 200 percent—any amount of enlargement that it would care to have—through the use of volunteer employees, compensated by someone else, because you can rest assured that they are going to be compensated. They are not going to work for nothing.

Mr. WILLIAMS. Mr. President, would the Senator like me to reply to the question?

Mr. ALLEN. Yes.

Mr. WILLIAMS. Why is this necessary and whether there is enough money to hire the personnel needed? Was that the question?

Mr. ALLEN. No. I asked the Senator to respond to my inquiry as to why the committee put in the provision giving the EEOC the authority to use volunteer or uncompensated employees when no other branch of the Federal Government has that authority and when there is an express provision in the code prohibiting the use of such employees.

Mr. WILLIAMS. I am not sure whether that is accurate as to any other agency.

Mr. ALLEN. There is a law on it.

Mr. WILLIAMS. I know, but there are exceptions made for other agencies. My understanding is that Title VII, when enacted in 1964, said that the Commission shall have power to cooperate with, and with their consent utilize, regional, State, local, and other agencies, both public and private, and individuals. Under this provision, individuals were used who were volunteers. Some question was raised and, in order to insure that volunteers could be used in limited circumstances, this provision was put in the bill, as we had it 2 years ago. It was preserved in this bill. It was in the bill that we voted on and which passed the Senate 2 years ago.

Mr. ERVIN. Is the Senator saying this is not new language?

Mr. WILLIAMS. It was in the bill as introduced.

Mr. ERVIN. The committee report shows otherwise, Senator. It is in italic, which indicates that it was inserted.

Mr. WILLIAMS. While this is being walked over to the Senator, I could say that the following is the situation: This could be called the

Johnny Cash amendment in the bill. This provides that a Johnny Cash or a Bill Cosby who wants to use his talent to deal with the idea of equal opportunity in a song, or prose, or poetry, can do so however he wants to: "You fellows have an Equal Employment Opportunity Commission and, if you are being denied, that Commission is there on your side." That is what it is.

That is what it is. It is the Bill Cosby provision of the EEOC bill that is before us.

Mr. ALLEN. Well, now, if the Senator would allow me to engage in a little colloquy with him on this point, was there any testimony before the committee as to the desirability of putting this section or this language in? If so, I would like him to cite it to me.

Mr. WILLIAMS. I do not know that it was formalized in the hearing, but certainly the information reached us that a question had been raised about the procedure being used by the Commission, and to clarify it so there would be no mistaking the authority, this language had been put in, and it was put in when we drafted the bill, yes.

Mr. ALLEN. So the committee decided, then, that it would be necessary to take them out from under the provisions of the code forbidding that practice, is that correct?

Mr. WILLIAMS. To make it clear that volunteers could participate yes.

Mr. ALLEN. Who pays these volunteers? Would the Senator enlighten the junior Senator from Alabama on that question? Do they have any volunteers from industry or business?

Mr. WILLIAMS. I cannot answer that. I would hope so. I would imagine that there are people from the ministry, from business, from entertainment, and just people who might——

Mr. ALLEN. Who think that discrimination exists throughout the country, and they want to cure that evil?

Mr. WILLIAMS. As I understand it, those who have been used have been helpful in publicizing the fact that this country has an Equal Employment Opportunity Commission.

Mr. ALLEN. Who pays those individuals?

Mr. WILLIAMS. That is it. This is to be noncompensated. These are volunteers.

Mr. ALLEN. I understand, but most of them have to eat, I suppose. Who pays them?

Mr. WILLIAMS. Well, now, there are as I understand it, 100 of the major companies, business organizations, which have been combined in the plans for progress organization, have volunteered their people, their names, themselves. Who pays them for this work? Nobody.

Mr. ALLEN. That is to go out and check other industries and businesses, is it?

Mr. WILLIAMS. No, it is not investigation. It is to publicize the fact of the existence of an Equal Employment Opportunity Commission.

Mr. ALLEN. There is nothing in here that would prevent them from doing some investigating, is there?

Mr. WILLIAMS. I beg the Senator's pardon.

Mr. ALLEN. There is nothing in the bill to prevent them from doing anything the Commission wanted them to do, including investigation.

Mr. Williams. Well, there is nothing in there because it is so wholly unlikely. There are many things that are not in there that are obviously not needed.

Mr. Allen. Would the Senator feel that there would be a chance that, through the use of volunteer uncompensated-by-the-Commission employees, it would be possible for the Commission to double its size without coming to Congress?

Mr. Williams. No.

Mr. Allen. Why not?

Mr. Williams. Because it would violate every reason known to man. That is why.

Mr. Allen. The Senator said 100 industries were turning their employees loose. How many from each industry?

Mr. Williams. As I have seen it work, a vice president may be assigned to this worthy, worthy activity, without major staff, but he, with his commitment and with the backing of his company, will come to the activity and publicize its support of the work of the Equal Employment Opportunity Commission.

Mr. Allen. How many employees does the EEOC have now, does the Senator know?

Mr. Williams. At this point?

Mr. Allen. Yes.

Mr. Williams. The last figure that reached me was just over 1,000 employees.

Mr. Allen. Well, how many does the Senator feel it would take to carry on the expanded work, the expandoed scope of the Commission, if this bill passes as it now stands?

Mr. Williams. Well, we have a judgment on that out of the hearings—and I believe it is stated in the committee report. Page 32 shows the estimate of costs, and that could be, with the employees we have now, the increase could be, roughly estimated, it would be an increase over the years projected—1972, 1973, 1974, 1975, 1976—it would be an increase, over the next 4 years, doubling the number of employees. With the 1,000 now, it would be 2,000 then. That is an estimate.

Mr. Allen. The Senator would not feel it would be possible for the Commission to utilize another 2,000 from the ranks of volunteer and uncompensated employees?

Mr. Williams. Well, I do not know where—I think it is most unreasonable to assume that there is any possibility of that. In fact, it is just plain unreasonable to think in those terms.

Mr. Allen. Could the Senator say how many volunteer employees the commission is using now, without the sanction of this section?

Mr. Williams. Well, the major -the area of greatest impact is one man and his talents: the entertainer, Bill Cosby.

Mr. Allen. I understood the Senator to say there were 100 industries.

Mr. Williams. One hundred businesses have been associated, and I think it is high-level executives; I have already estimated that at 100.

Mr. Allen. One hundred businesses, but how many from each business?

Mr. Williams. That is on a part-time basis. I would say, on a strictly part-time basis, as I have observed it, for every vice president, there may be three people working with him, and it is obviously not full time.

Mr. ALLEN. That would be about 300, then? Three for each one of the businesses?

Mr. WILLIAMS. If it were 100, and they each had a total of three, that would add up to 300.

Mr. ALLEN. Under the present law, though, they are not taken out from under this section of the United States Code, are they?

Mr. WILLIAMS. No.

Mr. ALLEN. Yes. Now, if it is 300 without any sanction of law, then without any bill taking them out from under the Code section, there would be no limit to the number of voluntary employees that they could use. Is that correct, there would be no limit?

Mr. WILLIAMS. Well, there is not any limit in the bill as it applies itself, no.

Mr. ALLEN. No. What would these people be? Would they be Federal employees, or what would their status be?

Mr. WILLIAMS. I beg the Senator's pardon.

Mr. ALLEN. What would the status of these voluntary persons be? Would they be Federal employees?

Mr. WILLIAMS. No.

Mr. ALLEN. They would not be Federal employees?

Mr. WILLIAMS. If the president of United States Steel wanted to voluntarily make an announcement of his association or his company's association with the objectives of the Equal Employment Opportunity Commission, that would be permitted under this act.

Mr. ALLEN. Yes. Well, now, if the Southern Christian Leadership Conference wanted to furnish the EEOC with 200 or 300 volunteer employees to go out over the country working on this project——

Mr. WILLIAMS. Which project?

Mr. ALLEN (continuing). They could be accepted, could they not?

Mr. WILLIAMS. Well, what is the project? Which project?

Mr. ALLEN. Well, the matter of bringing equal economic opportunities to the people in the country. That is what the bill is for, is it not? That is what I understood.

Mr. WILLIAMS. Does the Senator mean to publicize and——

Mr. ALLEN. I do not know what they would do. They could investigate if they wanted to.

Mr. WILLIAMS. No, no, no, these are not investigators by any means.

Mr. ALLEN. Where does the bill say that?

Mr. WILLIAMS. These are not employees. The law provides for the employment of people, and the employment of people for all of the procedures of this Commission. Volunteers are not to go to court or to investigate.

Mr. ALLEN. Where does the bill say that? The bill does not say that. They want to get 10 attorneys in the General Counsel's office.

Mr. WILLIAMS. It is in the report, and that does not have the force of law. I would be happy if the Senator would want to offer another amendment to further define the volunteer.

Mr. ALLEN. No. I would rather eliminate the entire section.

I yield the floor, Mr. President.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Byrd of West Virginia. Mr. President, I ask unanimous con-nt that the order for the quorum call be rescinded.
The Presiding Officer. Without objection, it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515), a ill to further promote equal employment opportunities for American orkers.
Mr. Allen. Mr. President, I ask for the yeas and nays on the amend-ent.
The yeas and nays were ordered.
Mr. Ervin. Mr. President, I rise in support of the amendment. I think it is repugnant to the first principle of sound government allow volunteers to exercise governmental power. The provision hich the amendment—which has been ably discussed by the distin-ished Senator from Alabama—seeks to strike is found on the last ree lines of page 59, lines 23, 24 and 25, and the first two lines of ge 60. This provides that the Commission can accept voluntary and compensated services notwithstanding the provisions of section 49(b) of the revised statutes.
I respectfully submit that it is extremely unwise for a commission, hich is charged with the performance of a judicial function and hich exercises the power of judges, to have the assistance of volun-rs who are so biased in favor of the enforcement of the law that they willing to work for nothing, provided they are allowed to exercise vernmental functions and assist a commission that is supposed to sit n impartial judge of a cause.
For these reasons, I think the amendment of the Senator from Ala-ma should be adopted and that the Commission should not be accept-the services of biased people whose bias prompts them to volunteer ir services. I think it is essentially incompatible with sound govern-nt for nongovernmental officials to be performing a governmental nction. This provision should be stricken from the bill.
The Presiding Officer. The question is on agreeing to the amend-nt of the Senator from Alabama. On this question the yeas and nays ve been ordered, and the clerk will call the roll.
The legislative clerk called the roll.
Mr. Byrd of West Virginia. I announce that the Senator from New xico (Mr. Anderson), the Senators from Nevada (Mr. Bible and . Cannon), the Senator from Mississippi (Mr. Eastland), the Sena-from Minnesota (Mr. Humphrey), the Senator from Washington r. Jackson), the Senator from Massachusetts (Mr. Kennedy), the ator from Washington (Mr. Magnuson), the Senator from Maine r. Muskie), the Senators from Rhode Island (Mr. Pastore and Mr. l), the Senator from Illinois (Mr. Stevenson), and the Senator m California (Mr. Tunney), are necessarily absent.
On this vote, the Senator from Mississippi (Mr. Eastland) is paired h the Senator from Washington (Mr. Magnuson). If present, and ing, the Senator from Mississippi would vote "yea," and the Sena-from Washington would vote "nay."
further announce that, if present and voting, the Senator from ode Island (Mr. Pastore), the Senator from Illinois (Mr. Steven-), the Senator from Minnesota (Mr. Humphrey), and the Senator m California (Mr. Tunney) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (M Buckley) is absent on official business.

The Senator from Arizona (Mr. Goldwater) is absent by leave o the Senate.

The Senator from South Dakota (Mr. Mundt) is absent because o illness.

The Senators from Colorado (Mr. Allott and Mr. Dominick), th Senator from Kentucky (Mr. Cook), the Senator from Maryland (Mr Mathias), and the Senator from North Dakota (Mr Young) are neces sarily absent.

The result was announced—yeas 26, nays 53, as follows:

[No. 13 Leg.]

YEAS—26

Allen	Fannin	Randolph
Bennett	Fulbright	Smith
Bentsen	Gambrell	Sparkman
Brock	Griffin	Spong
Byrd, Va.	Gurney	Stennis
Byrd, W. Va.	Hansen	Talmadge
Chiles	Hollings	Thurmond
Ellender	Jordan, N.C.	Tower
Ervin	Long	

NAYS—53

Aiken	Harris	Moss
Baker	Hart	Nelson
Bayh	Hartke	Packwood
Beall	Hatfield	Pearson
Bellmon	Hruska	Percy
Boggs	Hughes	Proxmire
Brooke	Inouye	Ribicoff
Burdick	Javits	Roth
Case	Jordan, Idaho	Saxbe
Church	Mansfield	Schweiker
Cooper	McClellan	Scott
Cotton	McGee	Stafford
Cranston	McGovern	Stevens
Curtis	McIntyre	Symington
Dole	Metcalf	Taft
Eagleton	Miller	Weicker
Fong	Mondale	Williams
Gravel	Montoya	

NOT VOTING—21

Allott	Eastland	Mundt
Anderson	Goldwater	Muskie
Bible	Humphrey	Pastore
Buckley	Jackson	Pell
Cannon	Kennedy	Stevenson
Cook	Magnuson	Tunney
Dominick	Mathias	Young

So Mr. Allen's amendment (No. 819) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. Bentsen). Mr. President, the question now occurs on amendment No. 597, as modified.

Order of Business

Mr. Byrd of West Virginia. Mr. President, there will be no more
llcall votes today. There will be rollcall votes tomorrow. May I ask
e distinguished senior Senator from North Carolina (Mr. Ervin)
ether it will be agreeable with him and with others concerned—
r. President, may we have order?
The Presiding Officer. There will be order in the Senate so that
can understand the program for the remainder of the day.
Mr. Byrd of West Virginia. Mr. President, the pending amend-
nt, offered earlier by the distinguished senior Senator from North
rolina (Mr. Ervin), was temporarily laid aside. May I inquire
ether the senior Senator from New York (Mr. Javits), the senior
nator from North Carolina (Mr. Ervin), and the manager of the
l would be willing to dispense with any further action with respect
he bill today and proceed with the resumption of morning business?
The amendment of the senior Senator from North Carolina would
ntinue in its temporarily laid-aside status and would be the pend-
question tomorrow.
Mr. Ervin. That is satisfactory.

* * * * * * *

National Commitment To Eliminate Job Discrimination

Mr. Byrd of West Virginia. Mr. President, on September 14, 1971,
ntroduced S. 2515 for the distinguished junior Senator from New
rsey (Mr. Williams) and for 32 other Senators. Although I was
a cosponsor of that bill, I support the bill which is now before the
nate, and I shall vote for it on final passage.
There are some features of the bill with which I am not in com-
te accord. Nonetheless, I hope that the bill can be improved when
conference with the other body.
I do not favor special treatment or special consideration or favored
ployment of any individual on the basis of that person's being black
white, male or female. Nor do I believe that every charge of dis-
nination in employment is valid. In many instances, a charge of
crimination is used as a crutch to cover incompetence and unfit-
s for a particular job. Discrimination is often blamed also for
lure of promotion, whereas in reality, such failure is not because
color but because of conduct.
Notwithstanding what I have just said, the fact remains that
crimination in employment, on the basis of race, does exist, and
crimination against sex does persist. Wherever there is such dis-
nination in employment, it is violative of the Constitution of the
ited States. I believe that, where jobs and promotions are concerned,
ry person should be judged on the basis of his ability to do the
, his willingness to diligently apply himself, his appearance as to
nliness, his attitude, and his personal conduct insofar as speech,
nners, and morals are concerned. In other words, he should rise or
on the basis of merit, not on the basis of race or religion or sex.
ery qualified individual—black, white, or else—should be given an
al chance—not preferential treatment—at employment.
There is no question but that the unemployment rate for Negroes
nsiderably higher than that for whites. Figures available for 1970

show that the unemployment rate for whites was 5.4 percent, whi
9.3 percent of Negroes were unemployed. Likewise, in 1970, the m
dian family income for Negroes was $6,279, while the median inco
for whites was $10,236.

While statistics on Spanish-speaking Americans are not nearly
current or complete, it is interesting to note that in 1969, the medi
family income for Spanish-speaking American families was $5,641.

The situation for working women is no less serious. Women contin
to be relegated to low-paying positions and the rate of advanceme
is slower than for men in similar positions. I am informed that
percent of all employed women work in order to provide primary su
port for themselves or to provide a supplement to the income of the
husbands which may be needed to meet household expenses. Howeve
within established, occupational categories, women are paid less fo
doing the same jobs as are done by men. For example, in 1968, th
latest year for which extensive data are available, the median salar
for all scientists was $13,200, but for women scientists, the media
salary was $10,000. Similarly, the median salary for a full-time ma
factory worker was $6,738, while his female counterpart was pai
$3,991. This economic disparity is further emphasized by figures whic
show that while 28 percent of men earn $10,000 per year or more, onl
3 percent of the women do so.

Discrimination against women is obviously no less serious than an
other prohibitive form of discrimination.

Enactment of this bill will not automatically end employment dis
crimination. Nor do I believe it to be the Federal Government's respon
sibility or function to dictate to every little private employer wha
his employment guidelines should be. The United States Constitutio
does not outlaw discrimination when practiced by an individual per
son. But job discrimination based on race, sex, nationality or religio
cannot be countenanced with respect to the actions of Federal, State
and local governments, or corporations, or even private employer
where a substantial number of employees are concerned.

The bill before the Senate would broaden the jurisdictional coverag
of the Equal Employment Opportunities Commission, and would de
lete the existing exemptions for State and local government employees

The U.S. Attorney General would be given the authority to brin
civil actions involving unlawful employment practices committed b
State and local governmental agencies.

Employees of State and local governments are entitled to the sam
benefits and protections in regard to equal employment as are the em
ployees in the private sector of the economy.

There are presently approximately 10.1 million persons employe
by State and local governmental units. This figure represents an in
crease of over 2 million since 1964, and all indications are that th
number of State and local employees will continue to increase mor
rapidly during the next few years. Few of these employees, however
are afforded the protection of an effective Federal forum for assuring
equal employment opportunity. It is an injustice to provide employee
in the private sector with the assistance of an agency of the Federa
Government in redressing their grievances while at the same time
denying assistance similarly to State and local government employees
The bill before the Senate would provide such assistance.

The Federal Government, with 2.6 million employees, is the single rgest employer in the Nation. The prohibition against discrimination the Federal Government, based on the due process clause of the fifth nendment, was judicially recognized in *Bolling* v. *Sharpe*, 347 U.S. 7 (1954) and cases cited therein.

Minorities represent 19.4 percent of the total employment in the deral Government—15 percent are Negroes, 2.9 percent are Spanish-rnamed, 0.7 percent are American Indians, and 0.8 percent are riental. Their concentration in the lower grade levels indicates that eir ability to advance to the higher levels has in many instances, been stricted.

In many areas, the pattern at regional levels is worse than the na-nal pattern. For example, a particularly low percentage of Federal s are held by Spanish-surnamed persons in areas of high residential ncentration of such persons, particularly in California and the uthwestern States.

The position of women in the Federal Government has not fared y better. While women constitute 34 percent, or approximately ,000 of the total number of Federal employees, 77 percent of the men are employed in jobs which are rated GS 1 through GS 6. enty-two percent are in grades GS-7 through GS 12, and only 1 cent are in grades GS 13 and above. The inordinate concentration women in the lower grade levels, and their conspicuous absence m the higher grades is again evident.

The bill before the Senate should make possible the rectification of h situations wherein discrimination based on race, nationality, or is involved.

Recognizing the importance that the concept of due process places on American ideal of justice, the bill insures fairness to the employer. arges must be in writing. The allegations will not be made public the Commission while it is investigating such, and the Commission l undertake to resolve each matter by informal means before issuing omplaint. Commission hearings must be on the record and will be ered by the provisions of the Administrative Procedure Act so as provide maximum protection to all parties to the proceedings. The pondent would have the right to seek judicial review of a Commis-n decision which rules against him.

believe that the Senate bill will provide the instrument for fulfill-nt of our national commitment to eliminate job discrimination based race, nationality, religion, and sex. I, therefore, will vote for the bill.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1971
Ordered to lie on the table and to be printed

JANUARY 26, 1972
Ordered to be printed as modified.

AMENDMENT

Proposed by Mr. ERVIN to S. 2515, a bill to further promote the equal employment opportunities for American workers, viz:

On page 61, after line 23 insert the following new section:

SEC. 10. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or superseded, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government, without first according such employer full hearing and adjudication under the provisions of section 554, title 5, United States Code and the following pertinent section: *Provided, however,* That if such employer shall deviate substantially from such previously agreed to affirmative action plan, this section shall not apply.

Amdt. No. 597 – (As Modified)

[From the Congressional Record—Senate, Jan. 27, 1972]

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

he ACTING PRESIDENT pro tempore. In accordance with the previous er, the Chair lays before the Senate the unfinished business, S. 2515, ch the clerk will please state by title.

he assistant legislative clerk read the bill by title, as follows:

bill (S. 2515) to further promote equal employment opportunities for Amer- workers.

he ACTING PRESIDENT pro tempore. The pending question is on eeing to the amendment offered by the distinguished Senator from th Carolina (Mr. Ervin), amendment No. 597.

r. BYRD of West Virginia. Mr. President, I suggest the absence of orum.

he ACTING PRESIDENT pro tempore. The clerk will please call the

he second assistant legislative clerk proceeded to call the roll.

r. BYRD of West Virginia. Mr. President, I ask unanimous con- that the order for the quorum call be rescinded.

he ACTING PRESIDENT pro tempore. Without objection, it is so ered.

r. BYRD of West Virginia. Mr. President, will the distinguished ator from North Carolina yield to me?

r. ERVIN. I am delighted to yield to the assistant majority leader.

r. BYRD of West Virginia. I thank the distinguished Senator from th Carolina.

r. President, the yeas and nays have been ordered on the pending ndment by the distinguished Senator from North Carolina (Mr. in). It is my understanding that all sides are about ready for that to occur. Therefore, I take the floor at this time just to alert the rkrooms on the respective sides of the aisle that they may know that vote is about to take place and, in turn, may inform Senators, so they may come to the floor.

r. JAVITS. Mr. President, if the Senator will yield, overnight my f and that of Senator Williams and the staff of Senator Ervin and agencies concerned—to wit, the Equal Employment Opportunity nmission and Government procurement people—have been in touch h each other. That is, the agency of the Department of Labor deal- with Government contractors and equal employment opportunity e been in touch with each other, and they have now produced a ft of a revised Ervin amendment which takes account of the prob- s raised by the Senator, with which there was substantial agree- nt by the Senator from New Jersey (Mr. Williams) and myself, ept that I could not see that the way in which the amendment had n drafted solved the problems. I now believe that it solves the

problems equitably, technically, and appropriately and I am prepa
on a rollcall vote, to vote for the amendment.

I would hope that perhaps right now the Senator from North Ca
lina could revise his amendment according to the new draft, so t
when we come out of the next quorum call we will be ready to v
for it without further delay.

Mr. ERVIN. Mr. President, I thank the distinguished Senator fr
New York. Inasmuch as the rollcall vote has been ordered on
original amendment, the Senator from North Carolina has lost
capacity to modify his original amendment without unanimous c
sent by the Senate.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. ERVIN. I therefore ask unanimous consent that my amendm
No. 597 be modified to conform to the draft agreed upon by the st
of the Senator from New Jersey, the staff of the Senator from N
York, and my staff. I send to the desk a copy of the revised draft a
ask the clerk to state it so that the Senate may know what modificatio
are being made.

The ACTING PRESIDENT pro tempore. The modification will be stat
for the information of Senators and then the question will be put
to whether unanimous consent is granted for the modification.

The legislative clerk read the modified amendment as follows:

At the end of the bill add the following new section.

SEC. 14. No Government contract, or portion thereof, with any employer, sh
be denied, withheld, terminated, or suspended, by any agency or officer of t
United States under any equal employment opportunity law or order, whe
such employer has an affirmative action plan which has previously been accept
by the Government for the same facility within the past twelve months withe
first according such employer full hearing and adjudication under the provisio
of 5 U.S.C. § 554, and the following pertinent sections. *Provided, however*, Th
if such employer has deviated substantially from such previously agreed
affirmative action plan, this section shall not apply. *Provided further*, That f
the purposes of this section an affirmative action plan shall be deemed to ha
been accepted by the government at the time the appropriate compliance agen
has accepted such plan unless within 45 days thereafter the Office of Feder
Contract Compliance has disapproved such plan.

Mr. ERVIN. Mr. President, perhaps I should clarify the remarks
made about the manner in which the compromise draft was reache
I stated that it was worked out by the staffs of the Senator from Ne
York, the Senator from New Jersey, and myself. I might state th
they did so under our direction. The staffs did a remarkable job i
putting in understandable phraseology, the agreement which we ha
reached in respect to this very important matter.

Mr. WILLIAMS. Mr. President, I wanted to say that rather late la
evening I was working with the Senators' staffs. I think that we ca
all be grateful for their faithfulness to the observations made by th
Senator from North Carolina on the floor and after we left the floo
It represents, in my judgment, a solution to the question and some o
the anxieties felt which prompted the Senator to offer the origina
amendment in the spirit in which I agreed with it yesterday with ce
tain reservations. The reservations have now been removed. I thin
that this modification is necessary as part of this legislation to insur
that the objectives are reached and the process of scrupulous fairnes
preserved.

Mr. ERVIN. I thank the Senator. I would suggest, so early in the session, with so few Senators in the Chamber, that it might be advisable to have a quorum call before we vote. So far as I am concerned, I am ready to vote.

The ACTING PRESIDENT pro tempore. If the Senator will excuse the Chair, unanimous consent has not yet been given.

Mr. ERVIN. Mr. President, I ask unanimous consent that I be permitted to modify my amendment in accordance with the compromise draft worked out by the Senator from New Jersey, the Senator from New York, and myself, with our respective staffs.

The ACTING PRESIDENT pro tempore. Is there objection to the modification proposed by the distinguished Senator from North Carolina? The Chair hears none, and it is so ordered.

Mr. ERVIN. Mr. President, I suggest the absence of a quorum so that the cloakrooms can inform Senators that a rollcall vote will be held shortly.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The question is on agreeing to the amendment offered by the Senator from North Carolina as modified. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Idaho (Mr. Church), the Senator from Missouri (Mr. Eagleton), the Senator from Alaska (Mr. Gravel), the Senator from Minnesota (Mr. Humphrey), the Senator from Hawaii (Mr. Inouye), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from South Dakota (Mr. McGovern), the Senator from Montana (Mr. Metcalf), the Senator from New Mexico (Mr. Montoya), the Senator from Maine (Mr. Muskie), the Senator from West Virginia (Mr. Randolph), the Senator from Illinois (Mr. Stevenson), and the Senator from California (Mr. Tunney) are necessarily absent.

I further announce that the Senator from Mississippi (Mr. Eastland) is absent because of illness.

I further announce that, if present and voting, the Senator from Mississippi (Mr. Eastland), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from New Mexico (Mr. Montoya) and the Senator from Illinois (Mr. Stevenson), and the Senator from California (Mr. Tunney) would each vote yea.

Mr. GRIFFIN. I announce that the Senator from New York (Mr. Buckley) is absent on official business.

The Senators from Colorado (Mr. Allott and Mr. Dominick) and the Senator from Oregon (Mr. Packwood) are necessarily absent.

The Senator from Arizona (Mr. Goldwater) is absent by leave of the Senate.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The Senator from Maryland (Mr. Mathias) is detained on offic
business.

The result was announced—yeas 77, nays 0, as follows:

[No. 14 Leg.]

YEAS—77

Aiken	Fannin	Nelson
Allen	Fong	Pastore
Anderson	Fulbright	Pearson
Baker	Gambrell	Pell
Beall	Griffin	Percy
Bellmon	Gurney	Proxmire
Bennett	Hansen	Ribicoff
Bentsen	Harris	Roth
Bible	Hart	Saxbe
Boggs	Hartke	Schweiker
Brock	Hatfield	Scott
Brooke	Hollings	Smith
Burdick	Hruska	Sparkman
Byrd, Va.	Hughes	Spong
Byrd, W. Va.	Javits	Stafford
Cannon	Jordan, N.C.	Stennis
Case	Jordan, Idaho	Stevens
Chiles	Kennedy	Symington
Cook	Long	Taft
Cooper	Mansfield	Talmadge
Cotton	McClellan	Thurmond
Cranston	McGee	Tower
Curtis	McIntyre	Weicker
Dole	Miller	Williams
Ellender	Mondale	Young
Ervin	Moss	

NAYS—0

NOT VOTING—23

Allott	Gravel	Montoya
Bayh	Humphrey	Mundt
Buckley	Inouye	Muskie
Church	Jackson	Packwood
Dominick	Magnuson	Randolph
Eagleton	Mathias	Stevenson
Eastland	McGovern	Tunney
Goldwater	Metcalf	

So Mr. Ervin's amendment as modified was agreed to.

Mr. Ervin. Mr. President, I move that the Senate reconsider th
vote by which the amendment was agreed to.

Mr. Javits. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR

Mr. Ervin. Mr. President, I ask unanimous consent that the follow
ing members of my staff be permitted to be on the floor of the Senate
to assist me during the remainder of the consideration of the bill:
Rufus Edmisten, William P. Goodwin, Jr., and Walker Nolan.

The Presiding Officer (Mr. Hollings). Without objection, it is s
ordered.

Mr. Ervin. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.
The legislative clerk proceeded to call the roll.
Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.
The PRESIDING OFFICER (Mr. Gambrell). Without objection, it is ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) bill to further promote equal employment opportunities for American workers.
Mr. ALLEN. Mr. President, I call up an amendment at the desk and k that it be stated. It is an amendment offered on behalf of myself d the distinguished Senator from North Carolina (Mr. ERVIN).
The PRESIDING OFFICER. The amendment will be stated.
The assistant legislative clerk read as follows:
In lieu of the language proposed to be substituted for the original nguage of the bill by the committee substitute, as amended, substitute the following:
(The amendment referred to, as introduced is S. 2617, introduced Senator Dominick and may be found on p. 553.)
Mr. ALLEN. Mr. President, a parliamentary inquiry.
The PRESIDING OFFICER. The Senator from Alabama will state it.
Mr. ALLEN. Mr. President, the amendment which has been offered the Senator from North Carolina and myself is a substitute for the mmittee substitute. The substitute is the exact language of the ouse bill, H.R. 1746, as it passed the House.
The question I wish to propound to the Chair is: Will the amendnt which has just been offered itself be subject to amendment?
The PRESIDING OFFICER. (Mr. Gambrell). The Senator is correct. will be subject to amendment.
Mr. ALLEN. Then, as long as this amendment is pending, it will be vehicle by which amendments may be offered to the pending bill. can be used as a vehicle for the introduction of amendments sepate from the other measures pending; is that not correct?
The PRESIDING OFFICER. The Senator's amendment can be used as vehicle for amendments to the bill, but also perfecting amendments n be offered to the committee amendment while the Senator's endment is pending.
Mr. JAVITS. Mr. President, will the Senator from Alabama yield so t we can clarify this matter?
Mr. ALLEN. I yield.
Mr. JAVITS. When the Chair refers to the committee amendment, rather it refers to S. 2515 as reported to the Senate, Calendar 412.
The PRESIDING OFFICER. That is correct.
Mr. JAVITS. So amendments will lie to S. 2515 as well as or in the ernative to the substitute of the Senator from Alabama. Will endments to the bill of the committee, that is, Calendar No. 412, also amendments in the second degree?
The PRESIDING OFFICER. An amendment to the committee substitute an amendment in the first degree.
Mr. JAVITS. But amendments to the Allen substitute are amendments the second degree.
The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. So that amendments to the committee substitute may turn be amended.

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. That is, if they are submitted at this time, under th framework.

The PRESIDING OFFICER. The Senator is correct

Mr. JAVITS. However, the Senate decision will then have to be mut ally conclusive, am I correct, in that if the Allen amendment, amended, is carried, that would preempt the committee bill amended.

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Just so that we have everything clear, I thought th should be explained. I have one other thing to bring out. How wou the votes come? Would amendments to the committee amendment, i cluding amendments to those amendments, be voted on first; or is it i discriminate, depending upon when they are offered?

The PRESIDING OFFICER. Perfecting amendments to the committe substitute will have preference over the Allen substitute.

Mr. ALLEN. Mr. President, the amendment which is at the des and up for consideration seeks to substitute for the pending committe amendment the language of House bill H.R. 1746 entitled, "A bill t promote equal employment opportunities for American workers."

The bill, S. 2515, introduced in the Senate and referred to the Healt and Education Subcommittees of the Committee on Labor and Publi Welfare, was amended in the committee by the writing of an entirel new bill, and that is what was the pending business until the pendin amendment was offered, which would substitute the House languag for the language which the committee seeks to substitute for the bill a originally introduced.

Mr. President, I feel that every Member of this body wants to se fair and equal employment opportunity for every citizen in this coun try. I feel that every Senator wants to see any man or woman, or an boy or girl, go just as far in life as his abilities, energies, and ambition will take him. All of us want to see every person receive fair and equa treatment before the law.

The EEOC was set up some 7 years ago as a Federal agency, a advisory agency, and an investigatory agency to aid in the matter o seeing that everyone had an equal opportunity to obtain fortune an receive promotion. This Commission does not have the power to mak orders which it cannot enforce. Some sort of machinery needs to b set up to allow the EEOC to obtain enforcement of its orders base upon its findings.

So the purpose of S. 2515 and the purpose of H.R. 1746 is to provid enforcement machinery for the orders of the EEOC. It is not a ques tion of which one offers more substantive right. Neither bill woul create a different degree or weight for equal employment opportunity The law would be the same with regard to the enforcement procedur under either bill.

One method provides that the Commission — and this is in S. 2515 — receive the charge, make the investigation, and, as now amended, refer the complaint over to the General Counsel who files charges before the Commission which received the complaint originally and which made the investigation. And this Commission — under S. 2515, but not under

e amendment introduced by the Senator from North Carolina and
yself—receives the complaint, investigates it, and forms a judgment
th respect to it, or it would not bother to send it to the General Coun-
l for the filing of charges. Then the General Counsel files a charge
fore the Commission which, the junior Senator from Alabama sub-
its, the Commission has already formed a judgment on. Then they
oceed to reach a decision and issue a cease-and-desist order that the
ployer must comply with.

Mr. ERVIN. Mr. President, will the Senator yield for a question at
at point?

Mr. ALLEN. I would be delighted to yield to the distinguished senior
nator from North Carolina.

Mr. ERVIN. Mr. President, is it not a principle of the common law
ich prevails in the overwhelming majority of the States of the
ion that no man can be a judge in his own case?

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. Mr. President, the committee bill authorizes members of
Commission to file charges of unlawful employment practices.
en these charges, if approved by the General Counsel, would be pros-
ted before the Commission itself, sitting as a jury and judge, and
Commission is to make a judicial decision based upon the charges
ich its members have filed.

Mr. ALLEN. The Senator is correct. That is what S. 2515 provides.
are trying to get that changed.

Mr. ERVIN. As I understand it, one of the fundamental principles of
substitute offered by the Senator from Alabama on behalf of him-
f and myself is to make certain that, instead of having the judicial
ction exercised by the members of the Commission who have pre-
red the charges or whose associates have preferred the charges, the
idity should be determined by the district courts of the United
ates as in all other civil actions.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. Does not the fundamental principle of justice say that
ry person is entitled to have his cause judged, to borrow a quotation
m Edmund Burke, "with the cold neutrality of an impartial
dge"?

Mr. ALLEN. Yes.

Mr. ERVIN. Does the Senator from Alabama agree with the Senator
m North Carolina that when one attempts to weigh the power to
fer charges—to conduct an investigation and prefer charges—with
power to judge the validity of those charges, he sets up a system
ich absolutely divorces the agency empowered to act in the matter
m the fundamental principles upon which any fair system of justice
st necessarily rest?

Mr. ALLEN. Yes; that is correct.

Mr. ERVIN. So the substitute amendment of the Senator from Ala-
ma is offered for the purpose of insuring that there shall be a fair
d a just determination of the charges by an impartial tribunal in-
ad of by a tribunal which is empowered to investigate charges and
ke charges?

Mr. ALLEN. Yes; that is correct. This tribunal would not be an
ncy that is not sympathetic to civil rights. On the contrary, the
deral district courts throughout the country have displayed great

compassion, great interest, great belief in, and great determination enforce, the civil rights of all citizens. So it would not be an unfrien ly tribunal by which those charges or complaints would be heard. The would be heard by the Federal district courts.

Mr. ERVIN. The Senator from Alabama is conscious of the solicitud of the Federal courts for civil rights, is he not?

Mr. ALLEN. Yes.

Mr. ERVIN. But he is also conscious of the fact that Federal court are also more likely to enforce civil rights by procedures that do no in and of themselves constitute civil wrongs?

Mr. ALLEN. Yes.

Mr. ERVIN. I thank the Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from North Carolin for giving me the benefit of his views and for participating in thi colloquy.

Mr. President, an effort was made previously in the Senate to amend S. 2515, so as to do away with the procedure by which the Commissio is judge, jury, and prosecutor, and to require that the forum for deter mining the rights of the parties involved would be not the Commissio which received the complaint, considered it, and passed it on to th General Counsel for action. It would not be that body which had al ready, in effect formed some sort of opinion about the matter. It would be a Federal district court of the place where the alleged unfair em ployment practice took place.

At one time, it looked as though the Senate were going to accept tha amendment, because then it did reconsider the vote by which the amendment failed of adoption. But then, on a second vote on the mat ter, by a vote of 48 to 46, it failed to agree to the amendment, if the memory of the junior Senator from Alabama is correct.

So the strong sentiment of just about an equal number of Senators is that the forum for settling and determining the rights of citizens shall be the Federal judiciary, starting at the courts closest home.

The Dominick amendment failed of adoption. The proponents o cease and desist by Commission fiat won that battle. It may have been a most expensive victory, becase, if the junior Senator from Alabama correctly interprets the feelings and the determination of a large num ber of Senators, this bill may not—and he says "may not"—be forced to a vote in the Senate. That would be a tragic happening. In many respects, that would be a reaching out for more than the Senate is willing to give, going farther than public opinion would require.

For 7 years, the Commission has operated without the power of cease and desist. Why does it need that power now, is this fashion? Why will it not accept going into court to prove its charges? Why does it want to try its charges itself? That just depends on the thoughts, ideas, and concepts of due process and of our Anglo-Saxon system of jurisprudence. Why not be satisfied to go into Federal court and make out the charges? "Oh," they say, "the Federal courts are just clogged with work. That would make it very difficult to get a man's rights adjudged."

Mr. ERVIN. Mr. President, will the Senator yield at that point without losing his right to the floor, so that I may call his attention to an editorial published in the New York Times of January 25, 1972?

Mr. ALLEN. I am delighted to yield for that purpose.

Mr. ERVIN. This editorial reads:

Superficially, the cease-and-desist route holds out the promise of swifter action
d more uniform administration of the law, but experience with N.L.R.B. hear-
g examiners suggests that they do not dispose of cases more rapidly than
deral district judges.

I should like to ask the Senator from Alabama if the record does
t show that, notwithstanding the fact that the powers of the EEOC
e limited by present law to the investigation of charges and the
aking of charges—and I might add, in the absence of an amend-
nt like the one of the Senator from Ohio, the prosecution of charges
those who made the accusatory charges—nevertheless, the Com-
ssion is some 18 months behind in its work.

Mr. ALLEN. Yes, I understand it is 18 to 24 months behind.

Mr. ERVIN. And if the committee bill passes, giving the Commission
risdiction over 10 million employees of State and political subdivi-
ns, and, in addition, giving jurisdiction over the activities of every
le businessman in American who employs as many as eight persons,
we not look forward to a delay of 10, 15, or 20 years in the process-
by the Commission of its work unless we multiply its employees to
h an extent that they will be comparable to a plague of locusts who
abroad throughout this land and eat up the substance of the tax-
yers?

Mr. ALLEN. Yes; that is correct. The Commission does not now have
hority under S. 2515, to take into the Federal service or to avail
lf of the use of unpaid or voluntary workers, who would have to
e prejudice or bias or they would not be volunteering their services.

Mr. ERVIN. Does not the Senator from Alabama share the belief
the Senator from North Carolina that the reason why the Congress
ied the EEOC cease-and-desist power when it enacted Title VII of
Civil Rights Act of 1964 was to divorce the investigatory and the
secutal power from the power to make judicial decisions?

Mr. ALLEN. Yes.

Mr. ERVIN. Is the Senator from Alabama not familiar with the
ision in the case of *Wong Yang Sung* v. *McGrath*, 339 United
tes 33, where the Supreme Court quoted with approval a report
the Attorney General's Committee on Administrative Procedure
ich declared:

hese types of commingling of functions of investigation or advocacy with the
tion of deciding are thus plainly undesirable. But they are also avoidable
should be avoided by appropriate internal division of labor. For the disquali-
tions produced by investigation or advocacy are personal psychological ones
ch result from engaging in those types of activity; and the problem is simply
of isolating those who engage in the activity. Creation of independent hear-
commissioners insulated from all phases of a case other than hearing and
ding will, the Committee believes, go far toward solving this problem at
level of the initial hearing provided that proper safeguards are established
ssure the insulation.

s not the Senator from Alabama familiar with that decision?

Mr. ALLEN. Yes, I am.

Mr. ERVIN. I ask the Senator from Alabama if the committee bill
s not leave the Commission in such a situation that it has the power
nvestigate and also the power to try the validity of the charges
ch it may initiate.

Mr. ALLEN. Yes.

Mr. ERVIN. Was not that separation considered desirable by the
orney General's committee, which was quoted by the Supreme
rt with approval in the opinion from which I have just read?

Mr. ALLEN. Yes.

Mr. ERVIN. Does not the Senator from Alabama agree with th Senator from North Carolina that the citation of that report is strong indication that the members of the Supreme Court who partic pated in the McGrath decision may have believed that a situatio permitting the same persons who exercise the investigating power an the power to prefer charges and the power to decide those charge even though the individual who may have preferred the charges ma be excluded from the trial process, is hardly consistent with the du process clause of the fifth amendment?

Mr. ALLEN. I certainly agree with the Senator from Nort Carolina.

Mr. ERVIN. Does not the Senator from Alabama believe that th members of an agency which is charged with the enforcement of particular type of law and which is empowered to investigate allege violations of the law and to charge violations of the law and to judg violations of the law necessarily have an interest in a decision whic tends to support the charges which they or their fellow members ma have filed?

Mr. ALLEN. Yes, it certainly seems that way to the junior Senato from Alabama.

Mr. ERVIN. Therefore, does not the Senator from Alabama agre that, under a setup like that, members of the agency, no matter how well-intentioned they are to do justice, are under a psychologica handicap which does not permit them to hold the scales of justic evenly?

Mr. ALLEN. I certainly agree.

Mr. ERVIN. Does the Senator agree that those people would cer tainly have a psychological tendency toward supporting the charges which they or their fellow members have filed?

Mr. ALLEN. Yes.

Mr. ERVIN. Does the Senator from Alabama recall that a few years ago the State of Michigan enacted a law which enabled a Michigan State judge to sit as a grand jury, and that under that law a Michigan judge charged that a certain individual who had appeared before him in court had been guilty of a contempt of his court, and that therefore that judge appointed himself a one-man grand jury to investigate the charge whether this individual had committed a contempt of court against the court, which was heard in that one-man grand jury, and the case went to the Supreme Court, which held that that act of the State of Michigan permitting the judge to act as a one man grand jury under those circumstances violated the due process clause of the fifth amendment, which was identical in meaning to the due-process clause of the fifth amendment?

Mr. ALLEN. Yes.

Mr. ERVIN. And does not the Senator from Alabama agree with the Senator from North Carolina that, if there is going to be a law providing for the adjudication of rights created by law, it is essential for that law and for law enforcement in general to be respected by the people of the United States, to make certain that the judging of the charges of violation of that law is done by a tribunal which is unbiased and impartial and which, to quote the words of Edmund Burke, is conducted by "the cold impartiality of a neutral judge"?

Mr. ALLEN. Yes, it should be, and it is not under S. 2515, and would come that way under the amendment we have offered.

Mr. ERVIN. I would like to suggest to the Senator from Alabama, I may do so without losing his right to the floor, that he insert in the record as a part of his speech the editorial from the New York Times, om which I have quoted, which states in substance that the New York mes thinks that the best way to enforce the law is through the courts.

Mr. ALLEN. Mr. President, I make the request.

There being no objection, the editorial was ordered to be printed in e Record, as follows:

[From the New York Times, Jan. 25, 1972]

ENFORCING EQUALITY

t is more than seven years since Congress enacted a comprehensive Civil hts Act banning discriminatory practices in many fields including employ- nt. But the latest job statistics show that the rate of unemployment is twice igh for Negroes as for whites. In part, this lag is attributable to the inferior cation and deprivation which many blacks have suffered in the past. Unfor- ately, however, it is also due to concealed racial bias on the part of some ployers and some unions.

he Equal Employment Opportunity Commission established by the 1964 lacks effective power to reach and overcome prejudice in the job market. onciliation fails, it is up to the individual who filed the complaint to pursue the ter in the courts by suing the employer or the union. The Justice Department the power to sue only if it can show that a pattern or consistent practice of rimination exists.

he House last year passed a bill authorizing the commission to institute a suit he courts at public expense on behalf of the individual. The issue is now before Senate. A bipartisan coalition of liberals on the Senate Labor Committee has orted a different bill which would give the E.E.O.C. authority to issue a se-and-desist order, the same authority which the National Labor Relations rd has in the area of collective bargaining. The bill would also transfer to commission the power now lodged with the Justice Department to move inst broad patterns of discriminations.

the past, The Times has favored giving the commission this power to en- e its own findings. We are still convinced that such an arrangement would resent a vast improvement over the present ineffectual method. But a strong can be made for the idea that effective, nonpartisan enforcement of the law in the long run be more certain through reliance upon the courts than upon olitically appointed commission whose members change with each ainistration.

dministrative agencies were given broad enforcement powers in the labor field use it used to be thought that the Federal judiciary had an antilabor bias. atever the truth of that estimate as applied to the courts in the 1930s, it is rly untrue concerning their approach to racial discrimination today. Of the e branches of government, the judiciary has consistently been most vigilant consistent in protecting minority rights in recent decades.

uperficially, the cease-and-desist route holds out the promise of swifter action more uniform administration of the law but experience with N.L.R.B. hear- examiners suggests that they do not dispose of cases more rapidly than Fed- district judges. As for uniformity of interpretation, the harder issues will be settled by appeal to the Supreme Court whether they originate in E.E.O.C. rs or in district court lawsuits.

closely divided Senate will decide today whether to substitute the court roach for the cease-and-desist order. If the final Senate vote is for cease-and- st orders, the question will go to a House-Senate conference. There is satisfac- at least in the knowledge that either version of the bill would bring about an rovement over the existing feeble arrangement.

Mr. ALLEN. Mr. President, I do not find myself too often in agree- nt with the New York Times, but this one I find highly enlightening.

Mr. ERVIN. The Senator from North Carolina will concede that metimes the New York Times does seem to be right.

Mr. ALLEN. Yes, that is right, and in this case they did. I appre
that.

I believe I was discussing the matter of the charge that the dis
courts might be too busy, their dockets might be clogged, and there
there could not be a determination, a settlement, an adjudicatio
these disputes by requiring that the Commission go into the Fe
district courts to prosecute these charges.

It so happens that there is only one Equal Employment Opportu
Commission, whereas there are 398 Federal district judges. So we
one commission here in Washington, to have a final determinatio
charges and complaints, and they have built up a backlog already, w
out bringing in this extra work of from 1½ to 2 years' workload.

They anticipate, I assume under the terms of the present law, 32
additional cases this year—that is, this fiscal year, to July 1, 1972—
they anticipate 45,000, again I assume under the existing law, in
next fiscal year.

If we are going to bring in 10 million State, county, city, and l
agency employees, if we are going to bring in every teacher in
country, if we are going to bring in every employer who employs
many as eight persons, reducing that from the present 25, busines
going to pick up at the EEOC.

Mr. WILLIAMS. Mr. President, will the Senator yield at that point

Mr. ALLEN. I yield.

Mr. WILLIAMS. And also labor unions with eight members.

Mr. ALLEN. Yes, that is correct. Labor unions are governed b
S. 2515. I appreciate the Senator's bringing that to my attention.

In that sense, however, I might say to the distinguished Sena
from New Jersey, labor unions would be employers, I assume, to
extent that they employed people in their operations. So the w
"employer" actually covers the labor unions. Labor unions can be e
ployers as well as being representatives of their members. But be t
as it may——

Mr. WILLIAMS. Well, I think there should be a little clarification
that. It is broader than the labor union as a wage-paying employ
This runs to membership, too.

Mr. ALLEN. Yes.

Mr. WILLIAMS. So it is broader than is indicated by the Senator.

Mr. ALLEN. Well, did the Senator think it would be necessary to p
in a special provision for labor unions? Was that the theory?

Mr. WILLIAMS. No. In perfect equity, on the labor-management si
the present law applies to both businesses and labor unions, and as
amend that to broaden the coverage to smaller businesses, we a
amend it to broaden it to smaller unions.

Mr. ALLEN. Yes.

Mr. WILLIAMS. But they are both in the present law.

Mr. ALLEN. Yes.

Mr. WILLIAMS. Unions and businesses.

Mr. ALLEN. Well, now, if they went beyond the role of employer—

Mr. WILLIAMS. As it is now. There is no change in that. It was just
thought, a bit of a misstatement of the present law when the Senat
was referring to unions only as employers.

Mr. ALLEN. Well, I did not refer to the unions. The Senator fr
New Jersey first mentioned them.

Mr. WILLIAMS. Yes, but in his reply to that, the Senator suggested
at it was only the union as employer.
Mr. ALLEN. Well, why would it not be?
Mr. WILLIAMS. The law has a prohibition against discrimination
ainst members.
Mr. ALLEN. Would the Senator say, then, that that would mean that
nion could not discriminate in admitting to union membership cer-
n individuals? Is that right?
Mr. WILLIAMS. Exactly. That is the whole point.
Mr. ALLEN. Would that, then, have the effect of requiring unions that
predominantly white unions, composed of white members, to open
ir membership ranks to all minority citizens?
Mr. WILLIAMS. Yes.
Mr. ALLEN. Yes. That is the purpose of the bill at that point?
Mr. WILLIAMS. Where there is discrimination, that is exactly correct.
Mr. ALLEN. Yes. Well, would the Senator feel that it would be dis-
nination if a labor union, by one method or another, prevented black
sons, refused to allow them to have membership in the union?
Mr. WILLIAMS. Well, I am not going to sit as judge on hypotheticals.
ry case depends on its facts. But that is exactly what we are trying
liminate, exclusion or discrimination that is based on the various
ified reasons that are listed in the bill.
Mr. ALLEN. A lot of the building trades unions, are they not com-
ed largely of white citizens?
Mr. WILLIAMS. I would think that is accurate. But if they discrimi-
they are running contrary to the law.
Mr. ALLEN. Well, now, how would they discriminate? John Jones, a
k employee on a construction project, applies to a union for mem-
ship in the union, or a nonworker, a man who wants to get work,
a black citizen. Would he then, under this bill, be able to require the
n to accept him into membership?
Mr. WILLIAMS. If he thought he was discriminated against, he could
a charge.
Mr. ALLEN. I guess he would be discriminated against if he was
admitted to union membership and given a job. That would seem
ne to be discrimination. Is that the opinion of the Senator from
Jersey?
Mr. WILLIAMS. Well, again, this is the guts of the factual determi-
on, whether he was discriminated against and kept out because
as black. If he was, that is contrary to the law.
Mr. ALLEN. The Senator would not have any doubt that that was
riminating against him because he was black, if he applied for
bership in the union and was turned down? Would not the Sen-
feel that that individual was discriminated against?
Mr. WILLIAMS. If he was turned down for that reason, that is con-
y to the law.
Mr. ALLEN. Well, suppose they used another reason, but that was
real reason.
Mr. WILLIAMS. That is what the process of complaint, full hearing,
due process is all about. It is for him to have the opportunity to
e a case in support of a complaint that he was discriminated
inst because of his race.

Mr. ALLEN. Yes. I appreciate this enlightenment very much the distinguished Senator from New Jersey has given on the sub

Mr. WILLIAMS. Well, I do not know if it was enlightenment. Al this speaks for itself, really. But it is interesting.

Mr. ALLEN. Yes; it has enlightened me, I say that in all fairn and I appreciate the enlightenment. I thank the Senator.

Mr. WILLIAMS. I appreciate the opportunity of enlightening Senator from Alabama.

Mr. President, will the Senator yield for a question?

Mr. ALLEN. For further enlightenment?

Mr. WILLIAMS. No. This is to enlighten me.

Mr. ALLEN. I yield for that purpose.

Mr. WILLIAMS. The Senator has offered the House bill as a s stitute.

Mr. ALLEN. In effect, yes—the language of the House bill.

Mr. WILLIAMS. I ask the Senator whether the substitute he offered would cover labor unions as the bill does and as we described it. Would labor unions with eight members or more covered under the substitute offered by the Senator from Alaban

Mr. ALLEN. I will say to the Senator that I am sure he knows answer to that question, because he is the chairman of the commit to which the bill was referred, and the committee has put out a rep on the bill consisting of four lines. I am sure that he read the bill that time, or he would not have reported the bill. It is the very sa provision of the House bill which the Senator studied in the co mittee.

Mr. WILLIAMS. This is the report to accompany H.R. 1746, in whi the committee says:

The Committee on Labor and Public Welfare, to which was referred that b reports thereon without recommendation.

As chairman of the committee, I joined the committee, withe recommendation. But now the Senator from Alabama is recommen ing that bill to us, and that is why I want to know at this poi whether labor unions down to eight members are covered.

Mr. ALLEN. I am not sure whether or not the bill provides tha and I was hoping that the Senator, inasmuch as he had studied it the time the bill was considered by his committee and extensi hearings were held on these bills—could further enlighten the Sen tor from Alabama.

Mr. WILLIAMS. I am not recommending the House-passed bill. I a recommending the Senate reported bill, and in that we extend cove age to unions with eight members.

I am advised that the House bill does not reach discrimination wi respect to men who want to be in a union where there are only eig members.

Mr. ALLEN. It would cover the union as an employer of person would it not?

Mr. WILLIAMS. Again, under present law, not the smaller ones. The have to be 25 or more employees.

Mr. ALLEN. I understand. But this bill would still apply, or the la would still apply, to labor unions as employers, would it not?

Mr. WILLIAMS. Oh, yes.

Mr. ALLEN. It does not go into the matter of who can and who cannot
n a union—the language of the House bill. Is that right?
Mr. WILLIAMS. The House bill does not change the present law.
der the present law, there cannot be discrimination in a union of
size of 25 members or more. We want to reach more working peo-
in unions as well as on the job.
Mr. ALLEN. There are many particulars in which the House bill did
cover the same ground as did the Senate bill. For example, it does
put the Senate, county, and city employees, under the provisions of
OC, as does the committee bill espoused by the distinguished Sen-
r from New Jersey.
Mr. WILLIAMS. That is one of the greatest oversights of the House
.
Mr. ALLEN. It does not cover teachers.
Mr. WILLIAMS. Another grave oversight. Of all the people who
uld be entitled to the protection of law and equality, it is the teach-
of our young people.
Mr. ALLEN. The Senator does not seem to realize that in Alabama
in the South, the Federal district courts already, in effect, control
hiring and firing of teachers there—it is already controlled by one
ncy—and the placement of pupils.
was going to go on and point out, on the matter of the overclogging
he dockets of the district courts, that whereas a large number of
gration cases are pending in the district courts of Alabama and the
th, very few such suits are pending in areas outside the South. So
e would be plenty of time for these 398 Federal district judges to
s on some of these charges of unfair employment practices.
o it occurs to the junior Senator from Alabama that that is in the
l in which the House bill seeks to act—that is, arming the Commis-
with the power to obtain enforcement of their efforts to eliminate
ticular instances of unfair employment practices. That is what the
se bill seeks to do. It does give to the Commission power that it
s not now have. It does not take any power away from the Commis-
. All it does is add to it. It finds the Commission, after 7 years, with
nforcement authority; and it gives it the authority to move into the
eral court and obtain Federal decisions and the long arm of the
eral Government, the Federal judiciary, to seek to eliminate unfair
loyment practices throughout the country.
lso, if a final determination is to be made on a charge of unfair
loyment practice, it occurs to the junior Senator from Alabama
it would be much more equitable to all concerned to have that
ter tried in the area where the alleged unfair employment practice
place, rather than to have the matter finally adjudicated by a five-
commission in the city of Washington. They already have a 2-year
klog. They do not need more coverage. They need to get rid of some
he backlog they have or, under the provisions of the House bill
ch we are seeking to substitute, have these matters decided in the
eral district court.
would seem to the junior Senator from Alabama that the Com-
ion would welcome this opportunity to obtain this additional
er, that it would accept this additional power to better enable it to
ide for equal employment opportunities throughout the country.
r. President, yesterday, an amendment was debated on the floor
the ability or the power of the Commission to avail itself of the

use of voluntary and uncompensated employees, and the Senate decid
that it was going to continue this power in the hands of the Commissi
so that it could avail itself of the use of volunteer workers who wo
be taken off the street and sent out over the country in connection w
alleged unfair employment practices. Possibly, that is the way they
going to get rid of this tremendous backlog of cases—through the
of these voluntary employees.

Mr. President, it is one thing to introduce a bill with all these ra
fications: We are going to bring in State, county, and city employe
we are going to bring in employees of all State agencies, all gove
mental agencies at the local level. We have a special provision for F
eral employees. We are going to bring in all teachers throughout t
country. It is estimated that over 10 million employees of local gover
ments—and there is no telling how many hundreds of thousands
teachers—are being covered for the first time.

Now, Mr. President, one of the easiest ways for an institution
higher learning, or any public school for that matter, to lose its accre
tation—and that is most important to young men and young ladies w
are in school, it is most important to the school itself, the faculty, a
all who are connected with it—it is important to the State in which
educational institution is located, that it be accredited.

One of the easiest ways for a school to lose its accreditation is to ha
its affairs always embroiled with governmental agencies. If the Go
ernor of a State interferes with an institution so that politics becom
the word of the day rather than excellence in education, we will fi
that that institution very quickly will lose its accreditation.

Academic freedom is something we hear about quite often—ple
that we have academic freedom in our institutions of higher learnin
not to interfere with the professor's right to express his opinion, n
to interfere with his right to have a different opinion from our ow
We have freedom of expression, freedom of thought, and freedom
association. But if we turn over to the EEOC the matter of determi
ing the employment practices and promotion practices in our instit
tions of higher learning, and have a big wrangle over the school's rig
to employ the members of the faculty that they want, we will soon ha
that college or that institution without any academic freedom a
without any accreditation.

The amendment which the Senator from North Carolina and I ha
offered would not extend the power and authority of the EEOC ov
educational institutions. It would not extend their power over Sta
and local governments. It would not have in it the power to emplo
voluntary and uncompensated employees who, of necessity, would ha
some interest in the work of the Commission that they were doing
they would not come in and apply to that work. Someone would ha
to be paying them. Very few of them would work without compens
tion. Some group, some foundation, or some person with an ulterio
motive, prejudice, or bias, of necessity would have to be paying the
volunteer workers who, if they felt that some organizations or bus
nesses throughout the country, small employers throughout the cou
try, were not giving equal employment opportunities to minorit
groups, or to women, can volunteer their services to the Commissio
and the Commission could avail itself of their services and send the
out throughout the country arming them with the power of Federa
authority.

Would they be Federal employees? They would be doing the work of deral employees. As was brought out yesterday, right now the EEOC 1,000 employees. It is suggested by the manager of the bill that in next couple of years that will go up to 2,000.

nder the provisions of the bill we are seeking to amend, if we leave all this additional authority, the Commission could employ 5,000 or uld arrange for the services of 5,000 people.

Well now, Congress has the power to set the limit on the activities the scope of the work of any of its agencies.

Ir. GAMBRELL. Mr. President, will the Senator from Alabama yield a question?

he PRESIDING OFFICER (Mr. Chiles). Does the Senator from Ala-a yield to the Senator from Georgia?

Ir. ALLEN. I am happy to yield to the Senator from Georgia for a stion.

r. GAMBRELL. I should like to ask the junior Senator from Ala-a if I understand correctly the purpose of the amendment, or one he primary purposes of the amendment which he is offering, that to substitute the court enforcement procedure recommended by House of Representatives in its version of the bill for the cease-desist Commission enforcement procedure as recommended by Senate committee on this subject.

r. ALLEN. That is correct.

r. GAMBRELL. That was my understanding.

I may ask another question of the Senator from Alabama with rence to the New York Times editorial of January 25, 1972, which printed in the Record a short while back by the Senator from ama, I should like to ask if it is not consistent with the Sena-approach to this matter which, I might say, I share, that is, ring enforcement procedures. Is it not also consistent with the osophy in the statement made in the New York Times editorial, is effect:

ut a strong case can be made for the idea that effective, non-isan enforcement of the law may in the long run be more certain ugh reliance upon the courts than upon a politically appointed mission whose members change with each Administration.

dministrative agencies were given broad enforcement powers in abor field because it used to be thought that the Federal judiciary an antilabor bias. Whatever the truth of that estimate as applied e courts in the 1930's, it is clearly untrue concerning their ap-ch to racial discrimination today. Of the three branches of gov-ent, the judiciary has consistently been most vigilant and istent in protecting minority rights in recent decades.

r. ALLEN. Yes, sir; that is correct.

r. GAMBRELL. I ask the Senator from Alabama if he would not e that the New York Times editorial in that respect has concisely essed the reason for supporting the court enforcement approach that, in fact, what the Senate committee bill undertakes to do violence to the separation of powers of our Government and, in icular, in instances where the courts have shown vigorous and, ct, in some cases, over vigorous and overzealous efforts to pur-he protection of minority rights.

r. ALLEN. Mr. President, I certainly agree with the junior Sena-from Georgia (Mr. Gambrell). He is making an important

contribution to the case for the use of the language in the House b
instead of this broad, scatter-shot approach of the committ
substitute.

Mr. President, I appreciate the remarks of the distinguished Sen
tor from Georgia on this subject. He very ably points out that t
Federal judiciary, more than either of the other branches of t
Government, has shown a concern for the civil rights of our peop
He points out that placing executive and judicial functions in o
department or in one agency of the Government would do violence
the doctrine of separation of powers. Certainly under the committ
substitute to S. 2515, the Commission is judge, jury, and prosecut

Mr. President, an amendment was agreed to by the Senate a d
or so ago that was supposed to have taken out from the bill t
prosecutor role for the Commission. They set up what they call
an independent General Counsel. He will be independent of the Com
mission, and therefore the Commission would not have the role
prosecutor, judge, and jury combined in one department.

It was provided under the amendment—and it is part of the sub
stitute as amended—that under the provisions of that amendmen
the President appoints a general counsel. Well, to show his indepen
ence then, I assume that he would have a right to appoint his region
attorneys all over the country, because I assume that the Commissio
is going to operate all over the country. It is doing that now and h
been for the last 7 years. But we assume that since it is an ind
pendent General Counsel, he would have the right to name his region
attorneys throughout the country. That is not so at all. Before h
appoints anyone under him, he has to have the concurrence of th
Commission.

That seems passing strange to me if they are going to be ind
pendent. When it comes to appointing them, the General Counsel wi
have to go to the Commission. To show his independence, the firs
time he tries to appoint somebody under him, he has to come in an
ask the Chairman of the Commission, "Will you join with me i
appointing John Jones as regional attorney for the Commission?"

The Commission says, "No, I will not do that. I do not like him
He is not zealous enough. I can't do that."

He then has to come up with another name. All of that is allowe
under the bill as it exists now, the committee substitute which we ar
seeking to amend. So what is the position? Well, we had a colloqu
on the floor, and I was asking one of the authors of the amendmen
about it.

Under the substitute as it exists now, in regard to the assertion tha
the Commission is judge, jury, and prosecutor, what is the procedure
A man comes in to a representative of the Commission and report
that he feels he was denied a job. Or, a woman comes in and say
that she was denied a job because she was a woman. A man comes in
and says that he was denied employment, that, although there wa
a job there, he was denied employment because he was a member o
the minority.

The Commission receives the complaint, starts a file on it, I assume
investigates it, and if it feels that a case of discrimination exists, the
charge or complaint is turned over to the independent General Coun
sel, so called.

Then he files charges in such cases as are referred to him by the ommission. Then this independent General Counsel—and I doubt independent counsel is going to do too much of it himself, because will be working with these attorneys and through the attorneys ppointed by him with the concurrence of the Commission—with file harges with the Commission. Then the Commission sits in judgment n these charges and renders its decision.

It is stipulated in the present law that the Commission, if it finds hat an unfair labor practice has been engaged in, will try to com-romise or conciliate the matter.

That is fine. I think that is spendid. That is wonderful if there is a atant case of discrimination and that can be pointed out to the em-loyer. Whether he agrees with it or not, if he feels that the best way t of the matter is to compromise it or settle it or conciliate it, then at is done. And that much of it is fine. But if we go on and turn e complaint or grievance over to the General Counsel for the filing a charge, once they make their finding, they have no way to en-rce it under the present law.

I am inclined to the opinion that this agency should be more than st a conciliation agency and that it should have some way to carry rough on its findings, if they are properly arrived at; and that ings on the amendment.

I feel that some enforcement procedure should be established, and at is the reason for the amendment that has been submitted. It does ovide a method by which the charge of unfair labor practice is ought before a court for the taking of testimony and for a deter-ination of the issues. Then there is a decree by a Federal court. hat will demand and command much more respect than an order the EEOC, arrived at through the performance of its threefold nction—prosecutor, judge, and jury.

Why should not the judiciary perform judicial functions? Why ould not the Commission exercise its investigatory powers? Why ould not the Commission investigate? Why should it not receive mplaints, and let it prosecute. Let it perform those two functions. t it receive complaints, and let it prosecute the complaints, but osecute them in a Federal court, before one of the 398 Federal dis-ct judges. Do not let the Commission make a judicial finding. The esent law allows the Commission to investigate, to judge, to define, d to seek to conciliate. But it does not give the Commission any forcement powers.

The Commission can go in one of two ways. The committee bill uld permit the Commission to investigate and prosecute the matter d to issue a cease-and-desist order. It would have the power of the deral Government assigned to it, and that must be appealed to the irt of appeals before it will be enforceable as the law or the mind the Federal Government.

Mr. ERVIN. Mr. President, will the Senator yield at that point?

Mr. ALLEN. Yes, I am happy to yield to the Senator from North rolina.

Mr. ERVIN. The U.S. court of appeals is the Federal appellate court ving jurisdiction between the U.S. district court and the Supreme urt. Its jurisdiction covers a vast territory comprising many States, es it not?

Mr. ALLEN. Yes, that is correct.

Mr. ERVIN. The territory of one U.S. court of appeals—I think it is the fifth circuit—starts on the Atlantic coast and runs out through the State of Texas—all that distance.

Mr. ALLEN. I am sorry to say that it covers Alabama, also.

Mr. ERVIN. Yes, it does cover Alabama. I can understand why the Senator from Alabama expresses his opinion about the circuit court of appeals for that circuit.

Does not the Bill of Rights provide that before a man can be tried for a Federal crime, the case must be tried in a district court close to the city in which the man lives?

Mr. ALLEN. Yes.

Mr. ERVIN. Under the bill, an employer of eight men, a man who has invested his meager resources in his business, can be taken all the way from the coast of Georgia or the Everglades of Florida clear over to Texas to have his day in court.

Mr. ALLEN. Yes; and the trial would be on a record; it would not be a trial de novo.

Mr. ERVIN. Can the Senator from Alabama explain to the Senator from North Carolina why, when we have a Bill of Rights, for which we have so much veneration, a Bill of Rights which provides that a person charged with crime shall have a reasonable opportunity to present his case, the proponents want to drag a poor little businessman halfway across the continent to a strange court, in a strange city, to defend his human right to employ persons to make his little business a success rather than a failure?

Mr. ALLEN. It is a bad departure from the concept of our Founding Fathers. It is a return to despotism, from which our Founding Fathers sought to extricate themselves when they separated from the mother country and the tyranny of King George III.

Mr. ERVIN. If there is to be a judicial trial, then the trial should be held in court, if the bill is intended to provide justice.

Mr. ALLEN. Yes.

Mr. ERVIN. The trial should occur in the district near the city where the business involved is located, should it not?

Mr. ALLEN. That is only fair. More facts can be obtained from both sides—the employer and the employee—in that way. Take the case of an employee who is supposedly discriminating against. He certainly would benefit by being able to have the case tried on his home ground, among his peers.

Mr. ERVIN. The case should be tried by witnesses who can come in person, not tried on a record.

Mr. ALLEN. Yes.

Mr. ERVIN. Does the Senator from Alabama agree with the Senator from North Carolina that if we reduced to cold writing, in the form of a record, the testimony of a man as truthful as George Washington is reputed to have been, and the testimony of as big a liar as Ananias was said to be, we could not tell the difference between the two?

Mr. ALLEN. In cold print, they would look very much alike.

Mr. ERVIN. Does the Senator from Alabama recognize that if truth is to be developed by the testimony of witnesses, the body which is to determine what the truth is should have the right to observe the conduct and demeanor of witnesses while they are testifying?

Mr. ALLEN. Yes; even a criminal has a right to be confronted in erson by his accusers, not by persons who have testified somewhere se.

Mr. ERVIN. Does not the Senator from Alabama agree with the Sen- tor from North Carolina that it makes a mockery of justice to require at a court hearing be held on a printed record, in the absence of itnesses, and before a tribunal which may be located hundreds and undreds and hundreds of miles away from the place where the busi- ess is located?

Mr. ALLEN. Yes: that is mockery and a travesty of justice.

I thank the distinguished Senator from North Carolina for his ge comments. I know that he has not said all that he wants to say this subject. For that reason, I yield to the distinguished Senator om North Carolina, who has other remarks to make with regard the bill and the amendment.

Mr. ERVIN. Mr. President, I advocate the adoption of the amend- ent in the nature of a substitute offered by the distinguished Senator om Alabama in his own behalf and in my behalf.

I should like to point out that the substitute bill, which is in identi- l form to that passed by the House of Representatives, makes a very bstantial change in the method of enforcing Title VII of the Civil ghts Act of 1964. As I construe Title VII of the Civil Rights Act 1964, the aggrieved party—that is, the party who complained that had been discriminated against on the ground of race or religion national origin or sex—would have to bring the action in the dis- ict court in his own behalf to obtain a remedy for the discrimination. The substitute, which is identical with the House-passed bill, has bstantially different provisions on this point. It still preserves the ght of the party aggrieved to bring a suit in the district court for lief against the discrimination allegedly practiced against him, but contains these additional provisions, and I read from page 4 of e substitute:

"(e) If within thirty days after a charge is filed with the Commission or thin thirty days after expiration of any period of reference under subsection), the Commission has been unable to obtain voluntary compliance with this r, the Commission may bring a civil action against the respondent named in charge . . .

Mind you, Mr. President, the Commission brings the action in the strict court at the expense of the taxpayers, because it is a public ency, supported with tax funds, whereas the poor little business- n, with as few as eight employees under the Senate bill, or even der the substitute, would have to bear the entire expense of defend- g against the charges of the Commission in the district court.

Then the substitute further provides, on page 6:

"(h) If the court finds that the respondent has intentionally engaged in or is entionally engaging in an unlawful employment practice charged in the com- int, the court may enjoin the respondent from engaging in such unlawful ployment practice, and order such affirmative action as may be appropriate, ich may include reinstatement or hiring of employees, with or without back pay ayable by the employer, employment agency, or labor organization, as the case y be, responsible for the unlawful employment practice).

And here the Commission is given full authority, under the substi- te, to sue in the Federal district court, at the expense of the tax- yers, to obtain relief for the aggrieved party, and the right of the

aggrieved party, as defined under the Civil Rights Act of 1964, is still retained in full force.

The substitute, which has already passed the House, also contains these further provisions, and I read from the top of page 6:

> Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as is deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable.

The last proviso is merely a statement of the rule of equity which ordinarily exists in any suit brought for a temporary restraining order or a temporary injunction, and is a very just and time-honored principle of equity.

The constitution of my State of North Carolina contains a statement of undeniable truth. It says that a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

I should like to direct the attention of the Senate to the Preamble to the Constitution of the United States of America. I read the Preamble:

> We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The Preamble to the Constitution states that the people established and ordained that instrument for the following purposes: First, to form a more perfect Union; second, to establish justice; third, to insure domestic tranquility; fourth, to provide for the common defense; fifth, to promote the general welfare; and sixth, to secure the blessings of liberty to ourselves and our posterity.

I assert, without fear of successful contradiction, that the bill reported by the Senate committee and now pending before the Senate is utterly repugnant in a number of respects to the objectives which the people of the United States had in mind when they ordained and established the Constitution of the United States. From what has been said, the committee bill is incompatible with the objective of the people of the United States to ordain and establish a Constitution to form a more perfect Union.

The Constitution of the United States was drawn to create the United States of America, not to create one centralized, united state. I shall elaborate in detail at a subsequent time why this bill is incompatible with the objective of the Founding Fathers to form a more perfect union of 13 colonies and the States subsequently admitted to the United States of America.

Here we have a Federal agency, which has headquaters in the city of Washington, given power under the committee bill to dictate to every one of the 50 States in the United States, to every county within those 50 States, to every city and town within the borders of those 50 States, to every school board operating within the boundaries of

hose 50 States, to every educational institution, in addition to the ublic schools, which undertakes to afford education even at the higher evels, whom they must hire, whom they must promote, and whom they annot discharge.

If Congress should give such concentrated and dictatorial powers o a Federal agency over all the States of America, over all the poli- ical subdivisions of all the States of America, and over the employ- ment practices of every person within the borders of these 50 States who invests his talents or his resources in an enterprise which employs s many as eight or more persons, Congress would do more to destroy han to improve the perfect Union which the people of the United States drafted and ratified the Constitution to ordain and establish.

The committee bill is also utterly repugnant to the objective of the American people expressed in the Preamble to the Constitution to stablish justice. The bill is cleverly contrived to make it virtually mpossible to achieve justice in the employment area which is com- mitted to the jurisdiction of the EEOC by the Senate committee bill. say this for a number of reasons.

In the first place, the Senate committee bill is inconsistent with the ncient principle of the common law that no man can be a judge in his wn case. The common law decreed that no man could be a judge of a ase in which he has an interest in the outcome of the case. The Senate ill clearly would set up a politically appointed commission, which hanges as the national administration changes, composed of men who re responsible to nobody on earth for their official actions, men who re not elected by the people to exercise any governmental function hatever, and who are not answerable to the people in any respect hatsoever; and this provision of the Senate committee bill is not only nconsistent with the purpose of the people who drafted and ratified he Constitution to establish justice, but it is also contrary to the prin- ple of the Declaration of Independence that all just power is derived rom the consent of the governed.

Another reason that the Senate committee bill is repugnant to the bjectives of the people of the United States who drafted and ratified e Constitution to establish justice is that it concentrates in this agency e duty to enforce a specific law, and thereby gives them the same terest in the enforcement of the law that field prohibition agents had the enforcement of the Volstead Act, and which the Alcohol Board mployees had in the enforcement of our revenue laws. It gives this oard the same interest in the enforcement of the law prohibiting dis- imination that the Internal Revenue Service has in the act of ongress which provides for the levying and the collection of revenues. et nobody could be so presumptuous as to say that the Internal Reve- ue Service should have the power to make judicial determination in spect of controversies between the Internal Revenue Service and a xpayer with respect to the validity of the amount of a tax.

It is incompatible with any fair system of justice to vest the power judge whether violations of law have been committed in the people ho are empowered to charge violations of such law, and to judge ether such violations have occurred.

The Supreme Court of the United States declared in the McGrath se, reported in 339 U.S., commencing at page 339, that the function being a prosecutor and a judge—uniting those functions in one

agency or one individual—is indefensible; and they struck down th regulations of the Immigration Service which had so united these tw inconsistent and repugnant functions in agents of the Immigratio Service.

The proponents of this bill will assert that they have divorced th function of a prosecutor from that of a judge by the milquetoa amendment offered by the distinguished Senator from New Yor (Mr. Javits) and the distinguished Senator from Pennsylvania (M Schweiker). The amendment undertakes to create the office of Gener Counsel and undertakes, in a rather specious way, to declare that th General Counsel shall be independent of the EEOC. But the same para graph which engages in this unattained objective makes the Gener Counsel dependent upon the consent of the Commission in respect to th appointment of the regional counsel who are to act on behalf of the supposedly independent General Counsel in the various regions of the United States.

So I assert, without fear of successful contradiction, that notwith standing the good motives which actuated these distinguished Senators to offer this amendment to the committee bill, this amendment, in its ultimate analysis, merely represents the symbol of an homage which unrighteousness pays to righteousness.

I have elaborated upon some of the provisions of the Senate-passed bill which I say are absolutely inconsistent with the purpose expressed in the Preamble to the Constitution to establish justice. Let me elaborate a little more on this aspect of the bill.

After charges have been filed with the Commission, and after the charges have been investigated by the commission or some of its members or some of its agents, members of the Commission can prefer charges, based upon their investigation, in which they charge that the respondent has discriminated against some person in employment on the basis of his race or his national origin or his religion or his sex.

It is the Commission which sets in motion the action of the supposedly independent General Counsel; and when the General Counsel, after being so set in motion by the Commission, prosecutes the case, he has to prosecute it before the members of the Commission, who sit as a jury and as a judge—I might add that, under the terms of the Senate bill, they also sit as executioners—of the poor, little businessman who is haled before them by the might of the United States of America and who has to defend himself against the charges investigated, preferred, and judged by the same agency which investigated and preferred the charges.

With all due respect to the proponents of the bill, I would have to submit that, in my judgment, a respondent's chances to obtain a fair trial and a just judgment under these circumstances are about on a par with the chances of a snowball to exist throughout the month of August in the hottest spot in hell.

So I say that this bill commits what I consider—and rightly consider—the greatest affront which can be committed against justice, and that is that it prostitutes the judicial process in order to make as certain as possible that only one side of a proceeding instituted before the Commission can have any reasonable opportunity to win a favorable decision.

To be sure, the Senate committee bill provides that after the members of the Commission or their agents have preferred charges against the respondent and have investigated those charges and have ruled as judges on those charges, the respondent can take an appeal to the Court for redress.

I will proceed further on this in a moment. Before doing so, however, I invite the attention of the Senate again to what the Supreme Court said in the McGrath case, by way of quotation from the report of a committee appointed by the Attorney General of the United States to consider the abominable practice in certain executive departments and agencies of concentrating the investigatory power, the prosecuting power, and the judging power in one individual or one agency.

I read from page 44 of the McGrath decision. It is a quotation from the report of the Attorney General's Committee on Administrative Procedure which the court cited with approval:

> These types of commingling of functions of investigation or advocacy with the function of deciding are thus plainly undesirable. But they are also avoidable and should be avoided by appropriate internal division of labor. For the disqualifications produced by investigation or advocacy are personal psychological bias which result from engaging in those types of activity; and the problem is simply one of isolating those who engage in the activity. Creation of independent hearing commissioners insulated from all phases of a case other than hearing and deciding will, the Committee believes, go far toward solving this problem at the level of the initial hearing provided the proper safeguards are established to assure the insulation.

Now the Senate committee bill leaves the investigating function and the judging function to the members of the Commission. To be sure, it states, in effect, that a member of the commission or an agent of the commission who has investigated a matter and made charges shall not sit on the trial of those charges, but that provision does not get away from the evil which the Attorney General's Committee on Administrative Practices pointed out. It still leaves each member of the commission and each agent of the Commission with investigatory powers in some cases and with judicial powers in other cases. The Supreme Court, by citing this statement of the Attorney General's Committee on Administrative Procedures and Practices, has stated that that is not sufficient, that we have to separate the hearing power—not the person that does the hearing—but the hearing power rather than the investigatory power and the adjudicatory power from each other, and that the evil of such a system is not removed by merely allowing the members of the Commission to judge cases which some of them have investigated, and to hear the charges which some of them have made, merely precluding those who exercise the adjudicatory power, rather, on a particular occasion, from exercising the investigatory and charging power on other occasions.

When people desire to accomplish an objective which they fear cannot be accomplished by fair methods, they adopt procedures which are inconsistent with fairness but which at the same time give a little appearance of some remote relationship to fairness.

So the Senate bill says that after the biased Commission and its agents who are charged with the duty of enforcing the law have investigated charges and have preferred charges and have rendered decisions adverse to the respondent on the charges which the Com-

mission or some of its members have preferred against him, that m
spondent can apply to the circuit court for some pretended relief.

I pointed out a moment ago, in colloquy with the distinguish
Senator from Alabama, that when the provisions of the Constitutio
were written to govern the places where criminal trials were to be h
in Federal court, the sixth amendment declared:

> In all criminal prosecutions the accused shall enjoy the right to a spee
> and public trial by an impartial judge of the State and district wherein t
> crime shall have been committed, which district shall have been previously a
> certained by law.

That amendment sets forth the places where those who drafted an
ratified the Constitution thought that criminal charges should
tried and determined. They said it had to be in the district in whic
the trial was alleged to have been committed. Yet, under the Senat
committee bill, the review of the decisions of the Commission on th
charges investigated by it, preferred by it, and judged by it, mus
be in a circuit court. Some of the circuit courts sit at points hundred
of miles away from the place where the alleged unfair or discrimi
natory practice occurred. That is bad enough. In my judgment, th
old adage, "All seasons for justice and in every place a temple," would
require as a matter of fairplay that a man be given a trial, or th
right of review from an adverse judgment of the Commission in a
court which sits somewhere in the neighborhood of where he reside
or where his alleged illegal act occurred. So that these provisions
giving jurisdiction to the circuit courts, are an affront to any fai
system of justice which contemplates, as the sixth amendment does
that a man shall be tried somewhere in the locality where the crim
is being investigated and reviewed and obviously somewhere in the lo
cality where he resides. But the attempt of this bill to frustrate th
purpose of the men and women who drafted the Constitution to estab
lish justice does not stop there.

I invite the attention of the Senate to certain provisions on page
42, 43, 44, and 45 of the Senate committee bill, that provide that an
employer has been condemned for alleged discriminatory practices
in employment by the EEOC on charges investigated and made by
the EEOC and if he goes to a distant court of appeals seeking re
lief from a judgment that the law ought not to have ever permitted
to have been made—that is, a judgment by biased, willful judges—
he finds that he cannot get any relief whatever if there is more than
a scintilla of evidence tending to support the conclusion of a biased
commission.

Page 42 of the Senate committee bill, in lines 16, 17, 18, and 19 reads

> The findings of the commission with respect to questions of fact, if supported
> by substantial evidence on the record considered as a whole, shall be conclusive

Page 43 of the bill has a similar provision with respect to the burden
of evidence where the Commission hears additional evidence and modi
fies the original findings. It states on page 43, beginning with line 1
and ending with line 6:

> The Commission may modify its findings as to the facts, or make new find
> ings, by reason of additional evidence so taken and filed, and it shall file such
> modified or new findings, which finds with respect to questions of fact, if sup
> ported by substantial evidence on the record considered as a whole, shall be
> conclusive.

Mr. President, I charge that those provisions are placed in the bill disable the court from reversing the findings of fact in decisions of Commission even in cases where the court finds that the findings of Commission are repugnant to the greater weight or preponance of the evidence. To be sure, some similar provisions with reect to the version of the evidence can be found in some of the laws acted by Congress at the instance of regulatory bodies. But I subt that the fact that iniquitous legislation had been enacted by Conss in times past is no justification for enacting new iniquitous islation, as Congress would do if it should pass the Senate comttee bill.

To argue that because iniquitous legislation appears in other areas ere regulatory bodies wish to compel courts to affirm their rulings re much that may be repugnant to the preponderance of the evice or its greater weight is no justification for doing so here.

We might as well argue that we can argue with equal intelligence t because murder and stealing have occurred in times past, we ght to declare that murder is meritorious and larceny is legal.

In reference to reviewing the other circumstances by the courts, it stated on page 44 of the Senate bill that:

he findings of the commission with respect to questions of fact, if supported substantial evidence on the record considered as a whole, shall be conclusive.

On page 45 we find this additional provision with respect to these er cases under review:

he commission may modify its findings as to the facts, or make new find-, by reason of additional evidence so taken and filed, and it shall file such ified or new findings, which findings with respect to questions of fact, if ported by substantial evidence on the record considered as a whole, shall be clusive . . .

These are provisions which are designed to bar a court which rews the findings and judgments of the EEOC to discover what is with respect to such findings. They are designed to make the rt accept as conclusive 1, 2, 3, 4, or 5 percent of the evidence in the even though 95 percent of the other evidence shows that the findss of the Commission are untrue.

I submit here that if the substitute amendment offered by the disguished junior Senator from Alabama and myself is not agreed to the Senate, I shall offer an amendment to the Senate bill which uld strike out these clauses I have read concerning substantial evice being conclusive and would provide that where a court reviews findings and judgment of the Commission, the court shall be at lib- to disregard the findings of fact of the Commission if it concludes those findings of fact are not supported by the preponderance of evidence.

I could site multitudes of cases on this point, but it is the case of *Ling Hosiery Company, Inc.*, v. *Margulies*, 364 Pennsylvania 45, Atlantic 2d 854, which says that:

roof by a preponderance of evidence is the lowest degree of evidence recogd in the administration of justice, and that the evidence which the burdened y offers does not become proof unless it preponderates in evidentiary weight ist the opposing evidence.

In other words, the court there declares what is recognized as the in all civil cases in the United States—that the prevailing party—

that is, the party who makes the charges—must establish that cha by a preponderance of evidence; and that he fails to establish charge unless the evidence he offers preponderates in evidenti weight against the opposing evidence. This is a far different requi ment from the provisions of the bill, which burdens the courts in th research for proof when a respondent seeks review from the findi of fact and judgment entered by the Commission on charges inve gated and preferred by the Commission itself.

What is proof by a preponderance of evidence?

Proof by a preponderance of evidence means that the jury must believe t the facts asserted are more probably true than false. Preponderance of evide is a phrase which, in the last analysis, means probability of the truth.

The first of this quotation was from the Oregon case of *Cook v. Michael*, 214 Oregon 513, 330 Pacific 2d 1026, 1032. The second w from a Kentucky Federal court case, *Asher* v. *Fox*, 424 Federal 2 727, 729.

Then, in the cases of *Marcantal* v. *Aetna Casualty and Surety Co pany*, a Louisiana case reported in 219 Southern 2d, 180, at page 18 we have this definition of "preponderance of evidence."

By a preponderance of evidence is meant simply, evidence which is of great weight, or more convincing, that that which is offered in opposition to it; th is, evidence which is, as a whole, shows the fact of causation sought to be prov is more probable than not.

I could multiply the quotations of what is meant by "preponderan of evidence" scores and scores—yes, hundreds—of times. Let us s what "substantial evidence" is.

In the case of *Kelly* v. *Celebreze*, 420 Federal 2d, page 614, we rea

Substantial evidence is more than a scintilla but less than a preponderanc

In the case of *Carpenter* v. *Flemming*, 178 Federal Supplementar 791, page 793, a Federal court sitting in West Virginia declared:

Under a statute providing for final decision of a social security disabilit claim must be accepted as conclusive if there is substantial evidence to suppor Substantial evidence is more than a scintilla but less than a preponderance.

I could cite scores and scores of cases to the effect that substantia evidence is merely evidence which is not entirely imaginary or whic is more than a scintilla but is less than a greater weight or preponde ance of the evidence.

Some courts define "substantial evidence" as evidence which i merely sufficient to carry a case to a jury and resist a nonsuit. Unde that ruling, if 5 percent of the evidence is to one effect, and 95 pe cent of the evidence tends to show that that effect is not true, then ther is a substantial degree of evidence.

So everything in the procedures which the Senate bill designe to authorize for the avowed purpose, the professed purpose, the pla purpose of doing justice is repugnant to every sound rule devised b the experience of the English-speaking race to secure justice and re veal truth.

The Senate passed bill is repugnant to the purpose declared in th Preamble of the Constitution, "to form a more perfect union," an the purpose, also declared in the Preamble of the Constitution, "t establish justice." It simply rapes and ravishes the provision of th assertion in the Preamble of the Constitution that "the people of th

ited States ordain and establish this Constitution for the United tes" and to "secure the blessings of liberty to ourselves and our terity."

have had the privilege of serving in three legislative bodies: nely, the Legislature of North Carolina, the House of Representa- s of the United States for a brief period and the Senate of the ited States for 17 years.

assert, without fear of contradiction, that this bill does more to troy the freedom of the American people than any legislative pro- al which ever came before any of those three legislative bodies ile I was privileged to be a member of them.

say the entire foundation underlying this bill is unsound. The bill s not make illegal the hiring of any person by any employer as . Under the terms of this bill and under the terms of every other ciple of law, the hiring of one man by another to perform serv- for an employer is a perfectly legal external act. Under the law an can hire anybody he pleases and under this bill he can hire body he pleases, as long as he does not have some intent down in innermost recesses of his mind that accompanies that act.

have a right, if I am an employer, even under the Senate bill, to anybody I please as long as I am not moved to hire him because of race or because of his religion or because of his national origin or use of his sex. It is only the intent or the motive which accom- ies the hiring which makes the hiring illegal under this bill and er the original Title VII of the Civil Rights Act of 1964.

r. President, I respectfully submit that there is nothing iniquitous free American preferring to hire a man of one race rather than a of another race, or preferring to hire a man of one religion rather a man of another religion, or preferring to hire a man of one onal origin rather than a man of another national origin, or pre- ing to hire a person of one sex rather than a person of another But under this bill a hiring prompted by any of these prefer- s—and all discrimination is a preference for one man over an- r—is made illegal. A commission is selected because it is biased rn itself into a psychologist and determine from innermost recesses man's mind, which they cannot see, whether the innocent motive h Congress declares iniquitous accompanied the hiring.

his is a dangerous law for that reason. In the first place, it makes gal acts which are entirely natural for a human being to do. I k it is natural, and certainly not iniquitous, for an American em- er to prefer a person whose national origin is American rather a person whose national origin is foreign. Yet under this bill, if American employer prefers to employ an American, and does em- an American, in preference to a person of foreign origin, he is ared to be an iniquitous man, performing an illegal act, and he have charges preferred against him by the Commission and have Commission judge the validity of the charges which it has already stigated and found to be true. The notion that he can get any ce at the hands of such a Commission is unrealistic. Rather than justice in court and have the court determine the truth by the evi- e, which shows what is true rather than false, they create artificial s to prevent the court from being free to search for the truth.

I have very little faith in the capacity of people to determine motives of other people. In this respect, the bill is different from ev other law. Under every other law we punish people for external a which are iniquitous, and under this bill we castigate and punish p ple, by unfair methods, for thoughts. I do not think men are qu capable of doing that.

I want to read from the 7th verse of the 16th Chapter of the Fi Book of Samuel:

> But the Lord said unto Samuel, Look not on his countenance, or on the hei of his stature; because I have refused him: for the Lord seeth not as n seeth; for man looketh on the outward appearance, but the Lord looketh the heart.

Here a commission is to be appointed that is going to assume exercise the power of the Almighty—not to judge men by extern appearances, not to judge men by their external acts, not to judg men because they hire this man or that, but to judge men on the bas of what the commission thinks or imagines they had in their hear at the time they did what was otherwise a perfectly natural and pe fectly legal act, namely, hiring an individual to perform service f them.

One of the proponents of the bill stated on the floor that he su ported this bill because it was designed to enforce human rights. W have a habit of using cliches to explain or justify our actions.

Mr. President, I submit that if a man belonging to a minority rac or professing a minority religion, or having a particular racial origi or a person of a particular sex, has a human right to seek employmen because of those factors, that is, because he is a member of a minorit race or of a minority religion, or of a foreign national origin, then, b the same token, a man of a majority race, or a man of a majority re ligion, or a man of American origin, has an equal human right t seek employment; and that any law which undertakes to compel em ployers to hire people of a minority race or a minority religion or minority national ancestry in preference to a man of a majority rac or a majority religion or a majority national origin is not a law to pro mote equality, but a law to promote discrimination.

I also submit that there are such things as human rights, and maintain there is no kind of rights recognized in the law except huma rights. But if there is such a thing as a human right, the supposed free American who has a little capital or has some talent, who invest his resources and talents in a little business for the purpose of makin a livelihood for himself and his family and a profit, has a right t select as his employees the persons who he believes will aid him t make his business a success rather than a failure; and I say that whe the Federal Government undertakes to deny him that right, it i denying him a human right, and is engaged in a course of conduc which is incompatible with freedom.

You know, when I hear people advocate bills which are repugnan to freedom, they so often prate about the superiority of human rights over property rights. In 1946, when I had the privilege of servin a few months in the House of Representatives, there was a Congress man who claimed to be a liberal in the modern use of that very much abused and misleading term who used to rise on the floor of the House

Representatives every time he had an opportunity and proclaim his
nviction that human rights are superior to property rights.
One day, however, a Member of the House who might be described
something of a moth-eaten conservative, in the much-abused mod-
n-day use of that term "conservative," became aroused while the
ngressman was expounding superiority of human rights over prop-
y rights, and silenced him with a question. I shall never forget that
asion.
This person I have designated as having the appearance, in the
dern parlance, of being a moth-eaten conservative, arose and stated
s question:
He said, "In the early days of this Nation, a settler would go out
o the wilderness and carry his rifle to protect himself and his family
ainst the Indians, his Bible so that he might strengthen his faith
the Divine, and an ax which he might use for material purposes."
said, "This frontiersman, when he got out into the forest, took
ax and cut down some trees, and he fashioned those trees into a
le cabin which he used to shelter himself, his wife, and his children."
This old man who I say could be described as a moth-eaten con-
vative then said, "Now, all of us, including my friend who extols
an rights over property rights, will agree, I think, that that fron-
sman had a right to use that cabin erected by his own hands in
wilderness as a shelter for himself, his wife, and his children."
en he said, "Mr. Speaker, the question I put to my friend is this:
s the right of that frontiersman to occupy that cabin as a home for
iself and his family a property right or a human right?"
Well, the person to whom the question was addressed never answered
question, and I would have to testify on his behalf that subsequent
hat time, he did not so frequently extol the superiority of human
hts over property rights.
As a matter of fact, there is no such thing as a property right. There
ot a single piece of property or a single inanimate object of any
d which has any rights in this Nation under the law of this Nation.
ery right belongs to a human being, and in that sense is a human
ht.
t is a human right which the law gives to a man to acquire, to own,
se, or to dispose of property, and it is this legal right which has
le this Nation the most powerful economic entity the earth has ever
wn.
There is a professor of law at New York University who is one of
most valiant fighters for the preservation of freedom in human
hts of any man of my acquaintance. He wrote a book entitled "The
or Policy of the Free Society." This is Prof. Sylvester Petro. I
t to read some words from a chapter of his book entitled "Property
hts, Human Rights, and the State." He says:

migration of the right of private property usually begins with a sharp dis-
ion between "human rights" and "property rights." Those who habitually
e this distinction normally go on to contend that society—and by society
persons usually mean government—may qualify property rights without
usly affecting the "essential human freedoms." They argue, indeed, that
restrictions on property rights which they favor will in fact expand the
ntial human freedoms."
ere is no truth in any of these assertions. Property rights are human rights,
nothing else. The various human rights, comprehended in the general right

of private property cannot be neatly distinguished, portioned out, and separ
in the real world of action; those are things which cannot be done satisfacto
even in analytical abstraction. Pruning and excisions, divestitures and re-all
tions of property rights, all necessarily amount to arbitrary action which re
human freedom and social productivity. Everyone now realizes that slaver
arbitrary; but few, apparently, know why it is arbitrary. For most people
oppose slavery are in favor of discriminatory taxation, in spite of the fact
such taxation is arbitrary in exactly the same sense that slavery is arbitrar

I digress from the reading a moment to note this. If the law say
A, "You must work for B even though you do not choose to do s
that is slavery, by any definition of the term. If the law says to
"You must hire B to work for you, even in a small personal compa
even though you do not want to do so or even though you pre
someone else of another race or religion or national origin," you m
not call that slavery, but you certainly cannot call it freedom. It
only a question of degree between the servitude you impose up
the one man and the servitude you impose upon another. Either one
these servitudes is an infringement of freedom.

I continue reading from Dr. Petro's book:

Some objections to the right of private property are of a relatively superfic
kind, easily cleared up by placing the right in its appropriate social context. T
right of private property did not spring full-blown upon the world. Nor did t
intimately related idea of the strictly enforceable contract have an easy ti
of it. Sir Henry Maine was of the opinion, indeed, that "the positive duty
sulting from one man's reliance on the word of another is among the slowe
conquests of advancing civilization." As defined in this book, property a
contract rights are the end products of a long and fitful evolutionary proces
they are understood and appreciated only by men in a relatively sophisticat
stage of development.

The evolution to the final, symmetrical form was dictated by the necessiti
which presented themselves to our forebears who wished to live in free a
productive societies. Private property in its broad form commended itself to tho
men because it worked. It offered both freedom and order. It set loose the co
structive energies of men, and at the same time constituted a rational, soci
basis for the integration of the activities of all men. It was a great centr
organizing principle that carried within itself the idea of the society which mig
be both free and harmonious. Private property in its comprehensive form is n
merely indispensable to the free society: it is the free society itself. Once th
is perceived, a good many of the objections disappear.

Yet there are still many who rebel against the comprehensive definitio
who insist that the "good of society" -a concept which they never define-
absolutely requires that the state be generally empowered at all time to expand
diminish or revise the right of private property. These are the people who s
red when they hear the words "inalienable property rights," no matter how car
fully those words may be used. The idea of property rights secured to all pe
sons against invasion by the state or anyone else, seems hopelessly "dated," eve
"totalitarianism" and comprehensive property rights as the central principles o
social organization, they call themselves "liberals," "progressives," or some othe
such modest name, and announce that they have found a "middle way."

Beyond any question, application of the private property principle does crea
difficult problems at times. Emotional and intellectual difficulties present them
selves even when the general principle itself is rightly understood. The mor
complicated the society, moreover, the more frequently do difficulties of applic
this arise. But this kind of thing is unavoidable. As a matter of fact, in the fre
society it really reflects the existence of a state of affairs which most find highl
desirable. For property problems become the more complicated the more widel
diffused the property rights happen to be, and the more intensely human affair
are interrelated. Restrict property rights narrowly, reduce personal autonom
to the minimum, and you will have a minimum of property problems. Take awa
private property rights completely, destroy entirely the autonomy of the perso
and you have no private property problems at all. If no person *legally* owns
controls anything, including himself, the problem of control is solved quite simpl
by force. If all property rights are vested in the state (that is, in the strongest

ce in the community) problems of personal *right* likewise do not arise to plicate the social structure. A monolithic structure of this kind may appeal to e. But it is no way to achieve personal freedom, well-being, and security.

s to the so-called "middle way" in current usage, this is actually a misnomer. sonal private-property rights, in the sense of the common-law doctrines and fashioned liberal political theory, represent as meaningful a pursuit of the ddle way" between the political absolutes of anarchy and socialism as straight king has yet produced. One may, in short, make a respectable argument to the ct that the private-property way is the only meaningful "middle way," since litarianism and anarchy are the only other pure forms of social organization ich may be meaningfully conceived.

But the "middle way" as used in current debate is only a semantically attrac- synonym for the *interventionist* state. It defines a condition in which the e is at all times authorized to modify personal property rights at will: the e may expand or contract the rights of persons as political exigency may n to dictate to those in public office. The perpetual dynamic equilibrium of sonal rights as here defined is anathema to the interventionists.

Many interventionists insist, it is true, upon respect for the rights of free ch, free thought, and free press. But they are apparently not aware of the y of all personal rights. They do not see that all personal rights have a com- core in the autonomy of the person, that the so-called "human rights" are ely one surface manifestation of the elemental right of private property.

he interventionist state is actually a state moving intermittently toward the plete destruction of all the personal freedom which it can reach. As such, in s of formal analysis it must be defined as a totalitarian state, since its own ponents insist that the state is the source of all rights. In empirical terms it ot be called a potential totalitarian state.

ow long will freedom of the press endure, if interventionism finally triumphs? edom of the press is nothing more nor less than the condition which exists n publishers have their property rights intact. Even in the United States y, when interventionism is still struggling to substitute political exigency for ate property rights, interventionists have unconsciously shown what they inely think of freedom of the press. The term "captive press" gets a great of use from trade unionists and from politicians who consider themselves derates."

interventionism finally triumphs, will its less moderate apostles limit them- es to this mere vilification of those who oppose them? Have interventionists, n they have come to full power and when political conditions have been pro- us, ever so limited themselves? Is not vilification always the first step— only the first step—of demagogues? When Juan Peron tired of freedom of press in Buenos Aires, he expropriated the publishers. If "it" happens here, opriation in one form or another will be the means used. The basis for such opriation exists in the way that interventionists look at property rights, king of them as subject to revision whenever the "good of society" so re- es. The Union of Soviet Socialist Republics may very well today have a law bill of rights which "guarantees" both freedom of speech and freedom of the s. But what good is such a guarantee when no private person or group may a printing establishment?

is inaccurate to describe a press based on private property rights as "cap- " Publishers under such conditions are limited in what they print only by r own personal views or interests and by the libel laws—and those laws are iselves an expression of the property right in the integrity of one's character. inaccurate also to say that the editorial policies of newspapers are deter- d by advertisers. Businessmen may be the greatest source of advertising rev- of one branch of the press, the dailies and the other periodicals. But adver- g revenues rise and fall in accordance with the circulation of the particular spaper or magazine, not with the secret or public ideology of the publisher . . . e in the United States compose a still largely free society, based on private erty and freedom of contract. But, as a matter of history, the distortions of principles of property and contract which mar our society trace to the pgoguery implicit in the characterization of our pioneering businessmen as ber barons" and "malefactors of great wealth."

Mr. President, Professor Petro expounds the doctrine that the right private property and the right to contracts are human rights and each is essential to the existence of the country as a free society.

This bill would interfere very greatly with the right of contract cannot see why, as an American, there is anything iniquitous in ploying a fellow American, because I prefer to do so, rather t having to employ a person of another national origin. I do not th there is anything iniquitous in a person preferring to employ a m ber of his own race, or of his own religion, or a person of the sa national origin as himself.

Just calling it iniquitous does not make it so, but, unfortunat when the country embarks upon a policy of restricting freedom order to deprive people of their liberty to choose those whom t seek to employ to make their business a success, no one can again the fact that it is not iniquitous. It is only iniquitous because i declared by act of Congress to be so. An act of Congress does not ma that iniquitous which is natural and the right of every American.

The trouble with laws of this kind is well illustrated in an acti which is frequently taken in employment cases. We have the Office Federal Contract Compliance in virtually every case, and the EE in many cases, compelling businessmen of America to practice d crimination in employment. Congress attempted to prevent that. C gress attempted to make it so that each case would be judged on merits, that it be judged as an individual case. So Congress wr into the Civil Rights Act of 1964 that no employer should be co pelled to employ people of any race, religion, national origin, or s by quotas; and yet we have decisions made almost every day in t Office of Federal Contract Compliance to order the businessmen America to practice discrimination in reverse by hiring a person of particular race, a particular religion, of a particular national orig of a particular sex. That is discrimination in reverse.

I say, in all seriousness, that I do not see how we can expect cri inally minded people to obey the laws when men in public office d obey the very laws and the very Executive order they are supposed enforce. The Executive order which the Office of Federal Contra Compliance in the Department of Labor is charged with enforci is an Executive order which says that there shall be no discriminati in Government employment or by a person having Government co tracts, on the basis of race, religion, national origin, or sex. Yet t very Office of Federal Contract Compliance makes it a consistent pra tice to violate the very Executive order it is charged with the duty enforcing. It orders businessmen who desire Government contracts employ persons of a particular race, or a particular religion, or particular national origin, or a particular sex—or particularly pe sons of a particular race according to fixed or variable numbers, pr portions, percentages, quotas, goals, or ranges, and thus violates t very Executive order it is charged with the duty of enforcing. T same thing on occasion can be said about the EEOC.

I do not see how we can better conditions in America and promot law and order while governmental agencies created for the avowe purposes of preventing discrimination in employment may discri inate in employment.

I expect to offer an amendment to the original bill in the eve the substitute amendment offered by the Senator from Alabama behalf of himself and myself is rejected by the Senate. I hope th this substitute amendment will be agreed to. It provides that we wi

ve enforcement in the courts. It affords an adequate procedure by
ich the EEOC, suing at the expense of the American taxpayers,
n have a right of vindication in the court according to the estab-
hed rules of procedure and the established rules of evidence. And
it is all that any American ought to ask for. He ought not to ask
have specific procedures established for or designed to prevent the
lfillment of the men and women who drafted the Constitution to
ablish justice.

Mr. President, I yield the floor, and suggest the absence of a
orum.

Mr. BYRD of West Virginia. Mr. President, will the Senator with-
d his request?

Mr. ERVIN. Mr. President, I withhold my request.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515)
ill to further promote equal employment opportunities for Ameri-
workers.

Ir. JAVITS. Mr. President, I wish to announce on the part of the
ator from New Jersey (Mr. Williams) and myself that at 3:30
hall move to table the substitute.

Ir. President, I would like to state to the Senate our reasons for
s action. No one knows better than I the feelings of Senators with
ard to a tabling motion.

ersonally, I do not remember having made, perhaps, more than
or two. I have had a long career, and I am very respectful of
ators' opportunities to debate and consider questions at the greatest
gth they feel they should. I have myself been cut off far more often
tabling motions than I have ever cut off other Senators. But in
particular case, I will explain why, not because I am an advocate
he bill, but because I think this is almost a classic example of the
per use of the tabling motion.

Ve have been given notice that this is the beginning of a filibuster.
the notice has been given in unequivocal terms. I invite the
ntion of the Senator from Alabama (Mr. Allen) to his words
I am about to read to the Senate. I have the written record from
Official Reporter. The Senator from Alabama said as follows:

ie Dominick amendment failed of adoption. The proponents of cease and
st by commission fiat won that battle. It may have been a most expensive
ory, because if the junior Senator from Alabama correctly interprets the
ng and the determination of a large number of Senators, this bill may not —
he says "may not"—be forced to a vote in the Senate. That would be a
ie happening. In many respects that would be a reaching out for more
the Senate is willing to give, going farther than public opinion would
ire.

seems to be obvious that the Senator from Alabama would not
e said that if it did not represent his own feeling; and from the
cations of the debate which we have already heard, coupled with
statement, I think we get the point. I do not think we need to
e a finger put in our eyes to understand exactly what to expect.
addition, the move which has been made is clearly an unnecessary
We have voted five times. When we take into consideration
first vote, the vote on the motion to table the first vote, the vote
he reconsideration of the first vote, then the second vote, then the

motion to table reconsideration of that second vote, we have vo
five times on the Dominick amendment. It seems to me that that
a very adequate expression by the Senate.

The Senator from Alabama himself admitted, when he submitt
the substitute, that it is open to any amendment to which the origi
bill is open. He also said—and the Chair confirmed this—that
original bill also is open to amendment in any respect. Indeed,
Chair ruled that it is open in two degrees. So nothing whatever
accomplished by substitutes of any kind of character except an opp
tunity to reargue and revote on the Dominick amendment.

After all, I think we have a right to vote on a tabling motion
cause an unnecessary action is being asked of the Senate, an acti
which does not represent any decision by the Senate, which iss
substantial requirement for a decision on a procedural ground; th
is, no conceivable opportunity to amend is cut off, or to table,
to move in any way that the opponents of the legislation desire,
tabling; and obviously, as they themselves were entirely recepti
to any amendment that would substitute in the shape it ought to
in, they do not have to extend, as far as they are concerned, as
is very clear that the essential argument is that it is simply a "re-d
of the Dominick amendment.

It is entirely the privilege of the opponents to talk as long as th
can and as long as the rules will allow. If we wish to invoke clotur
we know exactly how to do it. That is fine and legitimate. But
least the Senate ought to take a direct approach to that questio
Has it heard enough upon this measure, and does it now want t
restrict amendments to those which are at the desk? Second, does
wish to provide 1 hour for each of the 100 Senators? Or does it wis
to hear more debate? Those are legitimate questions, and we may
required to decide them. From what I see, we probably will. Bu
why have the screen of this substitute as the subject for debate whe
its only purpose, obviously, is to reconsider the amendment, whic
as I say, has already been voted on five times?

For these reasons, I believe a tabling motion is perfectly prope
I speak of this in a sense of explanation, because I am not happ
about such a motion; I do not like it; as I say, I have been the victi
of a tabling motion far more often than I have been the beneficiary
I seek to justify the reason why, in this particular case, such a motio
is proper.

Also, as a very necessary part of making this motion, I wish t
spread upon the Record the differences between the House bill, whic
is sought to be substituted, and the Senate bill. The differences ar
significant and substantial, the most significant being the difference
between cease and desist and court enforcement. In the second place
State and local people are covered by the Senate bill, but are no
covered by the House bill.

Third, the House bill does not extend coverage to more privat
enterprise employers; the Senate bill does, to employers of eight o
more persons, as distinguished from 25 in the House bill; and

Fourth, educational institutions are included in the Senate bill.

Other amendments which relate to the importance of whether th
Senate bill should be the one that prevails include one which deal
with the coverage of Federal employees and the extent of coverage

ey include one which deals with the transfer of pattern and practice
its from the Department of Justice to the Commission after 2 years.
Another deals with backpay limitations for 2 years from the date
complaint, which is in the House bill, rather than from the date
the charge—that is, the filing of the charge—with the Commission,
ich is now in the Senate bill, as it is amended.
There are other differences, but I have given the basic and signifi-
nt differences which, it seems to us, dictate that the Senate has
superior instrument for working the Senate's will on the House
l.
But in the final essence, the matter is very clear. This is simply
effort to reargue and revote on the Dominick amendment. It results
giving us an issue that is not a substantive issue that ought to tie
further debate on the bill. If we are going to get cloture, let us
it directly on the fundamental issue involved; namely, does the
nate wish to hear further debate on the bill, and how much? Or
es it wish to limit debate, remembering that every Senator is lim-
l in his right to speak?

Mr. ALLEN rose.

Mr. JAVITS. Mr. President, I will yield for a question, of course.

Mr. ALLEN. Mr. President, will the distinguished Senator from
w York allow me to speak for some 15 minutes, with the assurance
t I will return the floor to the Senator, so that I may make a state-
nt with regard to the pending amendment?

Mr. JAVITS. I am sorry to tell the Senator that I am unable to do
t, and that I do not wish to yield my right to the floor, because I
st make my motion. But I will certainly yield to the Senator and ask
nimous consent that he may make a statement in lieu of a question
hout my losing my right to the floor. I have talked for 5 or 6
nutes—I will say 5 minutes—and will yield him 5 minutes, if that
greeable to the Senator.

Mr. ALLEN. I appreciate the Senator's position of kindness and cour-
. That is all the junior Senator from Alabama was asking for. He
ees that the Senator from New York should have the floor back.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. It is 5 minutes, then; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. ALLEN. Mr. President, the distinguished Senator from New
rk made two points, as the junior Senator from Alabama under-
od his remarks: One, that on account of some remarks by the junior
ator from Alabama to the effect that this bill without the
minick amendment having been added might be difficult to bring
t vote, and that for that reason he is going to move to table this
endment, and he indicated that he would go on with a motion of
ure, indicating that the remarks of the junior Senator from Ala-
a provoked that action. Let me say that the junior Senator from
bama, in coming to the Capitol this morning from his home in
ginia, heard on the radio that the proponents of the measure were
ming to file a cloture motion. So the Senator from Alabama does
feel that any action by him has brought the proponents of the meas-
to that decision.

The Senator also stated that this is rearguing the Dominick amend-
nt and that is all it is. The junior Senator from Alabama begs to
er on that point, because the amendment offered by the distin-
shed Senator from North Carolina and myself substitutes the

language, not of the Dominick amendment, but of the House b which a majority of the Members of the House have passed as t proper method of giving the EEOC more authority to enforce findings.

The junior Senator from Alabama respectfully submits that this amendment is adopted and it does become the bill and the bill passed by the Senate, it will go to the House and, it being the exa language that the House has already approved, we will get earli approval of the bill, and this additional power will have been co ferred on the EEOC; whereas, if the amendment or a similar one not adopted, there is a good chance we will have no bill whatsoeve

So this is not a reargument of the Dominick amendment—far fro it. This is saying that the Senate, if it will agree to the House la guage, in all likelihood will get a bill, there being a chance that bill will be enacted if this amendment is not adopted.

I yield back my time.

Mr. JAVITS. I thank my colleague.

Mr. President, I move to table the pending substitute.

CALL OF THE ROLL

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that furthe proceedings under the quorum call be discontinued.

Mr. ERVIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The rollcall was resumed and concluded, and the following Senator answered to their names:

[No. 15 Leg.]

Aiken	Cotton	Pastore
Allen	Ervin	Pearson
Baker	Hatfield	Percy
Bellmon	Inouye	Roth
Bennett	Javits	Schweiker
Brooke	Jordan, N.C.	Scott
Byrd, Va.	Jordan, Idaho	Stafford
Byrd, W. Va.	Mansfield	Talmadge
Case	Mathias	Thurmond
Church	Mondale	Williams
Cook	Montoya	Young

The PRESIDING OFFICER. A quorum is not present.

Mr. BYRD of West Virginia. Mr. President, I move that the Ser geant at Arms be directed to request the attendance of absent Senators

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute th order of the Senate.

After some delay, the following Senators entered the Chamber an answered to their names:

Anderson	Cannon	Ellender
Bayh	Chiles	Fannin
Beall	Cooper	Fong
Boggs	Cranston	Gambrell
Brock	Curtis	Griffin
Burdick	Dole	Gurney

usen	McGee	Ribicoff
rt	McGovern	Saxbe
rtke	McIntyre	Smith
llings	Miller	Sparkman
nska	Moss	Stennis
ghes	Nelson	Stevens
nedy	Pell	Symington
g	Proxmire	Tower
Clellan	Randolph	Weicker

The PRESIDING OFFICER. A quorum is present.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator from Alabama seek ognition?

Mr. ALLEN. I suggest the absence of a quorum.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is that in order?

The PRESIDING OFFICER. It is in order. There has been business since last quorum. The ordering of the yeas and nays is business, under Senate precedents, and the clerk will call the roll.

The assistant legislative clerk called the roll, and the following ators answered to their names:

en	Fannin	Montoya
n	Fong	Moss
erson	Gambrell	Nelson
er	Griffin	Pastore
h	Gurney	Pearson
ll	Hansen	Pell
mon	Hart	Percy
nett	Hartke	Proxmire
gs	Hatfield	Randolph
k	Hollings	Ribicoff
oke	Hruska	Roth
dick	Hughes	Saxbe
d, Va.	Inouye	Schweiker
d, W. Va.	Javits	Scott
non	Jordan, N.C.	Smith
e	Jordan, Idaho	Sparkman
es	Kennedy	Stafford
rch	Long	Stennis
x	Mansfield	Stevens
per	Mathias	Symington
on	McClellan	Talmadge
nston	McGee	Thurmond
is	McGovern	Tower
	McIntyre	Weicker
nder	Miller	Williams
n	Mondale	Young

The PRESIDING OFFICER. A quorum is present.

The question now recurs on agreeing to the motion of the Senator n New York (Mr. Javits) to table the amendment of the Senator n Alabama.

n this question the yeas and nays have been ordered and the clerk call the roll.

The assistant legislative clerk called the roll.

Mr. CANNON (after having voted in the negative). On this vote I e a pair with the distinguished Senator from Maine (Mr. Muskie).

If he were present and voting, he would vote "yea." If I were at liber to vote, I would vote "nay." I withdraw my vote.

Mr. Byrd of West Virginia. I announce that the Senator from Tex (Mr. Bentsen), the Senator from Nevada (Mr. Bible), the Senat from Missouri (Mr. Eagleton), the Senator from Arkansas (Mr. Fu bright), the Senator from Alaska (Mr. Gravel), the Senator fro Oklahoma (Mr. Harris), the Senator from Minnesota (Mr. Hur phrey), the Senator from Washington (Mr. Magnuson), the Senat from Washington (Mr. Jackson), the Senator from Montana (M Metcalf), the Senator from Maine (Mr. Muskie), the Senator fro Virginia (Mr. Spong), the Senator from Illinois (Mr. Stevenson), a the Senator from California (Mr. Tunney) are necessarily absent.

I further announce that the Senator from Mississippi (Mr. Eas land) is absent because of illness.

On this vote, the Senator from Washington (Mr. Jackson) is paire with the Senator from Mississippi (Mr. Eastland).

If present and voting, the Senator from Washington would vot "yea" and the Senator from Mississippi would vote "nay."

I further announce that, if present and voting, the Senator fro Illinois (Mr. Stevenson), the Senator from Minnesota (Mr. Hum phrey), the Senator from California (Mr. Tunney), and the Senato from Washington (Mr. Magnuson) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New York (Mr Buckley) is absent on official business.

The Senators from Colorado (Mr. Allottt and Mr. Dominick), th Senator from Oregon (Mr. Packwood), and the Senator from Ohi (Mr. Taft) are necessarily absent.

The Senator from Arizona (Mr. Goldwater) is absent by leave o the Senate.

The Senator from South Dakota (Mr. Mundt) is absent because o illness.

If present and voting, the Senator from Colorado (Mr. Dominick would vote "nay."

The result was announced—yeas 45, nays 32, as follows:

[No. 17 Leg.]

YEAS—45

Aiken	Hatfield	Pearson
Anderson	Hughes	Pell
Bayh	Inouye	Percy
Beall	Javits	Proxmire
Boggs	Kennedy	Randolph
Brooke	Mansfield	Ribicoff
Burdick	Mathias	Saxbe
Byrd, W. Va.	McGee	Schweiker
Case	McGovern	Scott
Church	McIntyre	Smith
Cooper	Mondale	Stafford
Cranston	Montoya	Stevens
Fong	Moss	Symington
Hart	Nelson	Weicker
Hartke	Pastore	Williams

NAYS—32

en	Ellender	Long
ker	Ervin	McClellan
lmon	Fannin	Miller
nnett	Gambrell	Roth
ck	Griffin	Sparkman
rd, Va.	Gurney	Stennis
les	Hansen	Talmadge
k	Hollings	Thurmond
ton	Hruska	Tower
tis	Jordan, N.C.	Young
e	Jordan, Idaho	

RESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

annon, against

NOT VOTING—22

tt	Goldwater	Muskie
tsen	Gravel	Packwood
e	Harris	Spong
kley	Humphrey	Stevenson
inick	Jackson	Taft
leton	Magnuson	Tunney
tland	Metcalf	
right	Mundt	

o the motion to table the Allen amendment was agreed to.

Ir. Cotton. Mr. President, before the next amendment is offered, ould like to use not more than 5 minutes for some observations on bill itself. I wish to get these remarks into the Record at this time use I am compelled to be away for at least part of tomorrow.

Ir. President, the Senator from New Hampshire voted for every l rights bill back through the years in the 17 years he has been in Senate except for the so-called omnibus civil rights bill of 1964. reason that the Senator from New Hampshire could not vote for 1964 bill, although he voted for cloture in order that the Senate ld have its opportunity to work its will on the measure, was be- e of Title VII in that bill.

he Senate will recall how the coverage of the Equal Employment portunity Commission was automatically expanded over a 4-year od. The first year after it became law, the application of unfair loyment practices and unfair discrimination between color, sex, onal origin, and so forth, would only apply to those establish- ts employing at least 100 employees. The second year it automati- y would go down to 75. In the third year, it would automatically lown to 50. In the fourth year it would automatically go down 5.

t that time the Senator from New Hampshire approached the dis- uished Senator from Minnesota (Mr. Humphrey), who was man- g the bill. At that time it was the position of the Senator from Hampshire that he could not support a measure that enabled the eral Government to permit discrimination in employment in those blishments employing a small number of employees.

offered an amendment to hold it at 100 instead of dropping it to 25. not want to go into that detail. I was and am perfectly willing

to support legislation creating a Commission and creating machinery to prevent discrimination in employment so far as it concerns large plants, plants large enough to permit discrimination by reason of the policies of a corporation, the policies of a labor union, or the policies of a hiring hall.

But I am one who happens to live in a little county-seat town of 10,000 population. In my State there are many small but active communities. When a country bank, for instance, employs only 30 or 40, or even 50 employees, or a small insurance agency has perhaps only 15 or 20 employees, and the proprietor or the organization operating that business selects an employee, that is an intensely personal relationship. It is almost like selecting a partner. For the Federal Government to move into situations involving small business institutions and try to enforce a discriminatory law which forces the employer to deal with this nationality or that nationality, this color or that color, is a naked display of Federal power that goes far beyond the reasonable views of those who framed this Republic.

Furthermore, I feel that it impedes rather than promotes fairness and a lack of discrimination anywhere. For instance, if a black man has worked long and hard, has built up a small business, employs 25, 30, or 35 employees, and is prospering through his ability and his long years of hard work, I would not, for the life of me, want to be a party to going in and saying to him, "You have to employ so many white people. You cannot give persons of your own race a chance in this business that you have built up." I am still referring to a small business, not to a factory, not to an industry, not to a large department store, or any enterprise like that. I cannot understand how any law can be administered justly that applies to small institutions.

Furthermore, there be many a case, as a practical matter, when an employer having a small business wants to give a break, perhaps, to a person of a different color, or to one who has not had many opportunities or much education. That employer also knows that once he admits that he is in need of an extra employee, and he gives such a person a break, he cannot fire him if it develops he is not a good employee.

There are white men who are industrious and white men who are lazy—just as there are black men who are industrious and black men who are lazy. Perhaps I should not say it but there may also be women who are industrious and women who are not industrious.

A person having a small business depends on his associates with almost a family relationship. He is not going to indicate that he needs another employee until he gets the one he wants, if he knows that once he has given a less advantaged person a chance, he is stuck with him; and while he could fire a white Anglo-Saxon Protestant, if he turns around and has to discharge a member of another nationality or another color, he may find himself in trouble with his Government.

So I took the position that unless the limit for Title VII, which I had hoped would be held to 100, was held at 50, I could not vote for the entire measure, and I did not do so.

I was pointed out and subjected to a good deal of attack because I was one of five Senators from north of the Mason-Dixon Line who voted against that particular civil rights bill.

he measure before us reduces the number to eight employees. It oses certain safeguards, but it permits the Commission to go into an's business, if he employs just eight employees. If it is a family ness, he can be harassed, penalized, and handicapped in trying to e his business go, because he does not have the free and full opportty to employ those with whom he has been closely associated and hom he has complete confidence.

will be said, and it probably has been said, that the enforcement of the Commission would not, in its discretion, harass the persons ing a very small business or a family business. That is the reason business institutions that are connected with religious organizas are permitted to discriminate in favor of members of their own gious group. Nevertheless, it is never safe to write into the statutes pportunity for a naked display of Federal power in such a way oppress and harass citizens of this country simply on the assumpthat whoever may be charged with enforcement will do so care- and discretely.

ould not vote for the civil rights bill of 1964, even though I was to support every other title and section in the bill, because of my g objection on the point I have just spoken about—and I feel s strongly about it now.

gardless of any other amendment, if, when we come to the final ge of this measure, it still places in the hands of the Commission ower to deal with small business institutions of eight—which is ulous—or 25 or 35 or 50, I shall be compelled to vote against whole measure, just as I was compelled to vote against the civil s bill of 1964.

ppreciate the patience of the Senate. I wanted to get that state- clearly in the Record at some time during the debate so that the time comes when and if I am compelled to vote against this ure, the reasons will be clear.

ield the floor.

. PEARSON. Mr. President, the Civil Rights Act of 1964 made that every person in this Nation is entitled to equal treatment regard to a job. The Equal Employment Opportunity Commisunder the provisions of that act was charged with a responsibility aking that policy a reality. But the only enforcement power ed the EEOC was the authority to seek voluntary compliance the law, a weakness which the legislation before us today would ct.

ink it is clear that the majority of this Nation's employers recogthe intent of Congress to insure fair employment practices and abided by the law. But it is also clear that unemployment dismination still exists today, a situation which fair-minded people can- nd should not tolerate.

. President, the immediate issue before us is not whether the C should have enforcement powers. Rather the issue is what proes must be used in the exercise of that power. As the Senate is , the House of Representatives has approved a measure which res the EEOC to go court to enforce their rulings. The legislabefore us here, however, would authorize the EEOC, following vestigation of unlawful employment practices and an administra-

tive hearing on such complaints, to issue an appropriate enforcer order. That order would be subject to a full and complete review ir U.S. courts of appeals.

It has been argued that this grant of authority is without prece in the law. But that is not the case. The National Labor Relat Board and the Federal Trade Commission have similar authority. each of these agencies, this grant of authority has improved t capability to protect the public from unfair labor practices and sumer fraud and deception.

Mr. President, the technical nature of this issue should not cov the fact that this is a matter of civil rights. It is a matter which t our commitment to equality and basic human fairness. My record in Senate on civil rights legislation is one which reflects, I believe, a c mitment to these values. And though some would ask me to do so, I v not deviate from the course I have set over the last 10 years.

I support the Equal Employment Opportunity Enforcement Act 1971.

The Senate continued with the consideration of the bill (S. 2515 bill to further promote equal employment opportunities for Ameri workers.

Mr. Gambrell. Mr. President, I have filed an amendment at t desk. I shall not call it up at this time, but I would like to take th few moments to address myself to the bill as a whole, or the pendi business, and in connection therewith to make some comments in r erence to the amendment which I have offered. The amendment wh I have offered, incidentally, is a revision of a previous amendm which I have on file No. 810. I propose to call up the amendment wh I filed today at a later time in place of calling up No. 810. Howev what I have had to say on a previous occasion in reference to amen ment No. 810 would be equally applicable to the one I have filed tod

Mr. President, on January 21, the date on which I filed the amen ment which now bears the number 810, I addressed myself to the p poses of the bill and also to the purposes of the amendment. I might s we have had some considerable debate, and at least three or four vot which in substance dealt with the question of how the Equal Opp tunity Employment Act was to be enforced. Of course, the Rec will show that I have voted on a number of occasions to substitute t so-called Dominick plan or the House plan for the plan contained the Senate committee report, which now apparently will be the meth of enforcement, the cease and-desist method adopted by the Sen committee and now proposed for adoption by the Senate as a whole.

Of course, as I understand the procedure, if this bill in its pres form is adopted by the Senate as a whole, there will be a conference w the House of Representatives, which adopted the court enforcem procedure called for in the Dominick plan, and there will be so further discussion of the type of enforcement procedure to be used.

This entire question of the method of enforcement seems to me place many Senators, including myself, in a very awkard po tion. I would like to support equal employment opportunities, but bill in its present form does not, I think, permit me to do so. As I s on January 21 when I offered my amendment, there seems to be undue urge toward the adoption of the cease and desist method, wh smacks of an effort to play politics with job discrimination, and

e the entire field in a constant uproar, resulting in continued racial
ion and consequent disruption of trade and commerce.
r. President, it seems to me, if the present conciliation method of
reement has not proved to be effective, that rather than racing in
nseemly way to the ultimate enforcement method or technique
lable, the cease-and desist method, in an attempt to achieve the
s of fair employment practices and conciliation of animosities that
between the races, an effort should be made to carry this forward
step-by-step basis, to try to demonstrate confidence rather than
of confidence in the American court system.
e Senator from Alabama this morning put in the Record an edi-
l from the New York Times which I think very ably set forth one
e fundamental concepts in our system of law and law enforcement,
d on the separation of powers: That courts, and not executive or
nistrative agencies, are much better able to give a consistent en-
ment pattern to the enforcement of laws of all kinds; that courts
rically and traditionally are not subject to the ebb and flow of po-
l opinion, they are not nearly as subject as political agencies to
ses of enforcement, and the judgments of courts are much more
to have acceptance by the people and by the public than are
of political bodies, which the public, or parts of the public, would
from time to time, to be able to sway either to more aggressive or
ggressive, or more conservative or more liberal, interpretations
e law.
erefore, for that reason I have concluded in my own mind that I
not possibly support the bill in its present form, because the en-
ment practice that is set forth in the bill contains this cease-and-
provision, which I think is an excess which is only warranted, if
by the most extreme and most aggravated condition of noncom-
e with law.
. President, this same thought, the excesses or the possible and I
say historically probable excesses of executive or political agen-
n enforcing laws of this type, has led me to the introduction of
mendment which I have sent to the desk this afternoon.
e amendment which I have offered seeks to grant some relief to
businesses and small labor unions which may, under this act, be
ed of engaging in unfair, discriminatory employment practices
are banned by the act. The amendment does not seek to exempt
businesses or small labor unions; it simply seeks to put them on
al footing in terms of enforcement with the Federal Government
y which confronts them.
ink all of us have files loaded with complaints and concerns ex-
d by constituents of Government agencies abusing the tremen-
economic resources available to them to compel and enforce and
to achieve so-called compliance with regulatory authority. I
in many cases in my own experience as a practicing lawyer of
s who have come to my office and said, "You know, we have got
mplaint," or, "We are under investigation for thus and so, and it
like it is going to cost us thousands and thousands of dollars even
d out whether we are liable or responsible or guilty or not, and
ly, we would just rather give in, accept whatever they say, and do
ir way, rather than try to find out whether we are right or wrong
first place, because we can see a swarm of Federal agents com-

ing in here, examining our books, reviewing our practices, interv
ing our employees, and churning up our business here, where
margin of profit is very small, and we just economically cannot af
to combat in the courthouse with a Federal agency, much less con
before that same agency which is making the charges."

I have no answer to that. I guess in a sense I may be an idealis
would like to tell this client, "Well, you owe it not only to yourself
to other businesses similarly situated to make this point of law o
try to establish this question of fact that is in issue in this case, bu
cannot, in good conscience, tell you to set out to defend your
against the many, many very highly qualified experts in this field."

At the same time, Mr. President, I in my practice of law have
large corporations come in, under the same circumstances who h
told me, "Mr. Attorney, we want you to fight a scorched-earth pol
on this subject, if it takes 10 years. We are not going to submit to t
and we are willing to set aside the expenses that it takes to defe
it."

I have seen that carried out, and I have seen such corporations
tain consent judgments, where the Government finally said, "My G
we cannot afford this expenditure any more; we have had it out w
this company, and we cannot afford to devote all our resources to fig
ing with this one company. We could go after all these little bitty f
lows and get a lot of precedents established by them giving in, so w
should we fight the big fellow? Let's take this consent judgment a
let this big guy off with an easy slap on the wrist."

Mr. President, I think that is entirely unfair, and yet I think eve
Member of the Senate who has had any experience with Governme
activities knows that this type of thing goes on. I do not mean to
critical, or contend that it is done with malevolent intent, but in e
forcement practices, just like anything else, the line of least resista
is the one that people take.

If you have two cases and one is easy to prosecute and one is difficu
you take the one that is easy. If your opposition is going to cave in, y
push him real hard. If the opposition in the other case is going to fig
back, you say, "Let's dodge that as long as we can."

I suggest that we very much need to reconsider and review t
matter. When this amendment is called up, I expect to point out
number of instances of other enforcement agencies where abuses
what I would consider abuses—have been committed, as I say, in go
faith in most instances. But in an unknowing effort and an insensit
effort to achieve a favorable result, to build a good file, a Governme
agent has driven a small business out of business, into bankruptcy,
a good faith effort to enforce the law.

Mr. President, at this time I will not call up my amendment, und
the understanding with the assistant majority leader that there will
no rollcall votes today. But I do intend to call it up in due course
the consideration of this bill. I might say that ultimately, and unfo
tunately, if the bill finally comes to a vote, with or without t
amendment I suggest, it will be necessary for me to vote against it.

I yield the floor.

Mr. WILLIAMS. Mr. President, just a word in reference to t
amendment that will be called up at a later time by the Senator fro
Georgia. It deals with a matter that has been discussed at length in t

nittee, relating to attorneys' fees and other costs recoverable by a
y who is involved in a complaint and prevails.
believe that when the amendment is offered by the Senator from
rgia, there will be comprehensive consideration of the costs of these
loyment suits, both from the standpoint of small business and
the standpoint of individuals who are complainants under the

r. President, the situation as we assess it at this point is that there
be full opportunity, as we return tomorrow on this bill, for the
osed legislation to be considered for further amendment. I know
at this time some amendments that have been suggested are being
idered very carefully. It is my hope that some of the suggestions
will be in amendments can be worked out toward the objective of
oning a stronger and sounder bill. I know that one which was
dered briefly yesterday—we had a record vote on it—dealt with
ervices of volunteers. There was limited debate, and the record
retained the provision as it is in the bill. It was suggested that
is some ambiguity as to exactly what is meant by the authority to
t volunteer services. It might well be that we will have further
ssion of that, and perhaps by amendment a clarification of it will
nerally acceptable on the permitted volunteer services—those
for good reason, the Commission should be in a position to accept
lunteers.
ese are two of the amendments. There will be others. We are on
venth day, I believe, of debate on this issue. Its importance is
asized by the longevity of the debate in which the Senate already
ngaged. This was the first measure to come before the Senate upon
eturn from recess. It has been the only major legislative business.
ave had a week of debate. The amending process is working well
will continue to be available to us as we return tomorrow.
. Gambrell. Mr. President, will the Senator yield to me, without
g his right to the floor, for a comment on what he has said in ref-
e to my amendment?
. Williams. I yield.
. Gambrell. The Senator and his staff has worked with me in
ction with the amendments I have offered and it has resulted in
ision of the amendment which I have offered today.
ave no enormous disagreement with the committee on the subject
wish to bring up; but, as I understand, they are insisting on my
ling in my amendment something which is different from the
se of the amendment.
ould suggest that if they wish to pursue the provision of attor-
fees for individual intervenors in this case, they offer an amend-
to that effect themselves. I simply do not care to insert that in my
lan.
. Williams. It was not my intention to suggest that the Senator
ant personally to include this in his amendment, but it is part
general subject matter and probably will be discussed at that
It may be offered as an amendment to the Senator's amendment.
Byrd of West Virginia. Mr. President, based on what the dis-
ished Senator from Georgia has stated, it is my distinct under-
ing, after consultation with other Senators, that there will be no
onal rollcall votes today.
ank the able Senator for yielding.

AMENDMENT NO. 818

Mr. ERVIN. Mr. President, on behalf of myself and the distinguis
Senator from Alabama (Mr. ALLEN), I call up amendment No. 81
The PRESIDING OFFICER. The amendment will be stated.
The legislative clerk read as follows:

On page 41, lines 15 and 16, strike out the words "or in the Court of App
for the District of Columbia Circuit.".

The PRESIDING OFFICER. The question is on agreeing to the ame
ment.
Mr. ERVIN. Mr. President, it is my understanding that the lea
ship does not contemplate any more votes, so I will not undertake
present the argument in favor of this amendment this evening.
Mr. WILLIAMS. Mr. President, may I have the amendment restate
The PRESIDING OFFICER. The clerk will restate the amendment.
The legislative clerk read as follows:

On page 41, lines 15 and 16, strike out the words "or in the Court of Appe
for the District of Columbia Circuit.".

Mr. ERVIN. The effect of the amendment is merely to require th
all the reviews be had in the circuit court of the circuit where t
proceeding arose, rather than having an option of bringing them in
the Circuit Court of the District of Columbia regardless of whe
they originated.
Mr. WILLIAMS. It has been announced that there will be no furth
votes; so if there is no further debate, this will be something for th
Senate to think about over the evening.
Mr. President, I suggest the absence of a quorum.
The PRESIDING OFFICER. The clerk will call the roll.
The legislative clerk proceeded to call the roll.
Mr. GRIFFIN. Mr. President, I ask unanimous consent that the ord
for the quorum call be rescinded.
The PRESIDING OFFICER (Mr. STAFFORD). Without objection, it is
ordered.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

Add a new section at the end of the bill appropriately numbered and reading as follows: "No department, agency, or officer of the United States shall require any employer to practice discrimination in reverse by employing persons of a particular race, or a particular religion, or a particular national origin, or a particular sex in either fixed or variable numbers, proportions, percentages, quotas, goals, or ranges. Any officer of the United States or any other person who violates this provision shall be guilty of a misdemeanor and upon conviction shall be imprisoned not exceeding one year or fined not exceeding $1,000.".

Amdt. No. 829

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. CHILES to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 59, line 25, following the comma, insert the following: "for the limited purpose of publicizing the Commission and its activities".

Amdt. No. 830

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. GAMBRELL to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: On page 50, line 19, add the following new section:

(e) Subsection (w) of section 706 of such Act, as redesignated by this section is amended to read as follows:

"(w) In any action or proceeding under this title the Commission or court, as the case may be, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs. Any respondent that is an employer of less than twenty-five employees or a labor organization of less than twenty-five members shall, upon application to the Commission, be indemnified by the United States for the cost of his defense against

Amdt. No. 833

1-699 O - 72 - 65

the charge in an amount not to exceed $5,000, including all reasonable expenses and attorney's fees incurred after the serving of notice on him of the charge.

"Any respondent that is an employer of twenty-five to one hundred employees whose average income from such employment is less than $7,500, or a labor organization with twenty-five to one hundred members, shall, upon application to the Commission, be indemnified by the United States for one-half of the cost of his defense against the charge not to exceed $2,500, including all reasonable expenses and attorney's fees incurred after the serving of notice on him of the charge. The costs evidenced by respondent's vouchers of his expenses and attorney's fees shall be deemed reasonable so long as they are comparable to the total amount of the expenses and attorney's fees incurred by the Commission in investigating and prosecuting the charge. Disallowance of any part of such request shall be made a part of the Commission's order in such proceedings. Any United States court before which a proceeding under this title shall be brought may upon request by the respondent make the determination provided for in this subsection.

"The Commission and the United States shall be liable for costs as provided for in this section the same as a private person. No enforcement procedure under this title may be initiated against a respondent employer or union until the

costs provided for herein shall have been paid in full. No such costs shall be paid in the event that the Commission or court having jurisdiction of such proceeding shall determine that a respondent has conducted his defense in a manner inconsistent with the achievement of the purposes of this title."

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. HRUSKA to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

Delete section 5, beginning on line 20, page 50, and continuing through line 3, page 52, and renumber the succeeding sections as appropriate.

Amdt. No. 834

[From the Congressional Record—Senate, Jan. 28, 1972]

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 839 THROUGH 846

(Ordered to be printed and to lie on the table.)

Mr. ERVIN (for himself and Mr. Allen) submitted eight amendments intended to be proposed by them jointly to the bill (S. 2515) o further promote equal employment opportunities for American vorkers.

* * * * * * *

The PRESIDENT pro tempore. Under the previous order, the Chair ow lays before the Senate the unfinished business, S. 2515, the pend- ng amendment being No. 818 by the Senator from North Carolina Mr. Ervin).

The clerk will read the bill by title.

The legislative clerk read the bill by title, as follows:

A bill (S. 2515) to further promote equal employment opportuni- ies for American workers.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence f a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the rder for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

CLOTURE MOTION

Mr. WILLIAMS. Mr. President, I submit, and ask the clerk to state, motion for cloture under the rule.

The PRESIDENT pro tempore. Under rule XXII, the Chair directs he clerk to state the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII f the Standing Rules of the Senate, hereby move to bring to a close the debate pon the bill (S. 2515), a bill to further promote equal employment opportunities or American workers.

1. Harrison Williams.
2. Walter Mondale.
3. Richard S. Schweiker.
4. George McGovern.
5. Thomas J. McIntyre.
6. Claiborne Pell.
7. J. Glenn Beall, Jr.
8. Mark O. Hatfield.

9. J. Javits.
10. Clifford P. Case.
11. Charles McC. Mathias, Jr.
12. Edward W. Brooke.
13. Charles Percy.
14. P. A. Hart.
15. Harold E. Hughes.
16. Gaylord Nelson.
17. Edward M. Kennedy.
18. Jennings Randolph.

* * * * * * *

Order That the 1 Hour Under Rule XXII Begin Running at 11:30 A.M. on Tuesday, February 1, 1972

Mr. Byrd of West Virginia. Mr. President, I ask unanimous consent that the 1 hour for debate under rule XXII not begin running on Tuesday next until 11:30 a.m.

The President pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Control of Time Under Rule XXII

Mr. Byrd of West Virginia. Mr. President, I ask unanimous consent that the time with respect to the 1 hour under rule XXII on Tuesday next be divided between and controlled by the able manager of the bill (Mr. Williams) and the able Senator from North Carolina (Mr. Ervin).

The President pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. Javits. Mr. President, a parliamentary inquiry.

The President pro tempore. The Senator will state it.

Mr. Javits. Does that mean that the vote on the cloture motion will come at 12:30 p.m. on Tuesday?

The President pro tempore. The Senator is correct, after a quorum call.

Mr. Javits. I thank the Chair.

Mr. Byrd of West Virginia. Mr. President, at 12:30 p.m. on Tuesday next, the Chair will ask the clerk to call the roll to establish a quorum. The roll call vote also is automatic under the rule.

The President pro tempore. Yes.

Mr. Byrd of West Virginia. The roll call vote would begin at about 12:40 or 12:45. Is that sufficient?

Mr. Javits. Yes.

Amendments in Order Under Rule XXII

Mr. Byrd of West Virginia. Mr. President, I ask unanimous consent that all amendments which are at the desk on Tuesday next at the time the Chair asks the clerk to establish the presence of a quorum—to wit, at the conclusion of the 1 hour of debate, at 12:30—be considered qualified under rule XXII and otherwise qualify.

The President pro tempore. Is there objection?

Mr. Ervin. Mr. President, as I understand it, they shall be considered as having been read under rule XXII and otherwise qualify.

Mr. Byrd of West Virginia. That is correct.

The President pro tempore. Is there objection? Without objection, it is so ordered.

Equal Employment Opportunities Enforcement Act of 1971

The Senate continued with the consideration of the bill (S. 2515) to further promote equal employment opportunities for American workers.

Mr. Byrd of West Virginia. Mr. President, it is my understanding that the able Senator from North Carolina is willing to have a vote at 11:30 a.m. today on an amendment which he is about to offer. May I ask if all parties are willing to announce that a vote will occur at that time, and if so, we can ask unanimous consent?

Mr. Javits. Mr. President, may I ask special consideration for the business of a commission of the United States of which I am a member, the Commission on Marihuana and Drug Abuse, with respect to the imminent plans of the Senator from Alabama and the Senator from North Carolina?

I am perfectly willing to vote, but I need a half hour to an hour some time this morning to attend that Commission meeting. Would I have a right to expect, assuming that we do vote at 11:30, that the following amendment may be one which is not so heavily involved in legal questions, et cetera?

Mr. Ervin. Mr. President, we propose to offer an amendment to provide that the courts are not bound by the findings of fact of the Commission unless they are supported by the preponderance of the evidence. We expect to offer after that an amendment which would exempt from the coverage of the bill employees of educational and religious institutions.

Mr. Javits. May I say to the Senator that on the latter—I shall say and debate the first amendment; I feel that I must, but on the latter amendment, may I ask whether there is going to be any time limitation soon on that?

Mr. Ervin. I doubt it seriously, because I think it will take a certain amount of time to show how ridiculous is the proposal of the bill to give to either Federal judges in respect to State educational institutions or to the commissioners in respect to other educational institutions the power to determine whether or not the institution has hired men who are more competent than others who have been hired to teach the very same subjects, men who are more competent than applicants to seek employment against the will of those institutions. That will require some time, and I would not be willing at this time to agree to a time limitation on it.

Mr. Byrd of West Virginia. Mr. President, I take it that all parties are willing to vote on the amendment the Senator from North Carolina is about to offer at 11:30 a.m. today.

Mr. Williams. Yes.

Mr. Byrd of West Virginia. I ask unanimous consent that the vote on the amendment which the able Senator from North Carolina is about to offer occur today at 11:30 p.m.

The President pro tempore. The amendment which is the pending business?

Mr. ERVIN. Mr. President, I was going to withdraw the pendin amendment, because I consider that it is not of the importance of th amendment I am about to offer.

The PRESIDENT pro tempore. Without objection, the amendment withdrawn.

AMENDMENT NO. 811

Mr. ERVIN. Mr. President, I call up amendment No. 811, which has been proposed by the Senator from Alabama (Mr. Allen) and myself and ask that it be stated in full, because that will explain what it does

The PRESIDENT pro tempore. Is there objection to the proposal t vote on this amendment at 11:30? The Chair hears none, and it is so ordered.

The amendment will be stated.

The legislative clerk read as follows:

1. On page 42, lines 17, 18, and 19, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reveiwed by the court, which shall reject them and make its own findings of fact on the evidence in the record in the event it concludes that the findings of fact of the Commission are not supported by the preponderance of the evidence in the record."

2. On page 43, lines 5 and 6, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court under the rule hereinbefore specified governing its review of other findings of fact of the Commission."

3. On page 44, lines 17 and 18, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court, which shall reject them and make its own findings of facts on the evidence in the record in the event it concludes that the findings of fact of the Commission are not supported by the preponderance of the evidence in the record."

4. On page 45, lines 5, 6, and 7 strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court under the rule hereinbefore specified governing its review of other findings of fact of the Commission."

Mr. ERVIN. Mr. President, for the information of the distinguished Senator from New York, I will state that the Senator from Alabama and I, instead of calling up the amendment that I mentioned to exempt employment practices of educational and religious institutions, will call up another amendment, if this amendment should be rejected, which would give the right to the party aggrieved by a decision of the Commission to apply to the court for trial de novo, and the right to a jury trial in the event either party requested it. If the Senator from New York will advise me at what time he wants to go to the meeting of the Commission that he mentioned, we can adjust the debate to suit the convenience of the Senator from New York.

Mr. JAVITS. I thank the Senator.

Mr. ERVIN. Mr. President, someone stated in a happier day that if he could write the songs of the Nation, he would not care who wrote its laws. I say that if I were allowed to write the verdict on which a judgment is to be based, I do not care who writes the judgment.

During the course of the day yesterday, I pointed out that the pending bill emulates hypocrisy. We are told that hypocrisy pays homage to righteousness and justice by attempting to disguise itself in the garb of righteousness and justice.

I also called attention yesterday to the fact that the men who drafted and ratified the Constitution stated in its preamble that one of their

poses in establishing and ordaining that document was to establish
ice. I charge without fear of successful contradiction that every
redural aspect of the Senate committee bill is designed to stay so
away from justice that despite the far-reaching grasp for power
his bill, the bill does not get close enough to justice to touch the
of its garment.
he truth of it is that this is a bill which seeks to prostitute justice
the purpose of making certain the policies of those who believe
basic rights should be denied to all American citizens for the sup-
d—and I use the word "supposed" advisedly—benefit of one class
ur citizens or one segment of our society.
r. Byrd of West Virginia. Mr. President, will the Senator yield?
r. Ervin. I yield.
r. Byrd of West Virginia. I ask unanimous consent that the time
he pending amendment be equally divided between the Senator
North Carolina (Mr. Ervin) and the Senator from New Jersey
. Williams).
r. Ervin. Mr. President, I shall not object to that if the Senator
West Virginia will not make his unanimous-consent request as
e few remarks I have heretofore made.
r. Byrd of West Virginia. No, beginning only at this point.
he President pro tempore. Without objection, beginning at this
ent, the time on the amendment will be equally divided between
Senator from North Carolina and the Senator from New Jersey.
ho yields time?
r Ervin. Mr. President, I yield myself such time as I may require
of what I construe to be the 20 minutes allotted to those who favor
mendment.
he President pro tempore. The Senator from North Carolina is
gnized for 20 minutes.
r. Ervin. Mr. President, I assert that every provision of this bill
signed to enforce the policy of the bill—that is, to rob all American
ns of basic liberties—for the supposed benefit of the individuals
ituting one segment of our society, for whom certain pressure
ps have appointed themselves guardians.
rst, you establish a Commission, a politically appointed Commis-
The history of this Commission down to this date shows that
ally all the men who have been appointed to serve on this Com-
ion were men who were psychologically incapable of holding the
s of justice evenly, because they were so biased in favor of the
y of the bill that they could not appraise impartially the truth
ved in the proceedings.
, you start out with the creation of a board composed of men of
ubted bias, men who would be disqualified to serve on any jury
ng on questions of fact which arise in cases of this nature, and
would be incapable of doing what the great English statesman
und Burke said is the duty of exercising the cold neutrality of the
rtial judge. If the men who were selected to serve on this Commis-
were impartial and unbiased, the system for administering the
s such that it makes it impossible for those men to long remain
ased; because it unites the function of the prosecutor and the func-
of the judge, and these men are prosecuting, in the sense that they
tigate charges and then prefer charges to the General Counsel on

some occasions, and on other occasions these men sit as judges rat
than investigators.

The Supreme Court of the United States has declared in plain wor
in the *McGrath* case, that when you unite these functions and permi
public official 1 day to exercise investigatory powers in some cases a
on the next day to exercise the adjudicatory powers in other cases, y
cause him to develop a psychological handicap which disables him fr
exercising either of these functions in an impartial manner.

I know nothing that is more inconsistent with the purpose p
claimed by the men who drafted and ratified the Constitution, and t
preamble to that instrument, when they ordained and established th
instrument to establish justice, than to create a Commission of th
nature, with power to coerce into acceptance of their views with respe
to each person employed by them, in all cases throughout the Unit
States involving a business enterprise employing from eight to
persons, and of every religious institution except in respect to tho
who engage simply in religious activities rather than the secular activ
ties which are necessary to permit any religious institution to functio

To show the absurdity of the last provision, many churches emplo
people to conduct kindergartens for small children in order that th
parents of these children may attend divine services. Yet, under th
bill, as I construe it, the EEOC would have jurisdiction to supervis
the employment practices of the churches in respect to the employmen
of these persons.

Furthermore, Mr. President, this bill gives the EEOC power t
supervise the employment practices of every private educational insti
tution in the United States. This shows another phase of this bil
which manifests that the bill is the greatest threat of tyrannical powe
ever proposed in any legislative proposal presented to the America
Congress throughout the history of this Nation.

For example, I hold in my hand a catalog of an educational institu
tion which manifests this absurdity. This educational institution has
department of classics in which they teach ancient art, Greek archeo
ology, the archeology of the Bible, and Roman art. This bill, insofa
as a non-State-supported educational institution is concerned, woul
give the EEOC the power to judge whether the person selected by th
educational institution to teach these rather abstruse subjects is les
competent than a person that the EEOC chooses to teach them in th
institution and to find that in employing a person to teach these sub
jects, the institution selected a man less competent than the man selecte
by the EEOC, and did so because of some mental preference, such as
those condemned by this act.

Another thing which illustrates the fact that the bill is not designe
to do justice arises out of the fact that, under the bill, the Commissio
is acting on behalf of individuals selected by it and the taxpayers o
the United States will pay the cost incurred in behalf of these ind
viduals, whereas the bill compels the individual employers and the
individual employees hired by the individual employees to bear the
cost of any efforts to vindicate their rights.

The crowning prostitution of justice sanctioned by this bill is the
provision which is designed to prohibit courts of law which review the
findings of the Commission to search for the truth with respect to the
facts of the case.

On yesterday, I read to the Senate the definitions which are given to terms "substantial evidence" and "preponderance of evidence."

What is the definition of "preponderance"?

It is this: Superiority in weight, quantity, power, importance, or like.

Under the law of every State in the United States, a party suing in civil court to establish a complaint of any kind is required to establish the truth of his cause by the preponderance of the evidence, that by the evidence which outweighs the evidence in opposition and evidence which shows that his allegations are probably true.

Not so with this bill. It disables the courts to search for the truth with respect to the facts by decreeing that the court, no matter how inconsistent the findings of the Commission may be with respect to questions of fact, is bound by its findings if they are supported by substantial evidence.

Now what is "substantial evidence"?

According to the definition of the courts, it is merely evidence which more than a scintilla. It is merely evidence which is a percentage out beyond being purely imaginary. Five percent of the evidence substantial evidence.

Thus, we have a situation here that, in their zeal to deny all Americans rights for the supposed benefit of one segment of our society—for which the pressure groups supporting this bill have appointed themselves guardians—we have a system under which the courts are denied right to search for truth with respect to issues of fact, even if those es of fact are supported by as little as 5 percent of the evidence and shown to be false by at least 95 percent of the evidence.

Mr. President, I do not know what will happen to this country. I uld say, with all due respect to those who support this bill, that one the chief activities of Congress in enacting bills of this character is frustrate another purpose of the Founding Fathers declared in the amble to the Constitution, and that is, to destroy rather than to re the blessing of liberty to the American people.

his bill represents the greatest grab for governmental power in the ory of this Nation. It represents the implementation of the grab power by procedures which constitute an insult to justice which, as ve stated, do not approach close enough to Justice even to touch the of her garment.

Mr. President, I urge the Senate to adopt this amendment and thus ble the courts which review the findings of the Commission to ch for truth in accordance with the evidence in the case and thus et aside the findings of fact which are not supported by a preponance of the evidence. In any case, under this amendment, where the ings of the Commission are supported by a preponderance of the dence, the court would be bound by those findings.

ut this amendment would merely provide, where the court finds findings of the Commission are not supported by the greater ght of the evidence, or the more convincing evidence, or the preponderance of the evidence, that the court itself can make findings of

is important to have these findings of fact reviewed by an impartribunal composed of men who are capable of acting with the cool rality of the impartial judge.

Mr. WILLIAMS. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. I am happy to yield to the Senator from New Jersey.

Mr. WILLIAMS. Within the last few seconds, the Senator described in three ways his interpretation of the meaning of the weight of evidence that would be the test here. Could the Senator please repeat which those three ways of describing the weight of the evidence are?

Mr. ERVIN. They all mean the same thing.

Mr. WILLIAMS. Would the Senator repeat them?

Mr. ERVIN. I tell the Senator that I used to have to charge juries on this. The preponderance of the evidence is the evidence which has more convincing force than the evidence in opposition to it. All I am trying to do is see that the court should be allowed to act in cases where the findings of the Commission are only supported by evidence which is less convincing than the evidence accepted by the Commission.

Mr. WILLIAMS. Mr. President, I thank the Senator.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. WILLIAMS. Mr. President, I am glad that I asked the Senator from North Carolina the last question. He did give further meaning to the word "preponderance." Since we talked about the weight of the evidence in charges to the jury—and as I say, the Senator from North Carolina was a most able and distinguished jurist in North Carolina before he came to the Senate—that is one of the points I would like to make.

This description of the weight of the evidence would be the test where it is used in law and used in the jury trial situation. Of course that is not what we are dealing with here. We are dealing with agency administrative action and all of the precedent and all of the practice goes contrary to what the Senator from North Carolina is suggesting as the court of appeals test in connection with the weight of the evidence on an appeal from a Commission decision.

I will say that perhaps if any man can tread where others might fear to tread in this legal area: the Senator from North Carolina perhaps is that one.

Professor Wigmore, whom many of us used as the high authority in evidentiary matters as we went through law school and who used to guide us in the practice of law, found the term "preponderance of the evidence" to be quite impossible to define and subject to much confusion among the courts and those in the legal profession.

If I recall correctly, Professor Wigmore characterized it as a term which jurors could waste years trying to define. Therefore, we have not the time to define it here.

I will say that there is a precedent for this descriptive phrase to be applicable in the trial of a case. This is true in jury cases. However, we are not dealing with jury trials here. We are dealing with trials before an administrative agency or a commission.

We have a precedent in jury trials. Two years ago, as manager of the bill, I accepted an amendment offered by the Senator from North Carolina to have the preponderance of the evidence as a test for the Commission. That was written into the bill passed by the Senate.

will confess my error in not including that in the bill that was orted to the Senate by the Committee on Labor and Public Welfare. s an oversight.

will say that if this amendment offered by the Senator from North olina fails on the vote that will be taken shortly, it will be my pur- e to include the preponderance test where it properly belongs, at trial level. Then we will go on to the test at the appellate level as s in all other administrative agencies save one, the Subversive Ac- ties Control Board. And we might look into how many cases they e had to use that test of preponderance in at the appellate level. I bt if there are very many, if any. At any rate, it is at the appellate el. I would like to stick, being a lawyer, with the long-time prec- nts on the evidence rule.

Ir. President, I yield to the Senator from New York.

The Presiding Officer. The Senator from New York is recognized.

Ir. Javits. Mr. President, I join with the manager of the bill in the ement that we will include the preponderance of the evidence rule ore the Commission. Second, I must say that the vast majority of missions which have cease-and-desist powers are subject to the stantial evidence rule rather than the preponderance of the evi- e rule, aside from the Subversive Activities Control Board, which manager of the bill has already mentioned.

ndeed, the substantial evidence rule is specifically mandated into as the general standard of review under the Administrative Pro- ure Act. Thus 5 U.S.C. 706 provides:

. Scope of review.

the extent necessary to decision and when presented, the reviewing court decide all relevant questions of law, interpret constitutional and statutory isions, and determine the meaning or applicability of the terms of an agency n. The reviewing court shall—

) compel agency action unlawfully withheld or unreasonably delayed; and

) hold unlawful and set aside agency action, findings, and conclusions found —

* * * * * * *

) unsupported by substantial evidence in a case subject to sections 556 and f this title or otherwise reviewed on the record of an agency hearing provided atute; or

* * * * * * *

aking the foregoing determinations, the court shall review the whole record ose parts of it cited by a party, and due account shall be taken of the of prejudicial error. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393).

lso, there is a very serious question as to whether this amendment not simply constitute again a reargument of the cases on cease- desist power in an effort to obtain civil suits. We might as well ceed with the nisi prius suit and not circuit court review. In short, amendment is just another way of trying to reverse the Senate's tion so far taken in respect to the so-called Dominick amendment.

r. President, I realize that they do not call witnesses in the trials ose cases. However, they must weigh every shred of evidence as fully as if it were a de novo trial. And if they have a preponder- of the evidence rule, they will have to use that technique time and again because they will have to study and evaluate the evidence. as to meeting the standard of substantiality, but as to which side ponderates on the scale of justice.

Mr. President, if the substantial evidence rule contained as mu
gossamer as the Senator from North Carolina would have us belie
he would have much more of a point not only against this Commiss
but also against every other commission than he actually has.

There is a big, gaping hole in his argument. He said that it i
percentage point beyond being purely an imaginary description of
substance. Then he said it could be as little as 5 percent of the eviden

Let us see what the substantial evidence rule is. A classic statem
on that rule is made in the case of *Universal Camera Corp.* v. *the Lab
Board*, 340 U.S. 474. At page 488, Mr. Justice Frankfurter, in t
classic decision on the subject had this to say about the substant
evidence rule:

> To be sure, the requirement for canvassing "the whole record" in order
> ascertain substantiality does not furnish a calculus of value by which a revie
> ing court can assess the evidence. Nor was it intended to negative the funct
> of the Labor Board as one of those agencies presumably equipped or informe
> by experience to deal with a specialized field of knowledge, whose findin
> within that field carry the authority of an expertness which courts do not posse
> and therefore must respect. Nor does it mean that even as to matters n
> requiring expertise a court may displace the Board's choice between two fair
> conflicting views, even though the court would justifiably have made a differe
> choice had the matter been before it *de novo*. * * *
>
> Congress has merely made it clear that a reviewing court is not barred fro
> setting aside a Board decision when it cannot conscientiously find that th
> evidence supporting that decision is substantial, when viewed in the light tha
> the record in its entirety furnishes, including the body of evidence oppose
> to the Board's view.

So the doctrine of substantiality, based upon the Administrativ
Procedure Act which will be applicable to this particular Commissio
under this bill, as defined by the U.S. Supreme Court means that w
take the whole record, the facts for and the facts against, and the
see if there is substantial evidence left that backs up the finding of th
Commission.

That, Mr. President, is a very different standard, a much mor
weighted standard than "a percentage point beyond being purel
imaginative." We do not contend for a "percentage point beyond bein
purely imaginative," but we do contend that the agency which is tryin
the facts presents a complete record to the court, when it weighs th
pros and cons and still leaves a substantial amount in favor of th
pros; that that will stand with the court; and that the court of appeals
should not have to weigh the evidence as it would if it were trying th
case de novo, remembering always that the court can send back the cas
for further evidence if it does not find that by laying the pros an
the cons in the balance—both sides of the evidence, not just one side—
there is still a substantial amount to support the findings of the
Commission.

Mr. President, there are good reasons why the substantial evidenc
rule was included in the Administrative Procedure Act and in thi
bill before us.

To quote another case, *Conolo* v. *Federal Maritime Commission*, 38
U.S. 607, at 620:

> Congress was very deliberate in adopting this standard of review. It free
> the reviewing courts of the time consuming and difficult task of weighing th
> evidence, it gives proper respect to the expertise of the administrative tribun
> and it helps promote the uniform application of the statute. These policies ar

rticularly important when a court is asked to review an agency's fashioning discretionary relief. In this area agency determinations frequently rest upon complex and hard-to review mix of considerations. By giving the agency cretionary power to fashion remedies, Congress places a premium upon ency expertise, and, for the sake of uniformity, it is usually better to minimize opportunity for reviewing courts to substitute their discretion for that of the ncy. These policies would be damaged by the standard of review articulated the court below.

Mr. President, those reasons are fully applicable to the EEOC and erefore I believe we should reject the pending amendment.

Mr. WILLIAMS. Mr. President, I have heard an overwhelming weight persuasion by the Senator from New York that this amendment uld be defeated by a preponderance of the statements and by ason of all the precedents.

Mr. President, in the first place, I do not feel that the use of the m "preponderance of the evidence" is at all useful or necessary in context of this bill. It neither clarifies the degree or nature of the dence that we would be dealing with in these situations nor in- duces any added benefit for the resolving of complaints under this in these situations.

n general, Mr. President, the courts have avoided using the term or olying it to any significant number of cases. While it is generally med to be the standard of persuasion in civil cases, its precise mean- or an understanding of its application has never been fully under- en by the courts. The questions still remain. A widely accepted inition is that evidence preponderates when it is more convincing to trier than the opposing evidence. While this kind of commonsense lanation has grown out of repeated use, its applicability has been ricted to jury-trial situations where the jury is led to believe, ough proof by preponderance, that the existence of a contested fact ore probable than its nonexistence. However, this ceases to be ap- able in apellate cases.

his nonapplicability of the term "preponderance of the evidence" be best illustrated by reference to the experiences of the NLRB. ile the National Labor Relations Act contains the requirement that Board make its findings by a "preponderance of the testimony," a rch of the labor board cases as reviewed by the courts discloses no rence to "preponderance." The courts rather refer repeatedly to bstantial" evidence.

econd, Mr. President, I feel that the amendment, as proposed by the inguished Senator from North Carolina, seeks to introduce a new unnecessary element in the courts' reviewing process of administra- decisions. If I understand the amendment correctly Mr. President, ould require the appellate courts to hold, in effect, a trial de novo in se cases where "it concludes that the findings of fact of the Commis- are not supported by the preponderance of the evidence in the ord."

Ir. President, it is one of the fundamental traditions of our system ourts that there is a gulf fixed between the trial court and the re- ving court. The reviewing court examines only questions of law, and rred, except in a few exceptional situations like mandamus actions lisbarment proceedings, from examining issues of fact. This amend- t, Mr. President, would specifically alter this separation of func- s.

The traditional and long-standing procedure of administrative
view in this country is that the courts of appeals review an agency de
sion by examining the record of the administrative proceeding to det
mine whether there is "substantial evidence on the record" to susti
the agency's finding. This process is guaranteed by the Administrati
Procedure Act and by the provisions of S. 2515.

The reviewing courts, in examining the record of the agency, ha
been very conscious of the need to fully insure that the administrati
hearing fully and properly takes into document all the evidence p
sented at the hearing. The standard has probably been best enunciat
by the former Mr. Chief Justice Frankfurter in the Supreme Cour
decision in Universal Camera Corp. against NLRB where the co
stated:

> The Board's findings are entitled to respect; but they must nonetheless be s
> aside when the record before the Court of Appeals clearly precludes the Boar
> decision from being justified by a fair estimate of the worth of the testimony
> witnesses or its informed judgment on matters within its special competence,
> both.

The amendment which we are now considering would destroy th
traditional function of the appeals courts and would seek to make the
trial courts. It would seek to supplant the substantial evidence ru
contained in the Administrative Procedure Act, and preferred by th
courts even before its formalization in that act, and seek to substitu
therefor a new procedure based upon a yet undefined standard wi.ic
the courts must use in reviewing equal employment cases. I submit, Mr
President, that this amendment would confuse the administrative re
view process immeasurably, and would result in unnecessary work fo
the appeals courts.

It is the purpose of appellate procedure to provide a quick and pr
cise review of any errors which may have been made at the trial leve
In this function, the appellate courts are by design, and not by accident
freed from the frequently tedious and time-consuming process of tak
ing factual evidence. To now introduce this function into the appella
courts, as this amendment seeks to do, can create nothing short of chao
in the judicial process. The appeals court traditionally reviews fo
errors and, if in its opinion errors are indeed found, it remands the
case to the trier of the facts with specific instructions for remedying the
error.

If this traditional separation of functions is now destroyed, Mr
President, what worth does the trial level proceeding have? If the re
viewing court is going to retry the entire case, then we might as wel
do away with the trial process altogether and only have the appeals
courts doing all cases. I feel, Mr. President, that the amendment whic
we are now discussing degrades the entire administrative process by
imputing that the appeals court may have to entirely retry a cas
where errors are made on the record, and that remand to the adminis
trative tribunal would not resolve any such errors which might have
been made.

Mr. President, I believe that the time of the Senator from Nort
Carolina has been used up. If he would like to borrow from my time
I shall be glad to yield to him.

Mr. ERVIN. I certainly appreciate the generosity of my good friend
rom New Jersey.

Mr. President, the distinguished Senator from New York says that
ne weight of this argument is that the court should not be permitted
) require a greater weight of evidence when the facts of the case should
ave been determined by a substantial amount of evidence.

He says he is willing to amend the bill to require the Commission to
ake a finding based on a preponderance of evidence, but the retention
i the bill of provisions which I seek to strike, and to offer substitute
rovisions which would nullify that purpose.

While the law as amended requires the findings of the Commission to
e made by a preponderance of the evidence, that would be paying little
ore lipservice to justice than the bill now before us. It would be ab
olutely nugatory because if the Commission did not obey that law and
ased its findings on less than a preponderance of the evidence, when
e court reviewed the action of the Commission it could not determine
at the Commission had failed to obey the law if the findings of the
ommission were supported by any substantial evidence—that is, any-
ing above a scintilla, and anything constituting enough to resist a
otion for a nonsuit in a civil court.

Mr. WILLIAMS. Mr. President, will the Senator from North Carolina
eld for an observation?

Mr. ERVIN. I yield.

Mr. WILLIAMS. It was just 2 years ago, when the bill was before us,
at the Senator from North Carolina persuaded me—indeed, per-
aded the entire Senate—that at the trial level, at the Commission
aring level—the preponderance of evidence—a test which fits the
recedents in other areas of the law—would be appropriate at that
vel, and that is why, in the bill as passed by the Senate, at pages 10
d 12, the Senator's amendment was added. The amendment pro-
ded that "if the Commission finds by a preponderance of the evi-
nce taken by the Commission," et cetera; and in the other section, at
ge 12, "shall be determined by a preponderance of the evidence of
e record." It was not lipservice then. We were persuaded by the
nguage of the amendment.

Mr. ERVIN. The Senator from North Carolina is a little wiser now
an he was then. He has recognized that all that amounted to was a
rt of biased request to the Commission. Under the provision that
lds the courts, if there is barely more than a scintilla of evidence—
at is, substantial evidence—then the Commission can violate the rule
at the Senator from Alabama and the Senator from North Carolina
vocated with respect to the action of the Commission, and the courts
ould be unable to correct a violation of that rule under the bill in the
sence of my amendment.

I thank the Senator from New Jersey for his generosity in yield-
g me the extra time. I should like to add this observation: It is true
at there are many laws making the findings of administrative agen-
s binding if they are supported by substantial evidence. But, as I
served yesterday, the fact that Congress has passed iniquitous laws
the past does not justify Congress continuing to enact iniquitous
ws.

I thank the Senator for yielding me his time.

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Mr. WILLIAMS. Mr. President, I yield back the remainder of m time.

The PRESIDING OFFICER. All time is yielded back.

Mr. JAVITS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the orde for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The time on the amendment having ex pired, under the previous order the Senate will now proceed to vote on the amendment offered by the distinguished Senator from North Carolina.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. Bentsen), the Senator from Missouri (Mr. Eagleton), the Senator from Georgia (Mr. Gambrell), the Senator from Oklahoma (Mr. Harris), the Senator from Washington (Mr. Jackson), the Senator from Massachusetts (Mr. Kennedy), the Senator from Washington (Mr. Magnuson), the Senator from Arkansas (Mr. McClellan), the Senator from South Dakota (Mr. McGovern), the Senator from Montana (Mr. Metcalf), the Senator from Maine (Mr. Muskie), the Senator from Alabama (Mr. Sparkman), the Senator from Virginia (Mr. Spong), the Senator from Mississippi (Mr. Stennis), the Senator from Illinois (Mr. Stevenson), the Senator from California (Mr. Tunney), the Senator from Idaho (Mr. Church), the Senator from Indiana (Mr. Hartke), and the Senator from Minnesota (Mr. Humphrey) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. Eastland) is absent because of illness.

On this vote, the Senator from Mississippi (Mr. Eastland) is paired with the Senator from Washington (Mr. Magnuson).

If present and voting, the Senator from Mississippi would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Colorado (Mr. Dominick) is paired with the Senator from Washington (Mr. Jackson).

If present and voting, the Senator from Colorado would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Georgia (Mr. Gambrell) is paired with the Senator from South Dakota (Mr. McGovern).

If present and voting, the Senator from Georgia would vote "yea" and the Senator from South Dakota would vote "nay."

I further announce that, if present and voting, the Senator from Idaho (Mr. Church), the Senator from Illinois (Mr. Stevenson), the Senator from California (Mr. Tunney), and the Senator from Minnesota (Mr. Humphrey) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. Dominick), the Senator from Oklahoma (Mr. Bellmon), the Senators from Oregon (Mr. Hatfield and Mr. Packwood), the Senator from

wa (Mr. Miller), the Senator from Kansas (Mr. Pearson), the nator from Ohio (Mr. Taft), and the Senator from South Carolina Ir. Thurmond) are necessarily absent.

The Senator from Tennessee (Mr. Brock), the Senator from New ork (Mr. Buckley), the Senator from Wyoming (Mr. Hansen), d the Senator from Maryland (Mr. Mathias) are absent on official siness.

The Senator from Arizona (Mr. Goldwater) is absent by leave of the enate.

The Senator from South Dakota (Mr. Mundt) is absent because of ness.

The Senator from Utah (Mr. Bennett) is detained on official siness.

On this vote, the Senator from Wyoming (Mr. Hansen) is paired th the Senator from Oregon (Mr. Hatfield). If present and voting, Senator from Wyoming would vote "yea" and the Senator from egon would vote "nay."

On this vote, the Senator from South Carolina (Mr. Thurmond) paired with the Senator from Ohio (Mr. Taft). If present and vot-g, the Senator from South Carolina would vote "yea" and the Sena- from Ohio would vote "nay."

On this vote, the Senator from Colorado (Mr. Dominick) is paired th the Senator from Washington (Mr. Jackson). If present and ing, the Senator from Colorado would vote "yea" and the Senator m Washington would vote "nay."

On this vote, the Senator from Utah (Mr. Bennett) is paired with Senator from Iowa (Mr. Miller). If present and voting, the nator from Utah would vote "yea" and the Senator from Iowa uld vote "nay."

The result was announced—yeas 22, nays 43, as follows:

YEAS—22

en	Ellender	Jordan, Idaho
ker	Ervin	Long
rd, Va.	Fannin	Roth
mon	Fulbright	Talmadge
les	Gurney	Tower
per	Hollings	Young
ton	Hruska	
rtis	Jordan, N.C.	

NAYS—43

en	Gravel	Percy
tt	Griffin	Proxmire
lerson	Hart	Randolph
rh	Hughes	Ribicoff
ll	Inouye	Saxbe
le	Javits	Schweiker
gs	Mansfield	Scott
oke	McGee	Smith
rdick	McIntyre	Stafford
rd, W. Va.	Mondale	Stevens
e	Montoya	Symington
k	Moss	Weicker
nston	Nelson	Williams
e	Pastore	
g	Pell	

NOT VOTING—35

Bellmon	Harris	Mundt
Bennett	Hartke	Muskie
Bentsen	Hatfield	Packwood
Brock	Humphrey	Pearson
Buckley	Jackson	Sparkman
Church	Kennedy	Spong
Dominick	Magnuson	Stennis
Eagleton	Mathias	Stevenson
Eastland	McClellan	Taft
Gambrell	McGovern	Thurmond
Goldwater	Metcalf	Tunney
Hansen	Miller	

So Mr. Ervin's amendment was rejected.

Mr. WILLIAMS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 829

Mr. ERVIN. Mr. President, I have announced that the distinguished Senator from Alabama and I would next call up amendment No. 609, which would provide for trial by jury——

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ERVIN. I had announced that I would next call up amendment No. 609, which was an amendment to allow the party aggrieved by a judgment of the Commission to appeal to the courts and have a trial de novo, and a trial by jury if he so desired. But I think it will take more educational endeavors on my part to persuade the Senate, in view of its last vote——

Mr. BYRD of West Virginia. Mr. President, will the Senator please use his microphone?

The PRESIDING OFFICER. The Chair cannot hear the Senator from North Carolina.

Mr. ERVIN. I was announcing that instead of calling up that amendment, I have reached the conclusion, in view of the last vote, that the Senate is not now in a position to show much veneration for the ancient right of trial by jury, and I shall postpone offering that amendment until the Senate has had time to further consider some of the landmarks of the Constitution of worthier service.

So instead of doing that, on behalf of the Senator from Alabama (Mr. ALLEN) and myself, I call up amendment No. 829, and ask that it be stated in full, because a statement in full will do much to explain what its purport is.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

Add a new section at the end of the bill appropriately numbered and reading as follows: "No department, agency, or office of the United States shall require any employer to practice discrimination in reverse by employing persons of a particular race, or a particular religion, or a particular national origin, or a particular sex in either fixed or variable numbers, proportions, percentages, quotas, goals, or ranges. Any officer of the United States or any other person who violates this provision shall be guilty of a misdemeanor and upon conviction shall be imprisoned not exceeding one year or fined not exceeding $1,000.".

Mr. ERVIN. Mr. President, I modify this amendment by striking
t lines 8, 9, 10, and 11, which provide that any officer of the United
ates or any other person who violates this provision shall be guilty
a misdemeanor and upon conviction shall be imprisoned not exceed-
g one year or fined not exceeding $1,000, and substitute in lieu
ereof the following:

If any department, agency, officer, or employee of the United States shall
olate or attempt or threaten to violate the provisions of the preceding sentence,
y employer or employee aggrieved by such violation, or attempted or threat-
ed violation, shall have the power to bring a civil action in the appropriate
strict court of the United States; and said district court shall have the power
enter such a decree or grant such temporary interlocutory or permanent
unctive relief as may be necessary to correct the consequences of such violation
to prevent such attempted or threatened violation.

The PRESIDING OFFICER. Will the Senator send his modification to
desk?

Mr. ERVIN. Unfortunately, it is in my head. I had written it out,
t I left it in my office. I can get a written copy, if we take a recess
g enough for me to go to my office.

I ask unanimous consent, instead of that, that the Official Reporter
Debates furnish it.

The PRESIDING OFFICER. The Chair should have the modification at
desk, so that the clerk can read it before we proceed.

Mr. ERVIN. I suggest the absence of quorum, until I can write it up.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, I ask unanimous consent that the order
the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I find that I was mistaken with respect
the draft of the modification. I send to the desk the amendment as
dified and ask that it be stated in full.

The PRESIDING OFFICER. The clerk will state the amendment as
dified.

The assistant legislative clerk read as follows:

dd a new section at the end of the bill appropriately numbered and reading
ollows: "No department, agency, or officer of the United States shall require
employer to practice discrimination in reverse by employing persons of a
ticular race, or a particular religion, or a particular national origin, or a
ticular sex in either fixed or variable numbers, proportions, percentages,
tas, goals, or ranges. If any department, agency, officer, or employee of the
ted States violates or attempts or threatens to violate the provisions of the
eding sentence, the employer or employee aggrieved by the violation, or
mpted or threatened violation, may bring a civil action in the United States
trict Court in the District in which he resides or in which the violation
irred, or is attempted or threatened, or in which the enterprise affected is
ted, and the District Court shall grant him relief by way of temporary
erlocutory or permanent injunctions as may be necessary to redress the con-
uences of the violation, or to prevent the attempted or threatened violation.

Mr. BYRD of West Virginia. Mr. President, will the Senator from
rth Carolina yield for a question, without losing his right to the
or?

Mr. ERVIN. I am delighted to yield.

Mr. BYRD of West Virginia. Mr. President, for the convenience of
ators on both sides of the aisle, I ask the able Senator from North
rolina whether or not a vote could be had on the pending amend-

ment at 2 o'clock this afternoon, and I ask the same question of th distinguished manager of the bill.

Mr. WILLIAMS. It is agreeable.

Mr. ERVIN. That would be entirely satisfactory to me.

Mr. BYRD of West Virginia. Is it anticipated by either party tha an amendment in the second degree would be offered to the pendin amendment?

Mr. WILLIAMS. Not for my part. I cannot speak for the comanage of the bill, the ranking minority Members.

UNANIMOUS-CONSENT REQUEST

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the vote on the pending amendment occur today at 2:15 p.m.; that time on any amendments to the pending amendment be limited to 20 minutes, to be equally divided between the mover of such and the distinguished manager of the bill; that the time on any motions or appeals be likewise limited and likewise divided; that time on any amendments to the amendment, motion, appeal, or point of order, with the exception of nondebatable motions, come out of the time allotted on the pending amendment; and that the time on the pending amendment be equally controlled and divided between the distinguished Senator from North Carolina (Mr. Ervin) and the distinguished manager of the bill.

Mr. COTTON. Mr. President, for the moment, I am compelled to object to the proposals. In a few moments, after I have had a chance to confer with the distinguished acting minority leader, I will not object.

Mr. BYRD of West Virginia. Mr. President, I withhold the request, accordingly.

The PRESIDING OFFICER. Objection is heard.

Mr. COTTON. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. I am delighted to yield.

Mr. COTTON. I know that the Senator from North Carolina is going into this, but I may have to leave town and might not be here all day. This amendment, if adopted, would mean that any Senator or Representative who had eight or more people on his staff would be subject to this law, just as every other American citizen, would it not?

Mr. ERVIN. It may be; so I would like to modify it again, to provide that it shall not apply to any Member of the legislative branch.

Mr. COTTON. I would hope not. No man should be above the law. I think that if we are going to make everybody in this country who employs 8 people be liable in some way and responsible in some way and subject to actions and harassment in some way, we should take it ourselves.

As I stated yesterday, I have always opposed this, because it gets down to the very small business, where the relationships of people are so personal. If we are going to do it to the small businessman with 8 employees in some little town, I think it would be very unwise and not very consistent for us to exempt ourselves, even if we are political officers.

I hope the Senator will leave it so that it will apply to us, because what is sauce for the goose is sauce for the gander.

Mr. ERVIN. Mr. President, the eloquence and cogent argument of the ble and distinguished Senator from New Hampshire have convinced e Senator from North Carolina of the absolute rectitude of the sition which the Senator from New Hampshire has just stated. On flection, I think it would be a mistake to modify this amendment so as exempt Members of Congress from its application. Since this nendment now covers all of the employees of all the States of all the subdivisions, and since it covers all the members of the faculties d the other employees of all educational institutions, and since it powers Caesar to lay his political hands on the activities of God. I ink it would be a mistake to exclude anyone from the unspeakable ranny which this bill is designed to inflict upon the people of nerica.

Mr. COTTON. Will the Senator from North Carolina yield to me for nore minute?

Mr. ERVIN. I am delighted to do so.

Mr. COTTON. I thank the Senator for the opportunity to express these ntiments, and having it understood that if I am unable to be present nen the final vote is taken on this amendmet, that I would vote for if it is to apply to us. However, I would vote against it if it does t apply to us, and I shall vote against the bill if it does not apply us. May I say now that I am very glad to withdraw my objection the unanimous-consent request of the distinguished Senator from st Virginia (Mr. Byrd).

Mr. ERVIN. I thank the distinguished Senator from New Hampshire, state which has now been irrevocably and completely embraced by Senator from North Carolina. [Laughter.]

Mr. BYRD of West Virginia. Mr. President, will the Senator from rth Carolina yield?

Mr. ERVIN. I am delighted to yield to the Senator from West rginia.

Mr. BYRD of West Virginia. Mr. President, I now renew my unani- us-consent request.

The PRESIDING OFFICER (Mr. McIntyre). Is there objection to the uest of the Senator from West Virginia? The Chair hears none, l it is so ordered.

Mr. BYRD of West Virginia. Mr President, I would ask the distin- shed Senator from North Carolina, does he anticipate a rollcall e on this amendment today?

Mr. ERVIN. Yes. I certainly do. I want to ask for the yeas and nays. ant to find out how many Members of the Senate——

Mr. BYRD of West Virginia. I do not believe there are a sufficient nber of Senators present in the Chamber at this moment, but the nator may be assured that the yeas and nays will be ordered.

Mr. ERVIN. Mr. President, I suggest the absence of a quorum on my e because I want to get the yeas and nays before there are too many kend departures. There might be too many weekend departures for to get the yeas and nays at a later time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent t the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, I yield to myself such time as I may use.

Mr. President, this amendment is very clear. It is in complete harmony with the other provisions of the Senate committee bill, strange to say.

All the other provisions of the Senate bill are avowedly included in the bill to prevent any employer, whether he is engaged in the work of Caesar or in the work of the Lord, who is touched by the bill, from practicing discrimination against applicants for employment or persons who desire to be promoted or persons who desire not to be discharged on account of their race, religion, national origin, or sex.

The amendment is in perfect harmony with that objective of the Senate committee bill because it forbids discrimination in reverse.

It gives access to the courts to prevent any department or agency or officer of the United States from requiring any employer to practice discrimination in reverse.

When Congress adopted the Civil Rights Act of 1964 it undertook to forbid discrimination in reverse.

It inserted in Title VII of that act a provision which stated in about as plain words can be found in the English language that no employer should be required to hire employees on a quota system: that is, a system which required him to employ certain numbers or percentages of a particular race, or a particular religion, or a particular national origin, or a particular sex.

I thought that that provision of Title VII of the Civil Rights Act of 1964 was so plain that he who runs might read it and not err in so doing.

But some officials who are charged by the Executive order relating to discrimination in employment—Executive Order 11246—and who are charged with enforcing the provisions of Title VII of the Civil Rights Act of 1964 were apparently illiterate or educated way past their intelligence, and they could not understand the plain and the unambiguous words of Congress which were designed to prevent what is probably known as discrimination in reverse.

As a consequence of this lack of understanding of the plain and unambiguous words of the English language employed in Title VII of the Civil Rights Act of 1964, the Officer of Contract Compliance on virtually every occasion has required employers seeking Government contracts to practice discrimination in reverse. The EEOC, on less frequent occasions, has hailed employers before its bar to practice discrimination in reverse.

It is to be noted that the Office of Federal Contract Compliance in the Department of Labor is charged with exactly the same duty in respect to employers seeking Government contracts that the EEOC is charged with in respect to employers generally. The sole function of the Office of Federal Contract Compliance under the Executive order is to review proposed contracts which various executive departments or agencies have made to obtain work or services for the Federal Government and to make sure that those contracts prohibit discrimination against employees or applicants for employment because of their race or religion or national origin or sex.

One of the strange things about Government is that it has an insatiable thirst for power and that if we give an executive department or executive agency an inch of authority, it converts that inch of authority into a mile of authority. This has been true in respect to the office of Federal Contract Compliance in the Department of Labor and it has been true in some instances in respect to the EEOC itself. The most notorious example of discrimination in reverse has been embodied in the concept set forth in what is popularly known as the Philadelphia plan.

The Office of Federal Contract Compliance adopted the Philadelphia plan and required building contractors who obtained contracts from the Federal Government of certain magnitude to deny the employment of members of the majority race until the employees belonging to the minority race reached certain percentages or certain proportions of their total employees.

Manifestly this requires discrimination in favor of the members of the minority race and discrimination against members of the majority race. In other words, it requires discrimination in reverse.

When the attention of the Office of Federal Contract Compliance and the then Secretary of Labor was called to the fact that the Office of Federal Contract Compliance was requiring discrimination in reverse and was requiring building contractors holding Government contracts of a certain magnitude to practice discrimination in favor of the members of one race and against the members of other races, the Office of Federal Contract Compliance and the then Secretary of Labor engaged in linguistic gymnastics and in a semantic operation the like of which unknown in the annals of either the English language or of our country.

They said that, when they require the employers holding Federal contracts to employ persons of one race in certain variable proportions preference to the members of other races, that does not constitute the ing of people by quotas, but on the contrary is the hiring of people obtain certain goals or the hiring of people to achieve certain ranges employment.

The Senator from North Carolina is not a person of great erudition the English language. For that reason he cannot ascend to the linstic stratosphere. On the contrary, he has to rely on the definitions the English dictionaries in his effort to ascertain the meaning of glish words.

The Senator from North Carolina took the dictionaries he had, and y are rather multitudinous, and he looked up the word "goal." He nd that the word "goal" was synonymous for all practical ints and purposes with the word "quotas." And he found that requiring an employer to employ persons of one race in preference to sons of other races within a variable percentage or a variable proportion of his total employees was nothing in the world other than all practical intents and purposes requiring a hiring of quotas.

So the Senator from North Carolina does not believe in discrimination and he joins those who propose that the Government prevent discrimination on the basis of race or religion or national origin or , and he offers an amendment which will prevent any department, ency, or office of the United States from requiring an employer to actice discrimination in reverse by employing persons of a partic-

ular race or a particular religion or a particular national origin o
particular sex in either fixed or variable numbers, proportions, p
centages, quotas, goals, or ranges.

I urge the Senate to adopt this amendment for two reasons. In t
first place, it is in perfect harmony with the objective of the bill
forbid discrimination in employment on the basis of race, religi
or national origin, or sex.

In the second place, the amendment is so phrased that any pers
handicapped in linguist ability and understanding of the meaning
words, and the Office of Federal Contract Compliance, the EEO
and the Secretary of Labor will have a law couched in phraseolo
which all of them can understand—and surely we ought to try
bring about simplicity of statements in the laws of the United Stat
and have those laws couched in terms such as the Members of Co
gress and those charged with preventing discrimination in emplo
ment can all understand alike. That is the objective of this amendme

In its original form, the amendment had a criminal sanction fo
enforcement; but on reflection, the Senator from Alabama (M
ALLEN) and the Senator from North Carolina came to the conclusio
that it would be a rather harsh remedy to make men criminals becaus
their understanding of English language differs from the understand
ing of Congress, which enacts laws in the English language. So th
distinguished Senator from Alabama and the Senator from Nort
Carolina modified their amendments so as to establish a differe
sanction for this amendment, and that sanction is the rather genera
sanction of giving any employer who is required to practice discrim
nation in reverse or any employee who is denied a job because of dis
crimination in reverse, access to the courts. The courts can then exercis
their general powers of equity and compel the Office of Contract Com
pliance and the EEOC to obey the acts of Congress according to th
plain intent of Congress. All these objectives will be achieved by th
adoption of this amendment.

Frankly, I find, as I travel to and fro among the people of this
land, that people cannot understand why the Federal Governmen
orders employers to practice discrimination in employment while they
are supposed to be preventing discrimination in employment. As I
observe the activities of the departments, agencies, or offices whic
are charged with preventing discrimination in employment, I am re
minded of one of Aesop's fables, the one about the man who got lost
in the woods on a very cold evening.

The man could not find his way out of the woods. He met a satyr.
The satyr told the man he would take him to the satyr's home and
entertain him overnight, and thus offer the man an opportunity to
find his way out of the dense woods to the man's home in the daylight
of the following morning.

When the satyr was accompanying the man to the satyr's home,
the man's hands were so cold that he blew on his hands, and the satyr
asked the man, "Why are you blowing on your hands?" The man said,
"I am blowing on my hands to keep them warm."

After the satyr and the man got to the satyr's habitation, the satyr
prepared an evening meal, which consisted in the main of hot por
ridge. The porridge was particularly hot, and the man blew his breath
on his porridge.

The satyr asked, "Why are you blowing your breath on the ridge."

The man replied, "I am blowing my breath on the porridge to make porridge cold."

The satyr said, "Out with you. I will have nothing to do with a n who blows hot and cold with the same breath."

That is precisely what the Office of Federal Contract Compliance the Department of Labor and the EEOC have been doing in their ged efforts to enforce Executive Order 11246 and Title VII of the il Rights Act of 1964, respectively, which prohibit discrimination employment on account of race, religion, national origin, or sex. ese authorities, in case after case, have entered orders requiring ployers to practice discrimination in reverse by employing persons a particular race or a particular religion or a particular national gin or a particular sex, either in fixed or variable numbers, pro- tions, percentages, quotas, goals, or ranges, I do not believe you can orce laws against discrimination in employment by commanding l requiring discrimination in employment. The two concepts are econcilable and repugnant to each other.

So I appeal to every Member of the Senate who does not think that Office of Federal Contract Compliance and the EEOC should be mitted to blow hot and cold with the same breath to support this ticular amendment.

Mr. President, I reserve the remainder, if any, of the time in support his amendment.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. WILLIAMS. It will be on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, will the Senator consent to the with- wing of his order for a moment? I just want to ask that the section he Civil Rights Act of 1964 that I referred to be printed in the ord.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the er for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. I yield myself such time as I may use at this moment.

Mr. President, I ask unanimous consent that subsection (j) of sec- 703 of Title VII of the Civil Rights Act of 1964 be printed in the ord at this point.

There being no objection, the statute was ordered to be printed in Record, as follows:

) Nothing contained in this title shall be interpreted to require any employer, oyment agency, labor organization, or joint labor-management committee ect to this title to grant preferential treatment to any individual or to any p because of the race, color, religion, sex, or national origin of such individual roup on account of an imbalance which may exist with respect to the total ber or percentage of persons of any race, color, religion, sex, or national n employed by any employer, referred or classified for employment by any oyment agency or labor organization, admitted to membership or classified ny labor organization, or admitted to, or employed in, any apprenticeship her training program, in comparison with the total number or percentage ersons of such race, color, religion, sex, or national origin in any com- ity, State, section, or other area, or in the available work force in any nunity, State, section, or other area.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quoru

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the ro

Mr. JAVITS. Mr. President, I ask unanimous consent that the ord for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MONTOYA). Without objection, it so order.

Mr. JAVITS. Mr. President, the amendment which is before us——

The PRESIDING OFFICER. How much time does the Senator yie himself?

Mr. JAVITS. Will the Senator from New Jersey yield me 10 minutes

Mr. WILLIAMS. Such time as the Senator requires, yes.

Mr. JAVITS. Mr. President, the amendment which is before us affec both the problem of dealing with Government contractors in the Offi of Contract Compliance, to which we have voted in the Department o Labor, and with remedies available under Title VII. This amendmen seeks to set a standard by which remedies shall be determined on th part of the United States.

Now, all we see in the wording of the amendment which is largel contained in its first sentence, is the tip of the iceberg because wha this first sentence purports to restrain is a department, agency, o officer of the United States. But a department, agency, or officer of th United States may move respecting a given situation for or upon th order of the court. We do not have to specify in this amendment tha it applies to the seeking or enforcing orders of a court because a cour usually does not itself require anything of an employer but acts o motion of an officer or employee of the United States. Therefore, th depth of this amendment is much greater than is apparent on th surface because it would purport not only to inhibit in given respect the officers of the United States but also the courts of the United State through whom, once they make a finding or a judgment, the officers o the United States are moved.

I make that analysis because it is clear that what is sought to b reached is, first the Philadelphia plan and similar plans in other cities, and beyond that, the whole concept of "affirmative action" as it has been developed under Executive Order 11246 and as a remedial con cept under Title VII.

Philadelphia-type plans are based on the Federal Government's power to require its own contractors or contractors on projects to which it contributes—for example, State projects with a Federal con tribution—to take affirmative action to enlarge the labor pool to the maximum extent by promoting full utilization of minority group employees, and by making certain requirements for those who hir to seek out minority employees as well as majority employees and also to correct discrimination on its face which has persisted over a long period of time. The courts have sustained such requirements The Philadelphia plan itself was sustained by the Court of Appeal for the Third Circuit in the case of *Contractors Association of Eastern Pennsylvania v. the Secretary of Labor*, 442 F. 2d 159. Certiorari wa recently denied by the Supreme Court. The basis of sustaining it wa really upon two critical points: First, the Government, as part of its procurement function, has the right to encourage full utilization of al minority group employees as a method of insuring the availability o

broad manpower pool to support procurement efforts, and second, plan was upheld as a proper way to remedy past discrimination in six building trades covered by the plan.

Thus, with respect to procurement, the court—I am reading from ge 171 of 442 Fed. 2d, if anyone is following the actual decision—ted:

n direct procurement the federal government has a vital interest in assuring t the largest possible pool of qualified manpower be available for the accom-hment of its projects.

Therefore, it was held that the Philadelphia plan requirement that nstruction contractors agree to use good-faith efforts to meet goals taining to the employment of minority-group employees in cer-n trades was entirely appropriate in terms of authority by the deral Government.

The court also held that there was nothing inconsistent between the iladelphia plan and section 703(j) of Title VII of the Civil Rights because the Philadelphia plan was issued under an Executive er, rather than Title VII of the Civil Rights Act, and that section (j) was a limitation only on Title VII. The decision also implied t the words of the Civil Rights Act themselves apply to the matter setting quotas for correction of imbalance in the percentage of ple in any race, in comparison to the percentage in the available k force in the area, whereas the Philadelphia plan was applicable ne available work force in certain specific trades.

Finally, the court also held that the Civil Rights Act of 1964 does prohibit specific relief requiring an employer to be "color con-ns" to remedy the effects of past discrimination.

The court, on page 173, held:

early the Philadelphia Plan is color-conscious. Indeed the only meaning which be attributed to the "affirmative action" language which since March of 1961 been included in successive Executive Orders is that Government contractors r be color-conscious. Since 1941 the Executive Order program has recognized discriminatory practices exclude available minority manpower from the labor In other contexts color-consciousness has been deemed to be an appropriate dial posture. Porcelli v. Titus, 302 F. Supp. 726 (D.N.J. 1969), aff'd, 431 F.2d (3d Cir. 1970); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 931 (2d Cir. 1968); Offermann v. Nitkowski, 378 F.2d 22, 24 (2d Cir. 1967). It been said respecting Title VII that "Congress did not intend to free an entire ration of Negro employees into discriminatory patterns that existed before Act." Quaries v. Philip Morris, Inc., *supra*, 279 F. Supp. at 514. The *Quarles* rejected the contention that existing, nondiscriminatory seniority arrange-ts were so sanctified by Title VII that the effects of past discrimination in job gnments could not be overcome. We object the contention that Title VII ents the President acting through the Executive Order program from attempt-o remedy the absence from the Philadelphia construction labor of minority esmen in key trades.

herefore, that the Government had a right under the Philadelphia plan, to r affirmative action which would overcome that past discrimination without gressing the Civil Rights Act of 1964.

he court sealed that in on page 177 of the opinion, which states:

e Philadelphia Plan is valid Executive action designed to remedy the ived evil that minority tradesmen have not been included in the labor available for the performance of construction projects in which the federal rnment has a cost and performance interest. The Fifth Amendment does not ibit such action.

. Mr. President, the courts have rejected much of the argument we should—what in effect this amendment does—preclude prefer-al treatment under any and all circumstances, because it runs a foul ection 703(j).

I would also like to cite in that regard the opinion in the *United States* v. *Ironworkers Local No. 86*, 443 F.2d 544, decided in the Ninth Circuit Court of Appeals as recently as May of 1971, in which the court held, in a Title VII "pattern or practice" case, that there was an affirmative duty for minority recruitment where it was shown that there was past discrimination which now required correction, and that the court could order that correction affirmatively without violating section 703(j) relating to preferential treatment of individuals of any group, and so forth, where there had been illegality. The court would not allow a respondent to profit from his own illegality under cover of section 703(j).

Now, Mr. President, I am told, and I believe the information to be reliable, that under the decision made last week by Judge Bonsal in New York, in the Steamfitters case, an affirmative order was actually entered requiring a union local to take in a given number of minority group apprentices.

What this amendment seeks to do is to undo the Philadelphia plan and those court decisions. Incidentally, I take great pride in the fact that when the legality of the Philadelphia plan was argued here, and we had an opinion of the Attorney General which held it lawful pitted against an opinion of the Comptroller General's Office which held it unlawful, I think I was the principal Senator who sustained the doctrine of legality. And I am very grateful, naturally, that the courts took that view.

So, there I believe that the amendment does two things, both of which should be equally rejected.

First, it would undercut the whole concept of affirmative action as developed under Executive Order 11246 and thus preclude Philadelphia type plans.

Second, the amendment, in addition to dismantling the Executive order program, would deprive the courts of the opportunity to order affirmative action under Title VII of the type which they have sustained in order to correct a history of unjust and illegal discrimination in employment and thereby further dismantle the effort to correct these injustices.

So, for both reasons, Mr. President, I believe that the amendment should be rejected, and I hope very much that the Senate will do that.

Mr. President, I ask unanimous consent that the two opinions which I have cited in this discussion be printed in the Record.

There being no objection, the excerpts were ordered to be printed in the Record, as follows:

CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA VERSUS SECRETARY OF LABOR

"The contractors Association of Eastern Pennsylvania v. The Secretary of Labor, George P. Shultz, the Assistant Secretary of Labor, Arthur A. Fletcher, the Director, Office of Federal Contract Compliance, John L. Wilks, the Secretary of Transportation, Clifford M. Hardin, and the General State Authority of the Commonwealth of Pennsylvania.)

(James D. Morrissey, Inc., the Conduit & Foundation Corp., Glasgow, Inc., Buckley & Company, the Nyleve Company, Erb Engineering & Constr. Co., Perkins, Kanak, Foster, Inc., and Lansdowne Constructors, Inc. (Intervening Plaintiffs-in-D.C.).)

"The Contractors Association of Eastern Pennsylvania, James D. Morrissey, Inc., the Conduit & Foundation Corp., Glasgow, Inc., Buckley & Company, the Nyleve Company, Erb Engineering & Constr. Co., Perkins, Kanak, Foster, Inc., and Lansdowne Constructors, Inc., Appellants.)

No. 19027, United States Court of Appeals, Third Circuit. Argued March 1, 1. Decided April 22, 1971.)

ction by contractors' association and individual contractors against various e and federal officials challenging validity of the Philadelphia Plan. The ited States District Court for the Eastern District of Pennsylvania, Charles Weiner, J., 311 F. Supp. 1002, entered order denying plaintiffs' motion for mmary judgment and granting motion of federal defendants for summary gment and the plaintiffs appealed. The Court of Appeals, Gibbons, Circuit ge, held that Executive Order promulgating Philadelphia Plan relating to ority hiring in federally assisted construction projects in five-county area including as a precondition to federal assistance the bidder's submission n affirmative program containing goals within the range set for minority ng was valid as being within the implied authority of President and his gnees and was not prohibited by any congressional enactment.

ffirmed.

Administrative Law and Procedure—668: Civil Rights—13: Contractor ntiffs, who as bidders on federally assisted project were directly affected requirement of Philadelphia Plan pertaining to the hiring of minority persons ederally assisted construction projects requiring, among other things, the sion in each bid of a commitment by bidder to an affirmative action program aining goals falling within specified ranges on minority hiring, had standing ring action challenging validity of Plan. Executive Order Nos. 11246, § 1), 11478, 42 U.S.C.A. § 2000e note; Civil Rights Act of 1964, § 701 et seq., .S.C.A. § 2000e et seq.

States—4.12: If Philadelphia Plan relating to the hiring of minority per- in federally assisted construction projects was adopted pursuant to valid cise of presidential powers, its provisions would prevail over local Pennsyl- a statutes. Executive Order Nos. 11246, § 202(1), 11478, 42 U.S.C.A. § 2000e : Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 200e et seq.

United States—82: When Congress authorizes an appropriation for program ederal assistance and authorizes executive branch to implement program by nging for assistance to specific project, in absence of specific statutory lations it must be deemed that Congress granted to President a general ority to act for protection of federal interests.

United States—82: Executive order promulgating Philadelphia Plan relating inority hiring in federally assisted construction projects in five-county area including as precondition to federal assistance the bidder's submission of an native program containing goals within the range set for minority hiring was d as being within the implied authority of President and his designees and not prohibited by any congressional enactment. Executive Order Nos. 11246, 2(1), 11478, 42 U.S.C.A. § 2000e note; Civil Rights Act of 1964, § 701 et seq., .S.C.A. § 2000e et seq.

Civil Rights—2: Express reference in Civil Rights Act of 1964 to executive rs relating to fair employment practices for government contractors indi- that Congress contemplated continuance of the executive order program the remedies established by that Act are not exclusive. Civil Rights Act of §§ 701 et seq., 703(j), 709(d), 42 U.S.C.A. §§ 2000e et seq., 2000e–2(j), -8(d).

Civil Rights—3: While Congress has not prohibited presidential action ea of employment on federal or federally assisted contracts, President is d by the express prohibitions of title of Civil Rights Act of 1964 dealing with imination in employment. Civil Rights Act of 1964, §§ 701 et seq., 703(j), 1), 42 U.S.C.A. §§ 2000e et seq., 2000e–2(j), 2000e–8(d).

Civil Rights—2: Civil Rights Act of 1964 provision stating that nothing d be interpreted to require any employer or labor organization to grant ential treatment to any individual or group because of race is a limita- only upon that title of Act dealing comprehensively with discrimination ployment and not upon any other remedies, state or federal. Civil Rights f 1964, § 703(j), 42 U.S.C.A. § 2000e–2(j).

Civil Rights—2: Provision of Civil Rights Act of 1964 to effect that it shall unlawful employment practice for employer to use different conditions ndards of compensation in any employment pursuant to bona fide seniority rit system is a limitation only upon that title of Act comprehensively deal- discrimination in employment and not upon any other remedies. Civil s Act of 1964, § 703(h), 42 U.S.C.A. § 2000e–2(h).

9. Civil Rights—2, 3: Civil Rights Act of 1964 provision making it unlawf employment practice for employer to fail or refuse to hire any individual b cause of race or classify employees in any way which would deprive a individual of opportunity because of race discloses no intention of Congre to freeze the status quo and to foreclose remedial action under other authori designed to overcome existing evil, and section does not preclude Philadelphi Plan relating to the hiring of minority in specified five-county area with respe to federally assisted construction programs. Executive Order Nos. 11246, § 20.2(1 11478, 42 U.S.C.A. 2000e note; Civil Rights Act of 1964, § 703(a), 42 U.S.C. § 2000–e(2).

10. Civil Rights—2: General prohibition against discrimination in any progra or activity receiving federal financial assistance contained in Civil Rights A of 1964 cannot be construed as limiting executive authority in defining a propriate affirmative action on part of a government contractor. Civil Rights A of 1964, §§ 601 et seq., 604, 701 et seq., 42 U.S.C.A. §§ 2000d et seq., 2000d-3 2000e et seq.

11. Labor Relations—251: While hiring hall arrangements are permitted b federal law, they are not required. National Labor Relations Act, § 8(f) a amended 29 U.S.C.A. § 158(f).

12. Civil Rights—3: Since Philadelphia Plan relating to hiring of minorities in certain construction trades within five-county area on federally assisted construction projects violate neither Construction nor federal law, fact that a contractual provision with relation to hiring of minority members for enumerated construction trades might be at variance with other exclusive hiring hall agreements by contractors was legally irrelevant. National Labor Relations Act, § 8(f) as amended 29 U.S.C.A. § 158(f).

13. Civil Rights—3: Absence of a judicial finding of past discrimination was irrelevant to authority to promulgate Philadelphia Plan regarding the hiring of minority workers in specified construction trades for work on federally assisted construction contracts in five-county area. Civil Rights Act of 1964, §§ 701 et seq., 706(g), 42 U.S.C.A. §§ 2000e et seq., 2000e-5(g).

14. Administrative Law and Procedure—303, 413, 701: Administrative action pursuant to Executive Order is invalid and subject to judicial review if beyond scope of Executive Order, but court should give more than ordinary deference to an administrative agency's interpretation of Executive Order or regulation which it is charged to administer.

15. Administrative Law and Procedure—413: Civil Rights—3: Where Attorney General issued an opinion that the Philadelphia Plan with regard to hiring of minority workers in federally assisted construction projects was valid and the President had continued to acquiesce in interpretation of Executive Order by his designee, the Labor Department interpretation of order that the affirmative action required more than mere policing against actual present discrimination and action looking toward employment of specific member of minority trades must be deferred to by courts. Executive Order No. 11246, §§ 201, 202 42 U.S.C.A. § 2000e note.

16. Civil Rights—3: Orders implementing Executive Order regarding hiring of minority tradesmen in federally assisted construction projects in the five county area were not invalid because signed by the assistant secretary rather than by the Secretary of Labor. Executive Order No. 11246, § 401, 42 U.S.C.A. § 2000e note.

17. Constitutional Law—275(2): Philadelphia Plan regarding hiring of minority tradesmen in a five county area for federally assisted construction programs does not violate due process clause of Fifth Amendment on ground that it imposes on contractor contradictory duties which are impossible of attainment, that plan is arbitrary and capricious by administrative action singling out contractors in five county Philadelphia area and that the goals specified by Plan were racial quotas prohibited by the equal protection aspect of Fifth Amendment. Executive Order Nos. 11246, § 202(1), 11478, 42 U.S.C.A. § 2000e note; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; U.S.C.A. Const. Amend. 5.

18. Administrative Law and Procedure—470; Civil Rights—3: Public hearings after notice were appropriate means for the Department of Labor to obtain information needed for informed judgment regarding orders to be issued to implement Philadelphia Plan relating to the hiring of minority tradesmen in federally assisted construction contracts. Executive Order No. 11246, § 204, 42 U.S.C.A. § 2000e note.

). Civil Rights 3: Data in order of Department of Labor implementing
ladelphia Plan as to percentages of utilization of minority tradesmen in the
trades compared with the ability of such tradesmen in the five county area
ified issuance of order regarding minority hiring of tradesmen in federally
sted construction projects without regard to a finding as to cause of situation.
ecutive Order No. 11246, § 204, 42 U.S.C.A. § 2000e note.

ohn J. McAleese, Jr., Synnestvedt & Lechner, Robert J. Bray, Jr., Phila-
hia, Pa., for plaintiff and intervening plaintiffs-appellants.

avid L. Rose, Civil Right Division, Planning and Special Appeals Section,
artment of Justice, Washington, D.C., Peter Nash, Solicitor of Labor,
ald L. Paley, Associate Solicitor of Labor, Jerris Leonard, Asst. Atty. Gen.
rid L. Norman, Deputy Asst. Atty. Gen., Louis C. Bechtle, U.S. Atty. Ber-
d H. Shapiro, Joseph B. Scott, Attys., U.S. Department of Justice, Washing-
D.C., for federal appellee.

heodore R. Mann and Barry E. Ungar, Philadelphia, Pa., amicus curiae, for
ellees; Goodis, Greenfield, Narin & Mann, Philadelphia, Pa., of counsel.

inthrop A. Johns, Lawrence T. Zimmerman, Washington, D.C., for Associated
eral Contractors of America; Reilly, Johns & Zimmerman, Washington, D.C.,
ounsel.

athaniel R. Jones, General Counsel, Paul J. Spiegelman, New York City, Rus-
Specter, Washington, D.C., William D. Wells, amici curiae, for NAACP;
ert J. Reinstein, Philadelphia, Pa., of counsel.

herman, Dunn & Cohen, Louis Sherman, Washington, D.C., Meranze Katz,
ur & Bielitsky, Bernard N. Katz, Philadelphia, Pa., amici curiae, for Building
Construction Trades Department, AFL–CIO and Building and Construction
les Council of Philadelphia and Vicinity, AFL–CIO.

ohn D. Day, Asst. City Sol., Matthew W. Bullock, Jr., First Deputy City Sol.,
v Anderson, City Sol., Philadelphia, Pa., amici curiae, for City of Philadelphia.

alph B. Powell, Jr., Philadelphia, Pa., amicus curiae, for General Building
tractors Ass'n, Inc.

ay Farmer, Patterson, Belknap, Farmer & Shibley, Washington, D.C., amici
ae, for National Electrical Contractors Ass'n.

efore Hastie, Chief Judge, and McLaughlin and Gibbons, Circuit Judges.

OPINION OF THE COURT

ibbons, Circuit Judge.

he original plaintiff, the Contractors Association of Eastern Pennsylvania
Association) and the intervening plaintiffs,[1] construction contractors doing
ness in the Philadelphia area (the Contractors), appeal from an order of the
rict court which denied their motion for summary judgment, granted the mo-
of the federal defendants[2] to dismiss the Association complaint for lack of
ding, and granted the cross-motion of the federal defendants for summary
gment.[3] When deciding these motions, the district court had before it the
ociation's verified complaint, a substantially identical complaint of the Con-
tors, the affidavits of Vincent G. Macaluso and Ward McCreedy on behalf
he federal defendants which identified certain relevant documents, a stipu-
on by the parties as to certain facts, and two affidavits of Howard G. Minckler
ehalf of the plaintiffs.

he complaint challenges the validity of the Philadelphia Plan, promulgated
he federal defendants under the authority of Executive Order No. 11246.[4]
t Plan is embodied in two orders issued by officials of the United States De-
ment of Labor, dated June 27, 1969 and September 23, 1969, respectively.
ies of these orders were annexed to the verified complaint as exhibits 1 and 2,
ectively, and to the Macaluso affidavit as appendices B and C respectively.
ummary, they require that bidders on any federal or federally assisted con-
ction contracts for projects in a five-county area around Philadelphia,[5] the

[1] James D. Morrissey, Inc.; The Conduit & Foundation Corp.; Glasgow, Inc.; Buckley &
pany; The Nyleve Company; Erb Engineering & Constr. Co.; Perkins, Kanak, Foster,
and Lansdowne Constructors, Inc.

[2] The Secretary of Labor, George P. Shultz; The Assistant Secretary of Labor, Arthur A.
her; The Director, Office of Federal Contract Compliance, John L. Wilks; The Secre-
of Agriculture, Clifford M. Hardin.

[3] An additional defendant, the General State Authority of the Commonwealth of Penn-
nia, has not participated in this appeal.

[4] 30 Fed. Reg. 12319 (Sept. 24, 1965), as amended by Exec. Order No. 11375, 32 Fed.
14303 (Oct. 13, 1967), 3 C.F.R. 406 (1969), 42 U.S.C.A. § 2000e note (170), super-
ed in part by Exec. Order No. 11478, 34 Fed. Reg. 12985 (Aug. 8, 1969), 3 C.F.R.,
Comp. 133, 42 U.S.C. § 2009e note (1970).

[5] Encompassing Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in
nsylvania.

estimated total cost of which exceeds $500,000, shall submit an acceptable affirm
tive action program which includes specific goals for the utilization of minorr
manpower in six skilled crafts: ironworkers, plumbers and pipefitters, steam
fitters, sheetmetal workers, electrical workers, and elevator construction worke

Executive Order No. 11246 requires all applicants for federal assistance to i
clude in their construction contracts specific provisions respecting fair emplo
ment practices, including the provision:

"The contractor will take affirmative action to ensure that applicants are e
ployed, and that employees are treated during employment, without regard
their race, color, religion, sex or national origin." [6]

The Executive Order empowers the Secretary of Labor to issue rules and reg
lations necessary and appropriate to achieve its purpose. On June 27, 19
Assistant Secretary of Labor Fletcher issued an order implementing the Exec
tive Order in the five-county Philadelphia area. The order required bidders, prio
to the award of contracts, to submit "acceptable affirmative action" program
"which shall include specific goals of minority manpower utilization." The ordd
contained a finding that enforcement of the "affirmative action" requirement o
Executive Order No. 11246 had posed special problems in the construction trades:
Contractors and subcontractors must hire a new employee complement for eac
job, and they rely on craft unions as their prime or sole source for labor. Th
craft unions operate hiring halls. "Because of the exclusionary practices of labor
organizations," the order finds "there traditionally has been only a small numbe
of Negroes employed in these seven trades." [8]

The June 27, 1969 order provided that the Area Coordinator of the Office o
Federal Contract Compliance, in conjunction with the federal contracting and
administering agencies in the Philadelphia area, would determine definite stand
ards for specific goals in a contractor's affirmative action program. After such
standards were determined, each bidder would be required to commit itself to
specific goals for minority manpower utilization. The order set forth factors to
be considered in determining definite standards, including:

"(1) The current extent of minority group participation in the trade.

"(2) The availability of minority group persons for employment in such trade

"(3) The need for training programs in the area and, or the need to assure de
mand for those in or from existing training programs.

"(4) The impact of the program upon the existing labor force."

Acting pursuant to the June 29, 1969 order, representatives of the Department
of Labor held public hearings in Philadelphia on August 26, 27 and 28, 1969. On
September 23, 1969, Assistant Secretary Fletcher made findings with respect to
each of the listed factors and ordered that the following ranges be established
as the standards for minority manpower utilization for each of the designated
trades in the Philadelphia area for the following four years:

[In percent]

Identification of trade	Range of minority group employment			
	Until Dec. 31, 1970	For 1971	For 1972	For 1973
Ironworkers	5–9	11–15	16–20	22–26
Plumbers and pipefitters	5–8	10–14	15–19	20–24
Steamfitters	5–8	11–15	15–19	20–24
Sheetmetal workers	4–8	9–13	14–18	19–23
Electrical workers	4–8	9–13	14–18	19–23
Elevator construction workers	4–8	9–13	14–18	19–23

The order of September 23, 1969 specified that on each invitation to bid each
bidder would be required to submit an affirmative action program. The order
further provided:

[illegible] This wording comes from Exec. Order No. 11375, see note 4 supra, and
[illegible] change from the original designed to parallel the classes of discrimi
[illegible] nation prohibited by Tit. VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.
[illegible] problem initiated the present Plan. Under the Philadelphia Pla
[illegible] [illegible] in effect on November 30, 1967 by the Philadelphia Fe
[illegible] [illegible] low bidder was required to submit a written affirmative
[illegible] [illegible] group representation in eight specified trades as a
[illegible] [illegible] construction contract or subcontract. This procedure
[illegible] [illegible] by the Comptroller General stating that it
[illegible] [illegible] adding 18 Comp. Gen. 326 (1968).
[illegible] [illegible] listed roofers and waterproofers among the trades under
[illegible] [illegible] craftsmen. The order of September 23, 1969 dropped this category
from the list leaving the 18 trades previously named.

4. No bidder will be awarded a contract unless his affirmative action program tains goals falling within the range set forth * * * above * * *

* * * * * * *

. The purpose of the contractor's commitment to specific goals as to minority power utilization is to meet his affirmative action obligations under the al opportunity clause of the contract. This commitment is not intended and ll not be used to discriminate against any qualified applicant or employee. enever it comes to the bidder's attention that the goals are being used in a rriminatory manner, he must report it to the Area Coordinator of the Office Federal Contract Compliance of the U.S. Department of Labor in order that ropriate sanction proceedings may be instituted.

* * * * * * *

. The bidder agrees to keep such records and file such reports relating to the visions of this order as shall be required by the contracting or administering ncy."

n November, 1969, the General State Authority of the Commonwealth of nsylvania issued invitations to bid for the construction of an earth dam Marsh Creek in Chester County, Pennsylvania. Although this dam is a Com- wealth project, part of the construction cost, estimated at over $3,000,000 be funded by federal monies under a program administered by the Depart- t of Agriculture.[6] The Secretary of Agriculture, one of the federal defend- , as a condition for payment of federal financial assistance for the project, uired the inclusion in each bid of a Philadelphia Plan Commitment in com- nce with the order of September 23, 1969. On November 14, 1969, the General e authority issued an addendum to the original invitation for bids requiring bidders to include such a commitment in their bids. It is alleged and not ed that except for the requirement by the Secretary of Agriculture that the adelphia Plan Commitment be included, the General State Authority would have imposed such a requirement on bidders.

he Association consists of more than eighty contractors in the five-county adelphia area who regularly employ workers in the six specified crafts, and collectively perform more than $150,000,000 of federal and federally assisted truction in that area annually. Each of the contractor plaintiffs is a regular er on federal and federally assisted construction projects. The complaint was prior to the opening of bids on the Marsh Creek dam. It sought injunctive f against the inclusion of a Philadelphia Plan Commitment requirement in invitation for bids. By virtue of a stipulation that the General State Author- would issue a new and superseding invitation for bids if the district court the Plan to be unlawful, the parties agreed that bids could be received out affecting the justiciability of the controversy. Bids were received on uary 7, 1970. One of the intervening contractor plaintiffs submitted a low and appeared at the time of the district court decision to be entitled to an rd of the contract.

he complaints of the Association and the Contractors refer to the fact that the ptroller General of the United States has opined that the Philadelphia Plan mitment is illegal and that disbursement of federal funds for the performance contract containing such a promise will be treated as unlawful.[7] The plain- point out that the withholding of funds after a contractor has commenced ormance would have catastrophic consequences, since contractors depend progress payments, and are in no position to complete their contracts with- such payments. They allege that the Philadelphia Plan is illegal and void he following reasons:

It is action by the Executive branch not authorized by the constitution or statute and beyond Executive power.

It is inconsistent with Title VII of the Civil Rights Act of 1964.[11]

It is inconsistent with Title VI of the Civil Rights Act of 1964.[12]

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ederal assistance was authorized under the Watershed Protection and Flood Pre- on Act, 16 U.S.C. § 1001 et seq.

Comp. Gen. Op., Letter to Sec. of Labor George P. Shultz, August 5, 1969, 115 Cong. 17,201 04 (daily ed. Dec. 18, 1969). The Comptroller General had objected to earlier s at implementing the "affirmative action" aspect of Exec. Order No. 11246 on the ed that these plans failed to inform prospective bidders to definite minimum standards ceptable programs. In his negative opinion letter in response to the original Phila- hia Pre-Award Plan, he had also adverted to the possibility of conflict with Title VII e Civil Rights Act of 1964. See note 7 supra. The Title VII objections became the of the opinion of August 5, 1969 which challenged the validity of the Revised adelphia Plan.

42 U.S.C. § 2000e et seq.

42 U.S.C. § 2000d et seq.

4. It is inconsistent with the National Labor Relations Act.[15]

5. It is substantively inconsistent with and was not adopted in procedural cordance with Executive Order No. 11246.

6. It violates due process because

(a) it requires contradictory conduct impossible of consistent attainme

(b) it unreasonably requires contractors to undertake to remedy an evil which the craft unions, not they, are responsible;

(c) it arbitrarily and without basis in fact singles out the five-county Ph delphia area for discriminatory treatment without adequate basis in fact or la and

(d) it requires quota hiring in violation of the Fifth Amendment.

The federal defendants moved both to dismiss the complaint under Rule 12 (1), Fed.R.Civ.P. and for summary judgment under Rule 56(b), Fed.R.Civ They asserted that the plaintiff's lacked standing and that they were entitled judgment as a matter of law. The plaintiffs moved for summary judgment. T district court held that the Association lacked standing to maintain the suit, t the Contractors had such standing, and that the Plan was valid. 311 F.Supp. 10 It granted summary judgment for the federal defendants, and the plaint appeal.

Standing

[1] The district court's holding that the Association lacked standing to s was handed down prior to that of the Supreme Court in Association of Data Pr cessing, Service Organizations, Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed. 184 (1970), and in the light of that decision and the more recent decision in Ci zens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed. 136 (1971, is at least doubtful. We need not reach this issue, however, since t Contractor plaintiffs who as bidders are directly impacted by the requireme that they agree in their bid to comply with the Plan, clearly have standing. A bott Laboratories v. Gardner, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967 All plaintiffs have been represented by the same attorney, and the presence absence of the Association as a plaintiff has no practical significance.

Executive power

[2] The plaintiffs contend that the Philadelphia Plan is social legislation local application enacted by the Executive without the benefit of statutory or con stitutional authority. They point out, probably correctly, that the Plan imposes the successful bidder on a project of the Commonwealth of Pennsylvania record keeping and hiring practices which violate Pennsylvania law.[16] If the Plan wa adopted pursuant to a valid exercise of presidential power its provisions would of course, control over local law. See United States v. City of Chester, 144 F.2 415, 420 (3d Cir. 1944); cf. United States v. Allegheny County, 322 U.S. 174, 18 64 S.Ct. 908, 88 L.Ed. 1209 (1944); Panhandle Oil Co. v. State of Mississippi ex rel. Knox, 277 U.S. 218, 221, 48 S.Ct. 451, 72 L.Ed. 857 (1928). But, say the plaintiffs, where there is neither statutory authorization nor constitutional authority for the Executive action, no substantive federal requirements may be imposed upon a contract between the Commonwealth and its contractor.

The district court's answer is that the federal government "has the unrestricted power to fix the terms, conditions and those with whom it will deal." For this proposition it cites Perkins v. Lukens Steel Co., 310 U.S. 113, 60 S.Ct. 869, 84 L.Ed. 1108 (1940) and King v. Smith, 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). Neither case is in point, however on the issue of Executive as distinguished from federal power. King v. Smith held that the Alabama [illegible] regulation was inconsistent with the Social Security Act, 42 U.S.C. [illegible] and points out that the federal government may impose the terms [illegible] upon which its money allotments may be disbursed. The conditions [illegible] to were imposed by Congress, not by the Executive branch. Perkins v. Lukens Steel Co. interprets the Public Contracts Act of June 30, 1933," which

[15] 29 U.S.C. § 151 et seq.

[16] The Pennsylvania Human Relations Act, 43 P.S. § 951 et seq. (Supp. 1970), specifically promotes an employer from keeping any record of or using any form of application which [illegible] religion, ancestry, sex or national origin of an applicant for [illegible] The Act also prohibits the use of a quota system for [illegible] criteria. 43 P.S. § 953.(c)(3). The record keeping prohibition [illegible] certain requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-8(c). Moreover, we do not know how the Pennsylvania courts or the Pennsylvania Human Relations Commission would react to a scheme of "benign quota hiring."

[17] 311 F. Supp. 1002, 1011 (E.D.Pa. 1970).

[18] 49 Stat. 2036–2039, 41 U.S.C. §§ 35–45.

uires that sellers to the federal government pay prevailing minimum wages. holds that an administrative determination of prevailing wages in a given ustry made by the Secretary of Labor is not subject to judicial review on alf of a potential seller.[17] The opinion contains the language:

Like private individuals and businesses, the Government enjoys the unrestrict- power to produce its own supplies, to determine those with whom it will deal, to fix the terms and conditions upon which it will make needed purchases."[18]

The quoted language refers to federal power exercised pursuant to a statu- mandate. The case is not in point on the issue of Executive power absent h a mandate.

The federal defendants and several amici[19] contend that Executive power to ose fair employment conditions incident to the power to contract has been eld in this circuit and in the Fifth Circuit. They cite Farmer v. Philadelphia ctric Company, 329 F.2d 3 (3d Cir. 1964) and Farkas v. Texas Instrument, ., 375 F.2d 629 (5th Cir.), cert. denied, 389 U.S. 977, 88 S.Ct. 480, 19 L. Ed. 471 (1967). Both cases discussed the Executive Order program for achieving employment in the context of Government contracts rather than federally sted state contracts, and both assumed the validity of the Executive Order applicable.[20] Both cases held that even assuming the validity of the Ex- ive Order, it did not give rise to a private cause of action for damages by rty subjected to discrimination. Discussion of the validity of the Executive er was in each case dictum. Moreover, both *Farmer* and *Farkas* refer to 40 C. § 486(a) as the source of the Executive power to issue the order. That section authorizes the President to prescribe such policies and directives as leems necessary to effectuate the provisions of Chapter 10 of Title 40[21] and pter 4 of Title 41.[22] These chapters deal with procurement of Government perty and services, not with federal assistance programs. Thus even if *Farmer* *Farkas* were holdings rather than dicta as to Executive power, the hold- would not reach the instant case. The validity of the Executive Order pro- n as applied to the construction industry in state government contracts by ue of federal assistance has not been litigated, so far as we have been able to rmine, in any case reaching the courts of appeals.[23] Certainly no case has en which considers Executive power to impose, by virtue of federal assist- , contract terms in a state construction contract which are at variance with e law.

he limitations of Executive power have rarely been considered by the courts. of those rare instances is Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 72 S.Ct.863, 96 L.Ed. 1153 (1952). From the six concurring opinions and one enting opinion in that case, the most significant guidance for present pur- s may be found in that of Justice Jackson:

We may well begin by a somewhat over-simplified grouping of practical situa- s in which a President may doubt, or others may challenge, his powers, and distinguishing roughly the legal consequences of this factor of relativity.

When the President acts pursuant to an express or implied authorization ongress, his authority is at its maximum, for it includes all that he possesses is own right plus all that Congress can delegate. In these circumstances, and hese only, may he be said (for what it may be worth) to personify the fed- sovereignty. If his act is held unconstitutional under these circumstances, nally means that the Federal Government as an undivided whole lacks power. eizure executed by the President pursuant to an Act of Congress would be ported by the strongest of presumptions and the widest latitude of judicial rpretation, and the burden of persuasion would rest heavily on any who ot attack it.

The actual holding of *Perkins* was subsequently nullified by Congress. 66 Stat 308 2), 41 U.S.C. § 43a. See K. Davis, Administrative Law § 28.06 (1958).

310 U.S. at 127, 60 S.Ct. at 876.

Amici favoring the Plan include the City of Philadelphia, the Urban League of Phila- hia, Wives for Equal Employment Opportunity, the Lawyers' Committee for Civil ts Under Law, and the N.A.A.C.P. Appearing as amici in opposition to the Plan he Building and Construction Trades Dep't, AFL–CIO, the Building and Construction es Council of Philadelphia and Vicinity, AFL–CIO, the General Building Contractors . Inc., the National Electrical Contractors Ass'n, and the Associated General Con- ors of America.

Exec Order No. 10925, 26 Fed. Reg 1977 (March 6, 1961), 3 C.F.R., 1961 Comp. 86.

Management and Disposal of Government Property.

Procurement Procedures.

But cf. Weiner v. Cuyahoga Community College, 19 Ohio St. 2d 35, 249 N.E. 2d 907 1), cert. denied, 396 U.S. 1004, 90 S. Ct. 554, 24 L. Ed. 2d 495 (1970); Ethridge v. es, 268 F. Supp. 83 (S.D. Ohio 1967).

2. When the President acts in absence of either a congressional grant or de
of authority, he can only rely upon his own independent powers, but there
zone of twilight in which he and Congress may have concurrent authority
in which its distribution is uncertain. Therefore, congressional inertia, indi
ence or quiescence may sometimes, at least as a practical matter, enable, if
invite, measures on independent presidential responsibility. In this area,
actual test of power is likely to depend on the imperatives of events and
temporary impondérables rather than on abstract theories of law.

3. When the President takes measures incompatible with the expressed or
plied will of Congress, his power is at its lowest ebb, for then he can
only upon his own constitutional powers minus any constitutional powers
Congress over the matter. Courts can sustain exclusive presidential contro
such a case only by disabling the Congress from acting upon the subject. Pr
dential claim to a power at once so conclusive and preclusive must be scrutin
with caution, for what is at stake is the equilibrium established by our
stitutional system." [24]

Plaintiffs contend that the Philadelphia Plan is inconsistent with the will
Congress expressed in several statutes. We deal with these statutory contentio
hereinafter. Thus for the moment we may set to one side consideration of Justi
Jackson's third category, and turn to category (1), action expressly or
pliedly authorized, and category (2), action in which the President has
plied power to act in the absence of congressional preemption. To determi
into which category the Philadelphia Plan falls a review of Executive Orde
in the field of fair employment practices is helpful.

The first such order, Executive Order No. 8802 [25] was signed by Preside
Roosevelt on June 25, 1941. It established in the Office of Production Manag
ment a Committee on Fair Employment Practice, and it required that all Gover
ment contracting agencies include in all defense contracts a covenant not
discriminate against any worker because of race, creed, color, or national origi
The order contained no specific statutory reference, and describes the action "
a prerequisite to the successful conduct of our national defense productio
effort." In December 1941 Congress enacted "An Act to expedite the prosecutio
of the war effort," [26] and on December 27, 1971, pursuant to that Act the Pres
dent issued Executive Order No. 9001,[27] which granted to the War and Nav
Departments and the Maritime Commission broad contract authority. Th
order among other provisions stated that a non-discrimination clause would
deemed incorporated by reference in all such contracts. On May 27, 1943, Exec
tive Order No. 8802 was amended by Executive Order No. 9346 [28] which estab
lished in the Office of Emergency Management of the Executive Office of th
President a Committee on Fair Employment Practice. This order required th
antidiscrimination clause in all government contracts rather than in defens
contracts only. Still, the order was quite clearly bottomed on the President'
war mobilization powers and was by its terms directed toward enhancing th
pool of workers available for defense production.

On December 18, 1945, President Truman signed Executive Order No. 9664,
which continued the Committee established by Executive Orders Nos. 8802 an
9346 "for the periods and subject to the conditions stated in the National We
Agencies Appropriation Act, 1946 (Public Law 156, 79th Cong., 1st Sess., ap
proved July 17, 1945)" On February 2, 1951, the President signed Executive
Order No. 10210,[29] which transferred to the Department of Defense the contract
ing powers referred to in Executive Order No. 9001. The order continued th
provision that a non-discrimination clause would be deemed incorporated b
reference in all defense contracts. It referenced the First War Powers Act, 194
as amended. By a subsequent series of Executive Orders, Executive Order N
10210 was extended to other Government agencies engaged in defense related pro
curement.[30] On December 3, 1951 the President signed Executive Order N

[24] 343 U.S. at 635–638, 72 S. Ct. at 870–871 (footnotes omitted).
[25] 6 Fed. Reg. 3109, 3 C.F.R., 1938–43 Comp. 957.
[26] Act of Dec. 18, 1941, ch. 593, 55 Stat. 838.
[27] 6 Fed. Reg. 6787, 3 C.F.R., 1938–43 Comp. 1054.
[28] 8 Fed. Reg. 7183, 3 C.F.R. 1938–43 Comp. 1280.
[29] 10 Fed. Reg. 15301, 3 C.F.R., 1943–48 Comp. 480.
[30] 15 Fed. Reg. 1049, 3 C.F.R., 1949–53 Comp. 390.
[31] Exec. Order No. 10216, 16 Fed. Reg. 1815 (Feb. 23, 1951), 3 C.F.R., 1949–53 Comp. 79
Department of Agriculture, Atomic Energy Commission, National Advisory Comm
[illegible] Government Printing Office); Exec. Order No. 10227, 16 Fed. Reg.
Exec. Order No. 10241, 16 Fed. Reg. 3925, April 5, 1951), 3 C.F.R., 1949–53 Comp. 739 (General Services Administration;
Tennessee Valley Authority); Exec. Order No. 10243, 16 Fed. Reg. 4419 (May 17, 1951
3 C.F.R., 1949–53 Comp. 773 (Federal Civil Defense Administration); Exec. Order N
10281, 16 Fed. Reg. 7539 (Aug. 28, 1951), 3 C.F.R., 1949–53 Comp. 781 (Defense Materi
Procurement Agency)

08,[32] creating the Committee on Government Contract Compliance, which was rged with the duty of obtaining compliance with the non-discrimination tract provisions. The statutory authorities referenced in Executive Order 10308 are the Defense Production Act of 1950 [33] and 31 U.S.C. § 691.[34] ference to the Defense Production Act of 1950 shows that the President was l acting, pursuant to his national defense powers, to assure maximum ization of available manpower.

President Eisenhower on August 13, 1953, by Executive Order No. 10479 [35] oked Executive Order No. 10308 and transferred the compliance functions the Committee on Government Contract Compliance to the Government Con- ct Committee.[36] In this order for the first time there is no mention of defense duction. For the first time the Committee is authorized to receive complaints violations,[37] and to conduct activities not directly related to federal procure- nt.[38] On September 3, 1954, by Executive Order No. 10557 [39] the required form Government contract provision was revised. The new provision was much re specific, required the imposition of the contractor's obligation on his sub- tractors, and required the posting of appropriate notices. The Eisenhower ers, while they did not refer to defense production and did authorize the plance Committee to encourage nondiscrimination outside the field of Gov- nent contracts, were still restricted in direct application to federal govern- t procurement.

While the orders do not contain any specific statutory reference other than appropriations statute, 31 U.S.C. § 690, they would seem to be authorized by broad grant of procurement authority with respect to Title 40 and 41." ess than in the case of defense procurement it is in the interest of the United es in all procurement to see that its suppliers are not over the long run easing its costs and delaying its programs by excluding from the labor pool liable minority workmen. In the area of Government procurement Executive nority to impose non-discrimination contract provisions falls in Justice sson's first category: action pursuant to the express or implied authorization Congress.

Executive Order No. 10925 [41] signed by President Kennedy on March 6, 1961, ng other things enlarged the notice requirements and specified that the sident's Committee on Equal Employment Opportunity could by rule, regula- or order impose sanctions for violation. Coverage still extended only to fed- government contracts. Significantly for purposes of this case, however, the ired contract language was amended to add the provision:

The Contractor will take affirmative action to ensure that applicants are em- ed, and that employees are treated during employment, without regard to race, creed, color, or national origin." [42]

he Philadelphia Plan is simply a refined approach to this "affirmative action" date. Applied to federal procurement the affirmative action clause is supported ie same Presidential procurement authority that supports the non-discrimina- clause generally.

he most significant change in the Executive Order program for present pur- s occurred on June 22, 1963 when the President signed Executive Order No. 4, [43] which amended Executive Order No. 10925 by providing that the same

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16 Fed. Reg. 12303, 3 C.F.R., 1949–53 Comp. 837.

50 U.S.C. App. § 2061 et seq.

This latter reference is to the source of appropriations for salaries and expenses for mittee members and staff. It appears in numerous subsequent Executive Orders, but o significance other than fiscal.

18 Fed. Reg. 4899, 3 C.F.R., 1949–53 Comp. 961.

The new committee was composed of 15 members, 9 named by the President and one esentative each from the Atomic Energy Commission, the Department of Commerce, Department of Defense, the Department of Justice, the Department of Labor and the ral Services Administration. Id. § 3, as amended by Exec. Order No. 10482, 18 Fed. 4944 (Aug. 15, 1953), 3 C.F.R., 1949–53 Comp. 968.

Id. § 5.

"Sec. 6. The Committee shall encourage the furtherance of an educational program mployer, labor, civic, educational, religious, and other voluntary nongovernmental ps in order to eliminate or reduce the basic causes and costs of discrimination in oyment.

ec. 7. The Committee is authorized to establish and maintain cooperative relationships agencies of state and local governments, as well as with nongovernmental bodies, to in achieving the purposes of this order."

§§ 6, 7.

19 Fed. Reg. 5655, C.F.R., 1954–58 Comp. 203.

See 40 U.S.C. § 486(a).

26 Fed. Reg. 1977, 3 C.F.R. 1959–63 Comp. 448.

Id., pt. III, § 301(1).

28 Fed. Reg. 6485, 3 C.F.R., 1959–63 Comp. 774.

non-discrimination contract provisions heretofore required in all federal proc
ment contracts must also be included in all federally assisted construction
tracts. By way of Executive Order No. 11246 [6] issued in 1965, President Joh
transferred to the Secretary of Labor the functions formerly specified in Ex
tive Order Nos. 10925 and 11114, and he continued both the affirmative a
requirement and the coverage of federally assisted construction contracts.

[3, 4] While all federal procurement contracts must include an affirm
action covenant [7] the coverage on federally assisted contracts has been exte
to construction contracts only. This choice is significant, for it demonstrates
the Presidents were not attempting by the Executive Order program merel
impose their notions of desirable social legislation on the states wholesale. Ra
they acted in the one area in which discrimination in employment was most li
to affect the cost and the progress of projects in which the federal governm
had both financial and completion interests.

In direct procurement the federal government has a vital interest in assu
that the largest possible pool of qualified manpower be available for the acc
plishment of its projects. It has the identical interest with respect to federa
assisted construction projects. When the Congress authorizes an appropriation
a program of federal assistance, and authorizes the Executive branch to im
ment the program by arranging for assistance to specific projects, in the abse
of specific statutory regulations it must be deemed to have granted to the Pr
dent a general authority to act for the protection of federal interests.

In the case of Executive Order Nos. 11246 and 11114 three Presidents have ac
by analogizing federally assisted construction to direct federal procurement.
such action has not been authorized by Congress (Justice Jackson's first ca
gory), at the least it falls within the second category. If no congressional ena
ments prohibit what has been done, the Executive action is valid. Particularly
this so when Congress, aware of Presidential action with respect to federa
assisted construction projects since June of 1963, has continued to make app
priations for such projects. We conclude, therefore, that unless the Philadelp
Plan is prohibited by some other congressional enactment, its inclusion as a p
condition for federal assistance was within the implied authority of the Presid
and his designees. We turn, then to a consideration of the statutes on which pla
tiffs rely.

The Civil Rights Act of 1964

[5] Plaintiffs suggest that by enacting Title VII of the Civil Rights Act of 19
42 U.S.C. § 2000e et seq., which deals comprehensively with discrimination
employment, Congress occupied the field. The express reference in that statute
Executive Order No. 10925 or any other Executive Order prescribing fair empl
ment practices for Government contractors, 42 U.S.C. § 2000e-8(d), indicat
however, that Congress contemplated continuance of the Executive Order p
gram. Moreover we have held that the remedies established by Title VII are n
exclusive. Young v. International Telephone & Telegraph Co., 438 F. 2d 32d C
1971).

[6, 7] But while Congress has no prohibited Presidential action in the area
fair employment on federal or federally assisted contracts, the Executive is bou
by the express prohibitions of Title VII. The argument most strenuously advanc
against the Philadelphia Plan is that requires action by employers which violat
the Act. Plaintiffs point to § 703(j), 42 U.S.C. § 2000e-2(j):

"Nothing contained in this subchapter shall be interpreted to require any em
ployer * * * [or] labor organization * * * to grant preferential treatment to an
individual or to any group because of the race * * * of such individual or grou
on account of an imbalance which may exist with respect to the total number
percentage of persons of any race * * * employed * * * in comparison with th
total number or percentage of persons of such race * * * in the available wor
force in any community * * * or other area."

The Plan requires that the contractor establish specific goals for utilization
available minority manpower in six trades in the five county area. Possibly s
[illegible] could not be compelled, under the authority of Title VII, to emb
such a program, although § 703(j) refers to percentages of minorities in
[illegible] force rather than percentages of minority tradesmen in an availab

[6] See note 4 supra

[7] Section 204 of Executive Order No. 11246 provides that the Secretary of Labor may exe
certain [illegible] purchase orders from the requirements of the order [illegible]
[illegible] certain [illegible] contracts (1) to be performed outside the United States, 2) i
[illegible] commercial supplies or raw materials, (3) involving insubstantial amounts
[illegible] of workers, or (4) involving subcontracts below a specified tier.

work force. We do not meet that issue here, however, for the source of equired contract provision is Executive Order No. 11246. Section 703(j) is itation only upon Title VII, not upon any other remedies, state or federal.

Plaintiffs, and more particularly the union amici, contend that the Plan tes Title VII because it interferes with a bona fide seniority system. Sec-703(h), 42 U.S.C. § 2000e–2(h), provides:

otwithstanding any other provision of this subchapter, it shall not be an wful employment practice for an employer to employ different standards of ensation, or different terms, conditions, or privileges of employment pursu- a bona fide seniority or merit system * * *."

e unions, it is said, refer men from the hiring halls on the basis of seniority, he Philadelphia Plan interferes with this arrangement since few minority smen have high seniority. Just as with § 703(j), however, § 703(h) is a **ıtion only upon Title VII, not upon any other remedies.**[46]

Plaintiffs contend that the Plan, by imposing remedial quotas, requires to violate the basic prohibitions of Section 703(a), 42 U.S.C. § 2000e–2(a): shall be an unlawful employment practice for an employer—

to fail or refuse to hire * * * any individual * * * because of such indi- 's race * * * or

to * * * classify his employees in any way which would deprive * * * any idual of employment opportunities * * * because of such individual's race

ause the Plan requires that the contractor agree to specific goals for ity employment in each of the six trades and requires a good faith effort ieve those goals, they argue, it requires (1) that they refuse to hire some tradesmen, and (2) that they classify their employees by race, in viola- f § 703(a). This argument rests on an overly simple reading both of the **nd of the findings which led to its adoption.**

order of September 23, 1969 contained findings that although overall ity group representation in the construction industry in the five-county lelphia area was thirty per cent, in the six trades representation was ximately one per cent. It found, moreover, that this obvious underrepre- ion was due to the exclusionary practices of the unions representing the ades. It is the practice of building contractors to rely on union hiring halls prime source for employees. The order made further findings as to the bility of qualified minority tradesmen for employment in each trade, and the impact of an affirmative action program with specific goals upon the ig labor force. The Department of Labor found that contractors could t to the specific employment goals "without adverse impact on the exist- bor force." Some minority tradesmen could be recruited, in other words, **ıt eliminating job opportunities for white tradesmen.**

read § 703(a) in the manner suggested by the plaintiffs we would have to ute to Congress the intention to freeze the status quo and to foreclose ial action under other authority designed to overcome existing evils. We n no such intention either from the language of the statute or from its tive history. Clearly the Philadelphia Plan is color-conscious. Indeed the ıeaning which can be attributed to the "affirmative action" language which March of 1961 has been included in successive Executive Orders is that ıment contractors must be color-conscious. Since 1941 the Executive Order n has recognized that discriminatory practices exclude available minority wer from the labor pool. In other contexts color-consciousness has been l to be an appropriate remedial posture. Porcelli v. Titus, 302 F. Supp.).N.J. 1969), aff'd. 431 F.2d 1254 (3d Cir. 1970); Norwalk CORE v. Nor- Redevelopment Agency, 395 F. 2d 920, 931 (2d Cir. 1968); Offermann v. vski, 378 F.2d 22, 24 (2d Cir. 1967). It has been said respecting Title VII 'ongress did not intend to freeze an entire generation of Negro employes iscriminatory patterns that existed before the Act." Quarles v. Philip , Inc., *supra*, 279 F.Supp. at 514.

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s same subsection refers to ability tests. The Supreme Court recently in Griggs v. ower Co., 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971) considered the extent h such tests are permissible. The Court said:

Congress directed the thrust of the Act to the *consequences* of employment prac- ot simply the motivation." 91 S. Ct. at 854.

ld that the tests must be job related. Nor can seniority make permanent the effects discrimination. Local 189, United Papermakers & Paperworkers v. United States, d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919, 90 S.Ct. 926, 25 L.Ed.2d 108 ; Quarles v. Philip Morris, Inc., 279 F.Supp. 505 (E.D.Va. 1968).

The *Quarles* case rejected the contention that existing, nondiscrimina seniority arrangements were so sanctified by Title VII that the effects of discrimination in job assignments could not be overcome.[47] We reject the tention that Title VII prevents the President acting through the Execu Order program from attempting to remedy the absence from the Philadel construction labor of minority tradesmen in key trades.

[10] What we have said about Title VII applies with equal force to Titl of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. That title prohibits ra and other discrimination in any program or activity receiving federal as ance.[48] This general prohibition against discrimination cannot be construe limiting Executive authority in defining appropriate affirmative action on the of a contractor.

We hold that the Philadelphia Plan does not violate the Civil Rights Ac 1964.

The National Labor Relations Act

The June 27, 1969 order, par 8(b) provides:

"It is no excuse that the union with which the contractor has a collect bargaining agreement failed to refer minority employees. Discrimination referral for employment, even if pursuant to provisions of a collective bargain agreement, is prohibited by the National Labor Relations Act and the C Rights Act of 1964. It is the longstanding uniform policy of OFCC that c tractors and subcontractors have a responsibility to provide equal employm opportunity if they want to participate in federally involved contracts. To t extent they have delegated the responsibility for some of their employm practices to some other organization or agency which prevents them from me ing their obligations pursuant to Executive Order 11246, as amended, such c tractors cannot be considered to be in compliance with Executive Order 112 as amended, or the implementing rules, regulations and orders."

The union amici vigorously contend that the Plan Violates the National La Relations Act by interfering with the exclusive union referral systems to wh the contractors have in collective bargaining agreements bound themselv Exclusive hiring hall contracts in the building and construction industry a validated by Section 8(f) of the National Labor Relations Act, 29 U.S. § 158(f). In Teamsters Local 357 v. NLRB, 365 U.S. 667, 81 S. Ct. 835, 6 L.Ed 11 (1961), the Supreme Court held that the National Labor Relations Boa could not proscribe exclusive hiring hall agreements as illegal per se since Co gress had not chosen to prohibit hiring halls. It is argued that the President attempting to do what the Supreme Court said the National Labor Relatio Board could not do—prohibit a valid hiring hall agreement. Of course collecti bargaining agreements which perpetuate the effects of past discrimination a unlawful under Title VII. Local 189, United Papermakers & Paperworkers United States, *supra*; United States v. Sheet Metal Workers, Local 36, 416 F 123, 132 (8th Cir. 1969). The findings of past discrimination which justifi remedial action in these cases were made in judicial proceedings, however. S 42 U.S.C. § 2000e-5(g). The amici contend that the Assistant Secretary's no judicial findings of prior exclusionary practices is insufficient to support t Plan's implied requirement that the contractor look to other sources for e ployees if the unions fail to refer sufficient minority group members.

[11, 12] It is clear that while hiring hall arrangements are permitted federal law they are not required. Nothing in the National Labor Relations A purports to place any limitation upon the contracting power of the federal go ernment. We have said hereinabove that in imposing the affirmative action quirement on federally assisted construction contracts the President acted wit his implied contracting authority. The assisted agency may either agree to [illegible] with contractors who will comply with the affirmative action covena or forego assistance. The prospective contractors may either agree to undert the affirmative action covenant, or forego bidding on federally assisted work Plan violates neither the Constitution nor federal law, the fact that

[illegible] in overcoming the effects of past discrimination are expres [illegible] VII to the affirmative action. 42 F.R.C. § 2000e-5(g). See Vogler [illegible] 296 F. Supp. 1265 (E.D. La. 1968), aff'd *sub nom.* International Ass'n of Bridge, Structural & Ornamental Workers v. Vogler, 407 F. 2d 1047 (5th Cir. 1969). [illegible] Title VI, 42 U.S.C. § 2000d-3, states that nothing in the Title au [illegible] Title with respect to employment practices of any employ [illegible] primarily aimed at providing employment. However [illegible] and purport to derive its authorization from Title V

ractual provisions may be at variance with other contractual undertakings
e contractor is legally irrelevant.
ctually, of course, that variance is quite relevant. Factually it is entirely
y that the economics of the marketplace will produce an accommodation
een the contract provisions desired by the unions and those desired by the
e of the funds. Such an accommodation will be no violation of the National
r Relations Act.

3] The absence of a judicial finding of past discrimination is also legally
evant. The Assistant Secretary acted not pursuant to Title VII but pursuant
e Executive Order. Regardless of the cause, exclusion from the available
pool of minority tradesmen is likely to have an adverse effect upon the cost
completion of construction projects in which the federal government is in-
ted. Even absent a finding that the situation found to exist in the five-county
was the result of deliberate past discrimination, the federal interest in
oving the availability of key tradesmen in the labor pool would be the
. While a court must find intentional past discrimination before it can
re affirmative action under 42 U.S.C. § 2000e-5(g), that section imposes no
int upon the measures which the President may require of the beneficiaries
leral assistance. The decision of his designees as to the specific affirmative
n which would satisfy the local situation did not violate the National Labor
ions Act and was not prohibited by 42 U.S.C. § 2000e-5(g).

Consistency With Executive Order No. 11246

15] The plaintiffs argue that the affirmative action mandate of § 202 of
utive Order No. 11246 is limited by the more general requirement in the
section, "The contractor will not discriminate against any employee or
ant for employment because of race, creed, color, or national origin." They
ld that properly construed the affirmative action referred to means only
ng against actual present discrimination, not action looking toward the
yment of specific numbers of minority tradesmen.
tion 201 of the Executive Order provides:
e Secretary of Labor shall be responsible for the administration of Parts II
rnment contracts] II [federal assistance] of this Order and shall adopt
rules and regulations and issue such orders as he deems necessary and
priate to achieve the purposes thereof."
ing under this broad delegation of authority the Labor Department in a
of orders of local application made it clear that it interpreted "affirmative
" to require more than mere policing against actual present discrimina-
Adminstrative action pursuant to an Executive Order is invalid and sub-
o judicial review if beyond the scope of the Executive Order. Peters v.
, 349 U.S. 331, 75 S. Ct. 790, 99 L.Ed. 1129 (1955). But if the courts
give more than ordinary deference to the administrative agency's inter-
ion of an Executive Order or regulation which it is charged to administer.
v. Tallman, 380 U.S. 1, 85 S. Ct. 792, 13 L.Ed. 2d 616 (1965); Bowles v.
ole Rock & Sand Co., 325 U.S. 410, 413, 65 S. Ct. 1215, 89 L.Ed. 1700 (1945).
ttorney General has issued an opinion that the Philadelphia Plan is valid,[50]
he President has continued to acquiesce in the interpretation of the Execu-
rder made by his designee. The Labor Department interpretation of the
ative action clause must, therefore, be deferred to by the courts.

Plaintiffs also contend that the signing of the June 27, 1969, and Sep-
r 23, 1969 orders by an assistant secretary rather than by the Secretary
or makes those orders procedurally invalid. Here they rely on § 401 which
es:
e Secretary of Labor may delegate to any officer, agency, or employee in
xecutive branch of the Government, any function or duty of the Secre-
nder Parts II and III of this Order, except authority to promulgate rules
gulations of a general nature."
Plan, they say, is a rule or regulation of a general nature, and could have
ssued only by the Secretary. In the first place the Plan is not general. It
ed upon findings as to the available construction manpower in a specific
market. Moreover, the interpretation of § 401 made by the administrator
s the same deference from the courts as is required toward his interpre-
s of the order. We will not second guess his delegation to the Assistant
ary of the duty of enforcing the affirmative action covenant.

United States Commission on Civil Rights, The Federal Civil Rights Enforcement
t 167–72 (1970).
y Gen. Op., Letter to Sec. of Labor Shultz, Sept. 22, 1969, 115 Cong. Rec. 17,204
ly ed. Dec. 18, 1969).

The due process contentions

[17] Plaintiffs urge that the Plan violates the Due Process Clause of the F
Amendment in several ways.

First, they allege that it imposes on the contractors contradictory duties
possible of attainment. The impossibility arises, they say, because the Pla
quires both an undertaking to seek achievement of specific goals of mino
employment and an undertaking not to discriminate against any qualifie
plicant or employee, and because a decision to hire any black employee n
sarily involves a decision not to hire a qualified white employee. This is
sophistry. The findings in the September 23, 1969 order discloses that the
cific goals may be met, considering normal employee attrition and anticipa
growth in the industry, without adverse effects on the existing labor force.
cording to the order the construction industry has an essentially transie
labor force and is often in short supply in key trades. The complaint does
allege that these findings misstate the underlying facts.

Next the plaintiffs urge that the Plan is arbitrary and capricious adminis
tive action, in that it singles out the contractors and makes them take act
to remedy the situation created by acts of past discrimination by the e
unions. They point to the absence of any proceedings under Title VII against
offending unions, and urge that they are being discriminated against. This ar
ment misconceives the source of the authority for the affirmative action p
gram: Plaintiffs are not being discriminated against. They are merely be
invited to bid on a contract with terms imposed by the source of the funds. T
affirmative action covenant is no different in kind than other covenants sp
fied in the invitation to bid. The Plan does not impose a punishment for p
misconduct. It exacts a covenant for present performance.

Some amici urge that selection of the five-county Philadelphia area was ar
trary and capricious and without basis in fact. The complaint contains a conc
sive allegation to this effect. No supporting facts are alleged. It is not alleged,
example, that the specific goals for minority manpower utilization would
different if more or fewer counties were to be included in the September 23, 19
order. The union amici do question the findings made by the Assistant Secreta
of Labor, but the complaint, fairly read, does not put these findings in iss

We read the allegation with respect to the five-county area as putting in iss
the legal authority of the Secretary to impose a specific affirmative action
quirement in any separate geographic area. The simple answer to this contenti
is that federally assisted construction contracts are performed at specific ti
and in specific places. What is appropriate affirmative action will vary accordi
to the local manpower conditions prevailing at the time.

Finally, the plaintiffs urge that the specific goals specified by the Plan are rac
quotas prohibited by the equal protection aspect of the Fifth Amendment. S
Shapiro v. Thompson, 394 U.S. 618, 641 642, 89 S.Ct. 1322, 22 L.Ed. 600 (1969
Schneider v. Rusk, 377 U.S. 163, 84 S.Ct. 1187, 12 L.Ed.2d 218 (1964); Ba
v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). The Philadelph
Plan is valid Executive action designed to remedy the perceived evil that mi
ity tradesmen have not been included in the labor pool available for the pe
formance of construction projects in which the federal government has a co
and performance interest. The Fifth Amendment does not prohibit such a

One final point. The plaintiffs contend that although there were cross-mo
for summary judgment the district court, while it should have entered sum
judgment in their favor, could not properly enter summary judgment for
[illegible] Several amici press this point on appeal even more strenuously tha
plaintiffs. They contend that neither the finding of past discrimination by t
[illegible] actions made in the June 27, 1969 order nor the statistical findings
availability of minority tradesmen, employee attrition, and industry growth m
the September 23, 1969 order should be accepted as true.

[18, 19] The federal defendants conceded in the district court that the affida
of Mr. Macauley, to which copies of both orders were attached, was offered
the truth of the underlying facts but only to identify the orders. This co
[illegible] significant for the decisions on the motions under Rule 12(b)(6
and Rule 56(c). The complaint to which the motions by the federal defendan
[illegible] challenges the factual underpinnings of the specific goals
[illegible] September 23, 1969 order. Rather the complaint makes a co
which must be [illegible] of the Department of Labor to impose these goals
contractual commitments. Read generously the complaint can be construed
challenge the administrative procedures followed by the Assistant Secretary

rmining these goals. We have dealt hereinabove with that challenge insofar
t questions compliance with the procedures specified in Executive Order
11246.

sofar as the complaint challenges on broader administrative law grounds the
ods by which the Assistant Secretary assembled the data for the Septem-
23, 1969 order, we hold that public hearings after notice were an appropriate
ns for the administrative agency to obtain the information needed for in-
ed judgment. Cf. Shannon 1. Department of Housing & Urban Development,
F.2d 809 (3d Cir. 1971). No public hearing was held prior to the issuance
he June 27, 1969 order, which contains the Assistant Secretary's finding of
exclusionary union practices. He relied upon published data, however, which
f may have been sufficient to justify administrative action leading to the
fication of contract provisions.

e need not decide that issue, however, for in our view the data in the Sep-
er 23, 1969 order revealing the percentages of utilization of minority group
esmen in the six trades compared with the availability of such tradesmen in
ive-county area, justified issuance of the order without regard to a finding
the cause of the situation. The federal interest is in maximum availability
nstruction tradesmen for the projects in which the federal government has
t and completion interest. A finding as to the historical reason for the
sion of available tradesmen from the labor pool is not essential for federal
actual remedial action.

e judgment of the district court will be affirmed.

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nited States Court of Appeals, Ninth Circuit, May 17, 1971, No. 26048]

ED STATES OF AMERICA, PLAINTIFF-APPELLEE v. IRONWORKERS LOCAL 86 ET AL., DEFENDANTS-APPELLANTS

ion wherein government charged unions and joint apprenticeship and
ng committees with having denied equal employment opportunities to
s in violation of Civil Rights Act. The United States District Court for
estern District of Washington, William J. Lindberg, J., 315 F. Supp. 1202,
ed judgment in favor of government, and all but one defendant appealed.
ourt of Appeals, Hamlin, Circuit Judge, held, inter alia, that finding that
ng construction unions and joint apprenticeship and training committees
ated with them had engaged in a pattern or practice of discriminatory
ct with respect to equal employment opportunities for blacks was not
y erroneous when well documented with statistical evidence showing a
ct absence of black membership in unions and committees, failure of union
halls to grant black referrals, many overt acts of discrimination on part
ons and committees, and many facially neutral employment practices which
differential effect on blacks.

rmed.

ourts—406.1(23), 406.3(13): On appeal from judgments determining that
n building construction unions and joint apprenticeship and training com-
es associated with them had pursued a pattern or practice of conduct which
l equal employment opportunities to blacks on account of their race, Court
peals would not review evidence de novo and freely substitute its judgments
at of trial court, but would apply clearly erroneous rule, even if a "large
ce" was placed on written evidence in trial court. Fed. Rules Civ. Proc.
2(a), 28 U.S. C.A.

ourts—406.3(6): Court of Appeals may not substitute its judgment for
ourt if conflicting inferences may be drawn from established facts by
able men, and inferences drawn by trial court are those which could have
rawn by reasonable men.

ederal Civil Procedure—1191: Application forms found in files of joint
nticeship and training committees, which were accused along with building
uction unions of having denied equal employment opportunities to blacks
ount of their race, were not admissible under business records exception
rsay rule to prove truth of matters contained therein, but were admissible
lence of type of information sought by committees and relied upon by them
hing their evaluative decisions. 28 U.S.C.A. § 1732.

ivil Rights—3: On basis that a showing of a small black union membership
eographic area containing a substantial number of black workers raises

an inference that racial imbalance is the result of discrimination, the burde
going forward and the burden of persuasion is shifted to the accused, for
a showing is enough to establish a prima facie case. Civil Rights Act of
§ 701 et seq., 42 U.S.C.A. § 200e et seq.

5. Civil Rights 3: Statistics showing racial composition of membershi
construction unions accused of having denied equal employment opportun
to blacks on account of their race could be used for purpose of establishi
prima facie violation of Civil Rights Act. Civil Rights Act of 1964, § 701 et
42 U.S.C.A. §2000e et seq.

6. Courts 406.3(6): Even if statistics concerning racial composition of m
bership of unions accused of having denied equal employment opportuniti
blacks on account of their race could not alone show as a matter of law
there had been a civil rights violation, conclusion of law reached by trial co
that a violation had occurred would not be overturned, where trial court
specific instances of discrimination on part of unions and apprenticeship
mittee in its findings, and where statistical evidence was complementary ra
than exclusive. Civil Rights Act of 1964, §701 et seq., 42 U.S.C.A. § 2000e et

7. Civil Rights 2: It is the intent of Congress that a "pattern or practice"
discriminatory conduct with respect to employment opportunities be found wh
acts of discrimination are not "isolated, peculiar or accidental" events. C
Rights Act of 1964 § 701 et seq., 42 U.S.C.A. §2000e et seq.

8. Courts 406.3(20): Finding that building construction unions and j
apprenticeship and training committees associated with them had engaged i
pattern or practice of discriminatory conduct with respect to equal employm
opportunities for blacks was not clearly erroneous when well documented w
statistical evidence showing a distinct absence of black membership in unions
committees, failure of union hiring halls to grant black referrals, many o
act of discrimination on part of unions and committees, and many facially neut
employment practices which had a differential effect on blacks. Civil Rights
of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

9. Civil Rights—3: Trial court did not violate Civil Rights Act by order
building construction unions to offer immediate job referrals to previous d
criminatees, and ordering apprenticeship and training committees associated w
unions to select and indenture sufficient black applicants to overcome past d
crimination, and to also meet judicially imposed ceiling requirements in appr
ticeship program participation. Civil Rights Act of 1964, §§ 703(j), 706(
707(a), 42 U.S.C.A. §§ 2000e-2(j), 2000e-5(g), 2000e-6(a).

10. Civil Rights 3: There can be little doubt that where a violation of eq
employment provision of Civil Rights Act is found, the court is vested with bro
remedial power to remove the vestiges of past discrimination and elimina
present and assure the nonexistence of future barriers to the full enjoyment
equal job opportunities by qualified black workers. Civil Rights Act of 19
§§ 703(j), 706(g), 707(a), 42 U.S.C.A. §§ 2000e-2(j), 2000e-5(g), 2000e-6(a).

Hugh Hafer (argued), John E. Rinehart, Jr., of Bassett, Donaldson & Haf
Seattle, Wash., Harold Stern, Gen. Counsel, Ironworkers International Uni
New York City, Donald Fisher, Gen. Counsel, Sheet Metal Workers Internatio
Union, Toledo, Ohio, Martin F. O'Donoghue, Gen. Counsel, Plumbing & Pipefitt
International Union, Washington, D.C., for defendants-appellants.

Frank Petramalo, Jr. (argued), David L. Rose, Robert T. Moore, Attys., De
of Justice, Washington, D.C., Jerris Leonard, Asst. Atty. Gen., Stan Pitkin, U
Atty., Seattle, Wash., Herman Sigueland, Duane Vance, Don Davidson, A
Brindle, Seattle, Wash., for plaintiff-appellee.

Before Hamlin and Merrill, Circuit Judges, and Hill, District Judge.*

Hamlin, Circuit Judge:

On October 31, 1969, the Attorney General of the United States[1] brought
action in the United States District Court for the Western District of Washing

*Honorable Irving Hill, United States District Judge, Central Division of Californ
sitting by designation.

[1] 42 U.S.C. § 2000e-6(a) reads:
Whenever the Attorney General has reasonable cause to believe that any person
engaged in a pattern or practice of resistance to the full en
ment of any of the rights secured by this subchapter, and that the pattern or prac
is of such a nature and is intended to deny the full exercise of the rights herein
General may bring a civil action * * * requesting such
for a permanent injunction, restraining order or other
son or persons responsible for such pattern or practice. * * *

ist five building construction unions,[2] located in Seattle, Washington, and joint apprenticeship and training committees associated with them.[3] The laint alleged that the named unions and joint apprenticeship and training nittees had denied employment opportunities to blacks on account of their and that certain policies, practices and conduct, described therein, constituted ttern or practice" of resistance to full employment of blacks in violation tle VII of the Civil Rights Act of 1964, 42 U.S.C § 200e et seq. The district , William J. Lindberg, Chief Judge, found that all the named unions and apprenticeship and training committees had pursued a pattern or practice nduct which denied blacks, on account of their race, equal employment rtunities in the construction industry; two judgments and decrees followed.[4] ut one of the defendants[5] have joined in the instant appeal.[6] We affirm.

ny of the basic facts were largely undisputed and were stipulated by the es. Appellant building trades unions are labor organizations which repre- a large number of workmen employed in the construction industry in and Seattle, Washington.[7] Through the union hiring halls, appellant unions ively control a large percentage of the employment opportunities in the ruction industry in that area. Under the bargaining agreements entered into en the contractor-employers and the unions, the unions must be given first tunity to fill positions. Contractors may not employ non-union workers s the positions are not filled by the unions within a period of time stipulated the bargaining agreement.

joint apprenticeship and training committees who join in this appeal are s legally separate and distinct from the specific unions with which they ssociated. The committees consist of members representing both the unions he employers,[8] and are formed to oversee and run the apprenticeship pro- s whose purpose is to train apprentices to become journeymen in the respec- rades. Once an applicant is accepted into the program,[9] he becomes inden- to the joint apprenticeship and training committee for a period of years.[10]

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al 86 International Association of Bridge, Structural, and Ornamental Iron- s Local 86; Local 46, International Brotherhood of Electrical Workers (here- Electrical Workers Local 46); Local 32, United Association of the Plumbing ipefitting Industry of the United States (hereinafter Plumbers and Pipefit- cal 32); Local 302, International Union of Operating Engineers (hereinafter ing Engineers Local 32); Local 99, International Sheet Metal Workers Asso- (hereinafter Sheet Metal Workers Local 99).

nworkers Joint Apprenticeship and Training Committee (hereinafter Ironwork- ATC); Plumbers and Pipefitters Joint Apprenticeship and Training Committee nafter Sheet Metal Workers JATC).

ge Lindberg's opinion is reported at 315 F. Supp. 1202 (W.D. Wash. 1970).

erating Engineers Local 32 was party to a consent decree and thus did not join appeal. The Ironworkers JATC chose not to join in the appeal and were rep- ed by other counsel.

er the court found that the unions and the joint apprenticeship and training tees had engaged in a pattern of practice of discrimination, the court, desiring ture proper and effective relief, ordered the parties (Electrical Workers Local fendant contractor associations and the United States) to "take all steps avail- persuade or require" the Electrical Workers Joint Apprenticeship and Training ttee (hereinafter Electrical Workers JATC) to intervene for purposes of relief ject to conduct of the apprenticeship program. The court specifically noted that not intend to find or imply that the Electrical Workers JATC had discriminated blacks, but entered the order so as to impart "uniformity in procedures rela- the JATC's connected with the respective defendant unions found to have inated." While appellants take exception to this order, we see no error in the equesting the full cooperation of the defendants in structuring appropriate relief.

re specifically, the court found that the unions had the following membership: Vorkers Local 86, approximately 920 members; Plumbers and Pipefitters Local proximately 1900 members; Electrical Workers Local 46, approximately 1750 rs; Sheet Metal Workers Local 99, approximately 900 members.

Plumbers and Pipefitters JATC is comprised of five representatives of Local l three representatives of the Seattle Plumbing and Pipefitting Employers, one ntative of the Refrigeration Contractors' Association and one member from the Sound Shipbuilders Association. As for the Sheet Metal Workers JATC, the committee joining in this appeal, it is comprised of eight members, four repre- ces of Local 99 and four representatives of contractors party to a collective ing agreement.

Sheet Metal Workers JATC provides an example of the process leading to nce into an apprenticeship program. An applicant must be between the ages of 24 (excluding time spent in the military service), pass a GATB aptitude test, e an application form and submit a high school transcript before he is con- Preference is given to high school graduates. Assuming these threshold re- nts are met, thereby allowing the applicant the right to be considered by the ttee, he is then interviewed in order to evaluate his qualifications and the com- then votes whether to accept him or not. The chairman of the Sheet Metal Work- JC indicated that they "will more or less look favorably on an individual who nily members who are sheet metal workers."

period of indenture differs between the appellant committees: Plumbers and ers JACT (five years), Sheet Metal Workers JATC (four years).

and participates in a program which consists of both on-the-job training classroom instruction. It is through this program that participants gain a sion to the union as a journeyman, thereby obviating the necessity of takin avenue of direct admission which demands that an applicant meet co requirements such as possessing a specified number of years of experience, within a given age range, having letters of recommendation, and pass journeyman's examination.

The court found appellant unions and joint apprenticeship and training mittees to have engaged in a pattern or practice of discrimination which d blacks employment opportunities in the construction industry. It based its clusions on specific findings of discrimination which included (1) the em ment of tests and admission criteria which had little or no relation to ca skills and which had a differential impact upon blacks, and which operat exclude them from entrance into the unions or referrals to available jobs; the active recruitment of whites while at the same time giving little or n licity to information concerning procedures for gaining union membership, referral opportunities, and the operation of the apprenticeship training prog in the black community; (3) the granting of preferential treatment to fri and relatives of existing members of the unions; and (4) the differential a cation of admission requirements, often by-passing such requirements in cas white applicants. In addition, several instances were shown where black wor who sought referrals were turned away without reason or after being giv spurious reason in support of its action; and in some cases, unions refus place blacks on the referral lists, thus assuring their inability to secure w

The relief granted by the court took the form of two judgments and decr the first related to the unions and the second related to the joint apprentice and training committees. In the first, the court enjoined the unions from en ing in future discrimination with respect to referrals for employment and acquisition or retention of union membership. It ordered that the unions detailed records of their operations and actively disseminate information in black community describing the operation of the referral systems, members requirements and available job opportunities. Specific relief was granted by court to certain individuals or groups of persons ordering the unions to them immediate construction referrals in response to the next contractor requ for workers and to open their membership application lists to these persons. court retained jurisdiction for such further relief as it deems necessary or ap priate to further effectuate equal employment opportunities.

Judgment and Decree No. 2 pertained to the joint apprenticeship and train committees. The committees were enjoined from all future discrimination aga applicants for apprenticeship on account of their race. It further ordered committees to disseminate information concerning the requirements and pr dures for admission to the apprenticeship programs so as to apprise blacks wi the geographical area of available opportunities. The respective committees ordered to consider all applicants who met the standards set out by the co in the decree. In addition to the above, an affirmative action program included in the decree in the hope of eradicating the vestiges of past discr nation. Among the provisions under this program were the creation of spe apprenticeship programs designed to meet the special needs of average blacks w no previous experience or special skills in the trade, or black applicants have some previous experience or special skills in the trade but do not journeymen standards. The court also retained jurisdiction over the committ in order to grant such further relief as it deems necessary.

I. FINDINGS OF FACT

We are confronted initially with the appellants' contention that the "clea erroneous" rule[1] should not govern our review of the findings of fact made the district court. They reason that the rationale underlying the rule is that appellate court should defer to the judgment of the trial court because the judge has access to demeanor evidence and could readily assess the credib of the witnesses. Hence, where, as they allege, "large reliance" is placed writing documents and depositions, they claim the rule does not apply documentary evidence played a small part in the trial judge's decision.

[1] See Fed. R. Civ. P. 52(a).

It is Appellants' characterization of the proceeding below as one in wh the trial judge placed "large reliance" on documentary evidence and deposit ignores the fact that over fifty five witnesses testified, many of whom w

ponents prior to trial. Even if "large reliance" was placed on written evidence, clearly erroneous rule would still apply. We examined this problem in ndgren v. Freeman, 307 F.2d 104 (9th Cir. 1962), and found the better rule to that the clearly erroneous rule does apply, even where the factual issues are ided on writen evidence alone.[12] Appellants would have us review the evidence novo and freely substitute our judgment for that of the trial judge. We line to do so. The well-established rule is that we "may not substitute our gment if conflicting inferences may be drawn from established facts by sonable men, and the inferences drawn by the trial court are those which ld have been drawn by reasonable men." *Lundgren, supra*, 307 F.2d at 113. *See* Jacobson v. Colorado Fuel and Iron Corp., 409 F.2d 1263, 1267 (9th Cir. 9); Friend v. H. A. Friend & Co., 416 F.2d 526, 531 (9th Cir. 1969); United tes v. Hanna Nickel Smelting Co., 400 F.2d 944, 947 (9th Cir. 1968).

3] Appellants further contend that the district court's findings were based on dence which it had previously excluded. Prior to trial, the Attorney General mined the application forms found in the files of the joint apprenticeship and ining committees. At trial, appellants objected to the introduction of charts ch were made from information found in the application forms on the ground t they did not qualify for admission under the business records exception he hearsay rule.[13] The court, sustaining, in part, appellants' objection, held evidence was inadmissible to prove the truth of the matters contained ein, but was admissible as evidence of the type of information sought by committees and relied upon by them in reaching their evaluative decisions. he contention of appellants is unsupportable, given the limited purpose for ch the information contained in the applications was used. As we noted in llips v. United States, 356 F.2d 297, 307 (9th Cir. 1965), cert. denied, 384 U.S. 86 S. Ct. 1573, 16 L.Ed.2d 548 (1966), where a similar argument was raised. ne purpose of that section [Business Records Act, 28 U.S.C. § 1732, as nded, 28 U.S.C. § 1732 (Supp. IV 1961)] is to provide, in the case of business ords, an exception to the hearsay rule, and to provide an acceptable substitute specific authentication of each business record. We are not here concerned n the hearsay rule because the letters and requests contained in exhibits 968 984 were not offered in proof of the statements contained therein. They e introduced only to show defendants had knowledge that such statements been made. Nor are we concerned with authentication since the authenticity ne documents need not be established where the only purpose of the documents o show notice.

ccord: United States v. Middlebrooks, 431 F.2d 299, 301 (5th Cir. 1970). As in *llips, supra*, the information contained in the applications was not proffered rove the statements therein, but to show what information was sought by the renticeship committees in the applications and relied upon by them in making r decisions. The application form information was properly admitted for purpose.

ne district judge's duty was to consider the evidence, reach all reasonable rferences therefrom, and make specific findings of fact and conclusions of . This task was necessarily a difficult one and involved the review of extensive testimony, many depositions and a great amount of accompanying documen- evidence. Its proportions are reflected in the size of the reporter's transcript ch alone numbers twenty volumes. In his carefully written and excellent ion, covering some fifty pages, Judge Lindberg made separate findings of as to each party, carefully analyzing the supportive evidence found in the ord. In these findings of fact Judge Lindberg has pointed out by page reference he record, the testimony, stipulations, admitted facts, and exhibits upon ch his findings were based. It would serve no purpose to repeat such refer- s in this opinion. It is not our duty to relitigate the facts at this time. Having ewed the findings below and the record before us, we are fully convinced the findings are amply supported by the evidence.

II. CONCLUSIONS OF LAW

t the outset, appellants contest the use of racial statistics to prove a "pattern ractice" of discrimination as a matter of law. They categorize this mode of of as a statistical "numbers game", incapable of proving a violation of

[12] A number of courts have held that in cases where the findings are based on documentary evidence, on uncontradicted testimony, on stipulated facts, or on testimony n by depositions, the trial court's findings are given only slight weight on appeal. *e.g.*, Galena Oaks Corp. v. Scofield, 218 F.2d 217 (5th Cir. 1954); Hart v. Gallis, F.2d 297 (7th Cir. 1960. *See generally*, 5 J. Moore, Federal Practice ¶ 52.04 (2d 1959).

[13] 28 U.S.C. § 1732, as amended, 28 U.S.C. § 1732 (Supp. IV 1961).

Title VII. We believe this argument is without support as the use of statisti is well established in recent Title VII cases.[14]

In the district court's opinion, a separate statement was made as to each a pellant concerning the racial composition of its membership. As to appella unions, it was stated: Ironworkers Local 86 had approximately 920 members January 1970, only one of whom was black.[15] Sheet Metal Workers Local 99 ha approximately 900 members in its construction division, only one of whom wa black:[16] and Plumbers and Pipe-fitters Local 32 had approximately 1900 membe in its construction classification, only one of whom was black.[17] In addition, wit respect to the appellant joint apprenticeship and training committees, the cou noted: Sheet Metal Workers JATC had 100 apprentices indentured in its progra and seven were black.[18] Plumbers and Pipefitters JATC had 104 building trad apprentices and none were black.

The district court also made a specific finding applicable to all parties concern ing the racial composition of the City of Seattle where the main offices, hirin halls and training facilities of the appellants are found. Approximately 42,00 blacks reside in the City, constituting roughly seven percent of the population This information came from an expert witness, a demographer, called to testify by the Attorney General.[19]

[4, 5] Since the passage of the Civil Rights Act of 1964,[20] the courts have frequently relied upon statistical evidence to prove a violation. This judical practice has most often taken the form of the use of such data as a basis for allocating the burden of proof. On the basis that a showing of an absence or a small black union membership in a demographic area containing a substantial number of black workers raises an inference that the racial imbalance is the result of discrimination, the burden of going forward and the burden of persuasion is shifted to the accused, for such a showing is enough to establish a *prima facie* case.[21] In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination by the employer or union involved. One court, in Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421, 426 (8th Cir. 1970), held as a matter of law, without other supportive evidence, that the statistics introduced showing an extraordinarily small number of black employees, notwithstanding a small number who held menial jobs, established a violation of Title VII. Of course, as is the case with all statistics, their use is conditioned by the existence of proper supportive facts[22] and the absence of variables which would undermine the reasonableness of the inference of discrimination which is drawn. It is our belief that the often-cited aphorism, "statistics often tell much and Courts listen,"[23] has particular application in Title VII cases.

[6] Here, even if we were to accept appellant's assertion that statistics alone cannot show as a matter of law that there has been a violation, it would not command our overturning of the conclusions of law reached by the district court. We are not faced with a situation where a court has relied upon statistical data

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[14] The reliance upon statistical evidence to prove discriminatory practices is not new to the courts. *See, e.g.*, Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed. 759 (1965); Patton v. Mississippi, 332 U.S. 463, 68 S.Ct. 184, 92 L.Ed. 76 (1947); Hill v. Texas, 316 U.S. 400, 62 S.Ct. 1159, 86 L.Ed. 1559 (1942); Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 (1935) (jury selection cases); F. W. Woolworth Co., 25 N.L.R.B. 1362 (1940) (anti-union discrimination case). *See generally*, Fiss, A Theory of Fair Employment Laws, 38 U.Chi.L.Rev. 235 (1971).

[15] The black was Howard Lewis, who was admitted on September 12, 1969, pursuant to an order of the Washington State Board Against Discrimination.

[16] His name was Leonard O'Neale, a member of Local 99 since the summer of 1968.

[17] He was David Williams, a welder, who was accepted in a period where there was an acute shortage of welders, forcing Local 32 to recruit from the Boilermakers' Union.

[18] Five were accepted after September, 1969, and the remaining two were accepted in May, 1968.

[19] Aside from their castigation of the use of such information as an engagement in a statistical "numbers game," appellants further contend that this data is irrelevant as the appellants' jurisdiction extends beyond the City of Seattle, rendering such statistics misleading. This is simply answered by the fact that the City has the single largest population within their jurisdiction and is that area from which they would most likely draw the vast majority of workers for apprenticeship, referral and membership purposes. We also recognize that appellants made no objection to this testimony at trial. We feel appellants' argument has no merit.

[20] Title VII of the Civil Rights Act of 1964 took effect on July 2, 1965.

[21] *See, e.g.*, United States v. Local 38, IBEW, 428 F.2d 144, 151 (6th Cir. 1970); EEOC v. United Association of Journeymen, etc., 311 F.Supp. 468 (S.D. Ohio 1970); United States ex rel. Mitchell v. Hayes Int'l Corp., 415 F.2d 1038, (5th Cir. 1969); United States v. Sheet Metal Workers Local 36, 416 F.2d 123 (8th Cir. 1969).

[22] Fiss, *supra* note 14, at 272-73. *See also* Note, Enforcement of Fair Employment Under the Civil Rights Act of 1964, 32 U.Chi.L.Rev. 420, 461 (1965).

[23] State of Alabama v. United States, 304 F.2d 583, 586 (5th Cir.), aff'd per curiam, 371 U.S. 37, 83 S.Ct. 115, 9 L.Ed.2d 112 (1962).

ne. On the contrary, in its findings, the district court cited specific instances
discrimination on the part of the unions and apprenticeship committees. Thus
statistical evidence is complementary rather than exclusive. We see no merit
appellants' complaint regarding the use of statistics.

Appellants next argue that the conclusions reached by the court that appellants
aged separately in a "pattern or practice of resistance" are wholly unsup-
table. They equate the phrase "pattern or practice" with "uniformly engaged
course of conduct aimed at denying rights secured by the Act." We feel that
h an interpretation is overly restrictive and does violence to the meaning in-
ded by Congress to be accorded the phrase. Moreover, it is our firm belief
t the conclusions reached by the district court are not clearly erroneous and
st be affirmed.

The phrase is not defined in Title VII, but some guidance is offered by an ex-
ination of the legislative history of this and other Civil Rights Acts employ-
the same words. Commenting on the meaning to be accorded the phrase in
debates on the Civil Rights Act of 1964, Senator Humphrey stated:

* * Such a pattern or practice would be present only where the denial of
its consists of something more than an isolated, sporadic incident, but is re-
ted, routine or of generalized nature.[24]

n testimony before the House Judiciary Committee on the Civil Rights Act
960,[25] Deputy Attorney General Walsh said:

attern or practice have their generic meanings. In other words, the court
s that the discrimination was not an isolated or accidental or peculiar event;
t it was an event which happened in the regular procedures followed by the
e officials concerned.[26]

n United States v. Mayton, 335 F.2d 153, 158 (5th Cir. 1964), an action under
Civil Rights Act of 1960, in which the court found that racial discrimina-
in the voter registration process was pursuant to a "pattern or practice",
court addressed itself to defining the words and concluded that they "were
intended to be words of art." *See also* United States v. Ramsey, 331, F.2d,
837 (5th Cir. 1964) (Judge Rivas, concurring and dissenting in part). With
ject to the phrase, Senator Keating commented that "[t]he 'pattern or
tice' requirement means only that the proven discriminatory conduct of
ndants was not merely an isolated instance of racial discrimination," 106
g. Rec. 7767.

7, 8] We are firmly convinced that it was the intent of Congress that a "pat-
n or practice" be found where the acts of discrimination are not "isolated, per-
ar or accidental" events. The words were not intended to be words of art.
plying this definition in the instant case, we are compelled to concur with the
rict court's findings that appellants engaged in a "pattern or practice" of
rimination. The findings are well documented with statistical evidence show-
a distinct absence of black membership in the unions and the apprenticeship
grams; the failure of the union hiring halls to grant black referrals; many
rt acts of discrimination on the part of appellants; and many facially neutral
ployment practices which had a differential effect upon blacks. We are not
cerned with isolated or accidental acts by appellants but a "pattern or prac-
" of resistance by them which has had an effect of denying black workers
al job opportunities in the Seattle area.

herefore, we hold that the conclusions reached by the district court finding
ellant unions and joint apprenticeship and training committees to have en-
ed in a pattern or practice of discriminatory conduct with respect to employ-
nt opportunities in the construction industry are not clearly erroneous.

III. RELIEF GRANTED

9] Appellants finally contend that the district court violated section 703(j)
he Act[27] in ordering appellant unions to offer immediate job referrals to pre-
us discriminatees, and ordering appellant apprenticeship and training com-

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110 Cong. Rec. 14270.
U.S.C. § 1971(e).
Hearings Before the House Committee on the Judiciary on H.R. 1037, 86th Cong.,
Sess. 13.
U.S.C. § 2000e–2(j). It provides:
othing contained in this title shall be interpreted to require any employer, em-
ment agency, labor organization, or joint labor-management committee subject to
title to grant preferential treatment to any individual or to any group because
ace, color, religion, sex, or national origin of such individual or group on account
n imbalance which may exist * * *.

mittee to select and indenture sufficient black applicants to overcome past d
crimination, and to also meet judicially imposed ceiling requirements in appre
ticeship program participation. This they condemn as "racial quotas" and "raci
preferences." We cannot agree.

The Act vests in the Attorney General and the trial court power to elimina
both the vestiges of past discrimination and terminate present discriminato
practices. Under sections 706(g) [28] and 707(a) [29] unlawful employment practic
may be enjoined by the court and such affirmative relief granted as the cou
may deem appropriate. The only statutory limitation on the availability of reli
is the anti-preferential treatment provision of section 703(j).

[10] There can be little doubt that where a violation of Title VII is foun
the court is vested with broad remedial power to remove the vestiges of pa
discrimination and eliminate present and assure the non-existence of futu
barriers to the full enjoyment of equal job opportunities by qualified black wor
ers. Parham v. Southwestern Bell Telephone Co., 433 F.2d 421, 427 (8th Ci
1970); United States v. International Brotherhood of Electrical Workers, No. 3
428 F.2d 144, 151 (6th Cir. 1970); Local 53 of International Association of Hea
and Frost Insulators and Asbestos Workers v. Vogler, 407 F.2d 1047, 1052-105
(5th Cir. 1969); United States ex rel. Mitchell v. Hayes International Corp
415 F.2d 1038, 1039 (5th Cir. 1969). *Cf.* Swann v. Charlotte-Mecklenberg Boar
of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (April 20, 1971). On th
basis of this board equitable power, the courts have allowed a wide range o
remedial relief. *See, e.g. Electrical Workers Local 38, supra* (remand to distric
court with direction to retain jurisdiction to assure compliance); Griggs v. Duk
Power Co., 420 F.2d 1225 (4th Cir. 1970), rev'd 401 U.S. 424, 91 S.Ct. 849, 2
L.Ed.2d 158 (March 8, 1971) (immediate work referral or union membership)
Hayes International Corporation, supra (preliminary injunction); *Sheet Meta
Workers Local 36, supra* (publication of the fact that membership and related
benefits were open to all persons and an affirmative duty of minority recruit
ment); United States ex rel. Mitchell v. United Association etc. Plumbers Local
73, 314 F. Supp. 160 (S.D. Ind. 1969) (revamping of apprenticeship program)
Without such powers, the district court would be unable to effectuate the desire
of Congress to eliminate all forms of discrimination.

In *Vogler, supra*, 407 F.2d at 1053–1055, the district court ordered, in additio
to an injunction against future discrimination and the immediate admission of
four discriminatees, that the union develop objective criteria for membership
and union size. As here, it was contended that the order established a "quota
system to correct racial imbalance in violation of section 703(j)." Rejecting this
argument, the court held the district court did "no more than ensure that the
injunction against further racial discrimination would be fairly administered."
Id. at 1054. The *Vogler* court succinctly stated that "where necessary to insure
compliance with the Act, the District Court was fully impowered to eliminate the
present effects of past discrimination." Similarly, in International Brotherhood
of Electrical Workers, Local No. 38, *supra*, 428 F.2d at 149, the court felt that
such an interpretation of section 703(j) "would allow a complete nullification
of the purposes of the Civil Rights Act of 1964."

We therefore reject appellants' contention. The district court neither abused
its discretion in ordering the affirmative relief, nor did it in any way establish
a system of "racial quotas" or "preferences" in violation of section 703(j).
The judgment of the district court is affirmed.

Mr. JAVITS. Mr. President, if there are no other speakers at the mo-
ment, I again suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. JAVITS. Mr. President, I ask unanimous consent that the time
consumed in the quorum be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The
clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent
that the order for the quorum call be rescinded.

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[28] 42 U.S.C. § 2000e–5(g) reads:
If the court finds that the respondent has intentionally engaged in or is engaging
in an unlawful employment practice charged in the complaint, the court may enjoin
the respondent from engaging in such unlawful employment practice, and order such
affirmative relief as may be appropriate. • • •

[29] See note 1 *supra*.

The PRESIDING OFFICER. Without objection, it is so ordered.
Mr. BYRD of West Virginia. Mr. President, will the Senator from w Jersey yield me time?
Mr. WILLIAMS. Mr. President, I yield to the Senator from West rginia.

AMENDMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent t the time for debate on the pending amendment close at 2 p.m. lay and that the vote on the pending amendment then occur.
The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS TO 1:45 P.M.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate nd in recess until 1:45 p.m. today.
The motion was agreed to; and (at 1:15 p.m.) the Senate took a ess until 1:45 p.m.; whereupon the Senate reconvened when called to er by the Presiding Officer (Mr. Byrd of Virginia).
The PRESIDING OFFICER. Who yields time?
Mr. WILLIAMS. Mr. President, on my time, I suggest the absence of a rum.
The PRESIDING OFFICER. The clerk will call the roll.
The legislative clerk proceeded to call the roll.
Mr. WILLIAMS. Mr. President, I ask unanimous consent that the er for the quorum call be rescinded.
The PRESIDING OFFICER. Without objection, it is so ordered.
Mr. JAVITS. Mr. President, will the Senator yield?
Mr. WILLIAMS. I yield.
The PRESIDING OFFICER. Does the Senator ask unanimous consent t the remaining time be equally divided?
Mr. WILLIAMS. Yes.
Mr. ALLEN. I yield back the remainder of my time.
Mr. JAVITS. Mr. President, just to consummate and complete the ument I made against this amendment, pointing out that it would pedo orders of courts seeking to correct a history of unjust dis- nination in employment on racial or color grounds, because it would vent the court from ordering specific measures which could assign cific percentages of minorities that had to be hired, and that could ly to government as well as private employers, I have just had attention called to two recent cases, both involving consent decrees otiated by the Justice Department.
One is a case in the U.S. district court in Boston and another in nsas. In one case, part of the decree required that 166 Negroes and rto Ricans be given preference—in filling future vacancies for ich they were qualified.
n the other case in Kansas, the company agreed to make a good- h effort to hire from three minority groups for 20 percent of the ical positions to be filled in the next 3 years.
This amendment would make it impossible for the Justice Depart- nt to obtain such decrees in the future.
ask unanimous consent that a news item in the Daily Labor Report December 22, 1971, concerning these two cases be printed in the ord.
There being no objection, the news item was ordered to be printed he Record, as follows:

[From the Daily Labor Report, Dec. 22, 1971]

JUSTICE DEPARTMENT OBTAINS CONSENT DECREES PROHIBITING DISCRIMINATI
UNDER TITLE VII

The entry of two consent decrees prohibiting two firms from discriminati against minority groups in employment is announced by the Department Justice.

A decree prohibiting AMBAC Industries, Inc., from discriminating again Negroes and Puerto Ricans in employment at its Springfield, Mass., plant entered in U.S. District Court in Boston, concluding a suit filed against AMBA by the Justice Department on June 28, 1968. A second one prohibits a Kans manufacturer from discriminating against Negroes, Spanish-surnamed America and American Indians. It was entered in U.S. District Court in Kansas Cit Kan., terminating an employment discrimination suit filed on April 24, 1969.

The AMBAC decree is also signed by American Bosch Industrial Unio Local 206, IUE, and the parent international union, which were named a defendants because the interests of their members would be affected by th relief sought. AMBAC, which has 1,200 employees, manufactures carburetor and fuel injection systems for trucks, trailers and tanks.

The suit charged discrimination against black and Puerto Ricans in its emplo ment practices in violation of Title VII of the Civil Rights Act of 1964, and th decree permanently enjoins AMBAC from any racial or ethnic discriminatio in its employment practices, including hiring, assigning, promoting and training

In addition, AMBAC is required to provide back pay of $1,000 to each o 29 black and Puerto Rican persons who unsuccessfully applied for jobs betwee 1966 and 1969. They also must be offered jobs ahead of all new applicants an ahead of persons who have been laid off and have a later seniority date. Th company is further required to give preference to another 166 black and Puert Rican persons in filling future vacancies for which they are qualified.

Another requirement is the notification by AMBAC of employment offices and racial and ethnic groups of job vacancies, to keep job applications for 90 days and check them against vacancies. AMBAC also must recruit for salaried employees at educational institutions which have a substantial black enrollmen and to post signs when vacancies exist stating that the company is an equa opportunity employer.

The Kansas decree applies to Certain-Teed St. Gobain Insulation Corp., suc cessor to Gustin Bacon Division of Certain-Teed Products Corp., and Teamsters Local 41, whose members, interests would be affected by the relief sought. Th original suit charged that Gustin-Bacon, which employed about 1,000 persons discriminated against the minority groups in hiring, job assignment, testing, and promotion to supervisory positions. The defendants are prohibited from any discriminatory practice and the company is required to provide for Negroes Spanish-surnamed persons and American Indians training similar to that made available to white employees.

In addition, the firm is required to make a good faith effort to hire from th three minority groups for 20 percent of the clerical positions filled during the next three years.

Mr. WILLIAMS. Mr. President, I do not believe that it is the intent of the Senator from North Carolina to deny to the judicial and executive branches of Government all power to remedy the evils of job discrimination; but I am afraid—I am desperately afraid—that this amendment would strip Title VII of the Civil Rights Act of 1964 of all its basic fiber. It can be read to deprive even the courts of any power to remedy clearly proven cases of discrimination.

That statement follows right on examples of situations cited by the Senator from New York of the kind of situation that could be affected adversely.

I have listened intently to the debates on this bill. Not one Member of this body has spoken against providing some method for enforcing the law. This amendment raises the real threat of destroying any potential for effective law enforcement. If this amendment is accepted, I earnestly suggest that we will have a law, but there will be litt

ance for order under the law again if this amendment should evail.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. JAVITS. I am authorized to state that the Secretary of Labor directly opposed to this amendment.

Mr. WILLIAMS. That is to say that the administration opposes this endment?

Mr. JAVITS. That is correct.

Mr. WILLIAMS. I do not always speak for the administration. I am ppy to.

Mr. ERVIN. It is not very surprising that a public official would ject to anything which robs him of the power to be a tyrant. That ot surprising at all.

Mr. WILLIAMS. Moderately, may I say that I disagree with the mpestuous language of the Senator from North Carolina.

Mr. President, if any further time remains, I yield it back.

Mr. ERVIN. If any further time remains on our side, I should like dd to the Senator's statement—"tempestuous and truthful."

The PRESIDING OFFICER (Mr. Montoya). All time has now expired.

Mr. WILLIAMS. There is no time for a surrebuttal. [Laughter.]

The PRESIDING OFFICER. All time on this amendment has now pired.

The question is on agreeing to the amendment of the Senator from rth Carolina (Mr. Ervin).

On this question the yeas and nays have been ordered, and the clerk l call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from xas (Mr. Bensten), the Senator from Missouri (Mr. Eagleton), the nator from Georgia (Mr. Gambrell), the Senator from Oklahoma r. Harris), the Senator from Washington (Mr. Jackson), the Sen- r from Massachusetts (Mr. Kennedy), the Senator from Washing- (Mr. Magnuson), the Senator from Arkansas (Mr. McClellan), Senator from South Dakota (Mr. McGovern), the Senator from ntana (Mr. Metcalf), the Senator from Maine (Mr. Muskie), the nator from Alabama (Mr. Sparkman), the Senator from Missis- pi (Mr. Stennis), the Senator from Illinois (Mr. Stevenson), the nator from California (Mr. Tunney), the Senator from Alaska r. Gravel), and the Senator from Indiana (Mr. Hartke) are neces- ily absent.

I further announce that the Senator from Mississippi (Mr. East- d) is absent because of illness.

On this vote, the Senator from Mississippi (Mr. Eastland) is paired h the Senator from Washington (Mr. Magnuson).

If present and voting, the Senator from Mississippi would vote a" and the Senator from Washington would vote "nay."

On this vote, the Senator from Georgia (Mr. Gambrell) is paired h the Senator from Washington (Mr. Jackson).

If present and voting, the Senator from Georgia would vote "yea" l the Senator from Washington would vote "nay."

I further announce that, if present and voting, the Senator from nois (Mr. Stevenson) and the Senator from California (Mr. nney) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Delaware (Mr. Boggs), the Senator from Colorado (Mr. Dominick), the Senator from Oklahoma (Mr. Bellmon), the Senators from Oregon (Mr. Hatfield and Mr. Packwood), the Senator from Iowa (Mr. Miller), the Senator from Kansas (Mr. Pearson), the Senator from Ohio (Mr. Taft), and the Senator from South Carolina (Mr. Thurmond) are necessarily absent.

The Senator from Tennessee (Mr. Brock), the Senator from New York (Mr. Buckley), the Senator from Wyoming (Mr. Hansen), and the Senator from Maryland (Mr. Mathias) are absent on official business.

The Senator from Arizona (Mr. Goldwater) is absent by leave of the Senate.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting, the Senator from Colorado (Mr. Dominick) would vote "yea."

On this vote, the Senator from Wyoming, (Mr. Hansen) is paired with the Senator from Oregon (Mr. Hatfield). If present and voting the Senator from Wyoming would vote "yea" and the Senator from Oregon would vote "nay."

On this vote, the Senator from South Carolina (Mr. Thurmond) is paired with the Senator from Ohio (Mr. Taft). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Ohio would vote "nay."

The result was announced—yeas 22, nays, 44, as follows:

[No. 19 Leg.]

YEAS—22

Allen	Ellender	Jordan, Idaho
Bible	Ervin	Long
Byrd, Va.	Fannin	Spong
Byrd, W. Va.	Fulbright	Talmadge
Cannon	Gurney	Tower
Chiles	Hollings	Young
Cotton	Hruska	
Curtis	Jordan, N.C.	

NAYS—44

Aiken	Griffin	Percy
Allott	Hart	Proxmire
Anderson	Hughes	Randolph
Bayh	Humphrey	Ribicoff
Beall	Inouye	Roth
Bennett	Javits	Saxbe
Brooke	Mansfield	Schweiker
Burdick	McGee	Scott
Case	McIntyre	Smith
Church	Mondale	Stafford
Cook	Montoya	Stevens
Cooper	Moss	Symington
Cranston	Nelson	Weicker
Dole	Pastore	Williams
Fong	Pell	

NOT VOTING—34

r	Hansen	Mundt
ion	Harris	Muskie
en	Hartke	Packwood
s	Hatfield	Pearson
k	Jackson	Sparkman
ley	Kennedy	Stennis
nick	Magnuson	Stevenson
ton	Mathias	Taft
and	McClellan	Thurmond
rell	McGovern	Tunney
vater	Metcalf	
el	Miller	

Mr. Ervin's amendment was rejected.

. Javits. Mr. President, I move to reconsider the vote by which mendment was rejected.

. Williams. Mr. President, I move to lay that motion on the

e motion to lay on the table was agreed to.

e Presiding Officer. The bill is open to further amendment. The tor from New Jersey is recognized.

. Williams. Mr. President, I yield briefly to the Senator from igan.

. Hart. Mr. President, I appreciate the Senator's yielding to me. to address a question to the manager of the bill with respect to spect that has given concern and to establish the understanding urpose as it will be reflected by the expression of the manager of ill.

. President, on Wednesday, January 19, at the opening of our rations on proposals to amend Title VII of the Civil Rights Act 64 so as to give the Equal Employment Opportunity Commission needed additional enforcement authority, the distinguished man of the Committee on Labor and Public Welfare placed into ecord an excellent comparative analysis of the present law, his ill (S. 2515) that we are discussing today, and the bill passed last by the House of Representatives (H.R. 1746).

hough this analysis will be most helpful to all of us as we con- debate on this vitally important legislation, I am concerned a provision in the House-passed measure that is described as xclusive remedy provision. It is one that is not identified or re- l to in the comparative analysis printed in the Record of Jan- 19, and I believe some clarification would be desirable.

is provision, which some feel might be interpreted as an exclu- or sole provision or sole remedy provision, was the subject of ssion during the floor debate on H.R. 1746 in the House. There, al Members drew attention to its possible effect on the remedies ilable, particularly beneficial to women employees under the Equal Act of 1963.

. President, the Equal Pay Act of 1963 was the first Federal nacted by the Congress to prohibit wage discrimination on the of sex. It has enjoyed widespread support, and we should make

explicit the fact that Congress does not intend the Equal Pay
to be affected by proposals to expand and strengthen Title VII of
Civil Rights Act of 1964.

I should like to ask the distinguished chairman of the Sen
Labor Committee if he will confirm my understanding that it is
the will or desire of this body that the Equal Pay Act of 1963
superseded in whole or in part by any action taken by the Congr
to provide most sorely needed amendments to Title VII of the Ci
Rights Act.

Mr. Williams. Mr. President, I appreciate the questions put to
by the distinguished Senator from Michigan. I certainly want to ma
the situation very clear here today.

The distinguished Senator from Michigan is correct in his assum
tion that it is not our intention in any way to affect or diminish th
remedies available under the Equal Pay Act of 1963. I am glad t
have the opportunity to add my voice to those who wish to see co
tinued, effective enforcement by the Department of Labor of a law tha
is of major importance, particularly to women employees who hav
long been the victims of wage discrimination based on sex. Many o
us in the Congress strove for a period of years to see an equal pay fo
equal work law placed on the statute books. The Senator from Mich
igan may rest assured that his question, if it still remains, will b
further clarified during the course of our conference on S. 2515 an
H.R. 1746 with Members of the House of Representatives.

Mr. Hart. Mr. President, I appreciate very much the response o
the distinguished chairman of the committee. I know that I spea
for many Members of the Senate.

Mr. Ervin. Mr. President, I call up my amendment No. 599 an
ask that it be stated.

The Presiding Officer (Mr. Saxbe). The amendment will be stated
The assistant legislative clerk read as follows:

On page 39, line 20, following "finds" insert "by preponderance of the ev
dence taken by the Commission".

On page 41, line 8, strike "on the record." and insert "by a preponderance o
the evidence of the record as a whole.".

Mr. Ervin. Mr. President, if I may have the attention of the dis
tinguished manager of the bill for a moment, I will state that the
amendment would merely make clear that in making findings of fact
the Commission should make the findings of fact conform to the
preponderance of the evidence. I understand that there is a probabil
ity that the distinguished manager of the bill may be willing to ac
cept the amendment.

Mr. Williams. Yes. We discussed the purport of the amendment
during the debate on an earlier amendment. I recall that this amend
ment, dealing with the preponderance of evidence at the Commission
level, was included in a bill passed by the Senate 2 years ago. The
Senator from North Carolina offered the amendment then, it was
agreed to, and was in the bill passed by the Senate at that time. It
was not included in the bill reported by the Senate committee this
year. It should be in the bill, in my judgment.

Mr. Ervin. I thank the Senator from New Jersey. I am ready to
vote.

Mr. Williams. I am, too.

The PRESIDING OFFICER. The question is on agreeing to the endment.

The amendment was agreed to.

Mr. ERVIN. Mr. President, I call up my amendment No. 812. I ask t the reading of the amendment be omitted but that the text of amendment be printed in the Record and that I be permitted to lain the amendment in lieu of its being read.

The PRESIDING OFFICER. Without objection, the amendment will be nted in the Record and considered as having been read.

The amendment is as follows:

On page 32, strike out lines 8, 9, and 10.

On page 32, line 18, insert the words "a State or political subdivision eof" between the comma following "United States" and the words "an an tribe."

On page 33, strike out lines 4 and 5.

On page 33, strike out lines 11, 12, and 13.

On pages 32 and 33, renumber (2) and (4) as (1) and (2), respectively.

On pages 36 and 37, strike out everything from the beginning of line 22 page 36 through the end of line 12 on page 37, and re-letter the remaining ections appropriately.

On pages 38 and 39, strike out everything from the word "In" on line 18 page 38 through the word "hearing" on line 2 on page 39.

On page 48, strike out everything from the word "upon" on line 14 through word "importance" on line 24.

On page 49, strike out everything between "Subsection (c)" and the words he efforts" on line 2.

On page 49, strike out everything between "Subsection (f)" on lines d 7 and the words "or the Commission" on line 8.

On page 54, strike out everything from the word "or" on line 16 through word "Subdivision" on line 17.

Mr. ERVIN. Mr. President, this is a simple amendment. I should like lert Senators to the fact that it is, in my judgment, one of the most rial amendments which will be offered to the bill.

tated simply, the amendment would completely remove from the all the provisions which undertake to give the EEOC jurisdiction the employment practices of any of the States or any of the polit- subdivisions of the States. I should like to discuss the amendment a comparatively brief time this afternoon and announce my will- ness to have it voted on, on Monday. I think that because of the t importance of the amendment, all Senators should have an op- unity to ascertain what is contemplated by it and have an oppor- ty to think about it before they vote. I am ready to proceed with argument.

Mr. President, in my honest judgment, the legislative proposal con- ed in the bill that the EEOC be given jurisdiction over the employ- t practices of all the States and of all the political subdivisions ll the States constitutes the most drastic assault upon our Federal em of government which has been proposed in any legislative posal to come before Congress at any time in its history.

he bill gives the EEOC power to pass upon the employment prac- whereby the States and their political subdivisions employ any on to render services to them. There is not even an exception in the to the effect that the EEOC will not have jurisdiction over the ernor of a State or the Lieutenant Governor of a State, or both: ewide election officials; State judges, whether they are elected or pointed to office; clerks of superior courts of counties and their as-

sistants; sheriffs of counties or their assistants; and the chiefs of pol
of municipalities. The bill would give the EEOC jurisdiction, ev
over members of school boards, certainly where they are appoint

It was once said, in a far happier day than the present, that the C
stitution of the United States looks in all its provisions to an un
structible Union composed of indestructible States. Yet today we ha
pending before the Senate of the United States a bill providing t
the EEOC be given the ultimate power to determine whom a State
a political subdivision of a State can appoint or employ to exercise t
legislative, executive, and judicial powers of a State.

If the amendment is not adopted, we ought to change the name
our country from that of the "United States of America" to t
"United States"—singular—"of America," because any Federal agen
which has jurisdiction over the employment of persons by a Stat
which exercises legislative, executive, and judicial power over a Sta
is the supreme dictator of State and local governments in America.

Mind you, Mr. President, the bill not only gives the EEOC power t
supervise and ultimately to control the employees of a State; it als
gives the Commission that power in respect to all employees. Hen
under this power, in the bill in its present form, the EEOC would b
authorized to act as the school board for every school district in th
United States. In that capacity, the EEOC would have the ultima
power to determine the persons who would act as school superintend
ents, school principals, and school teachers in every area of the Unite
States.

The bill does not, however, stop with that. It would, in effect, giv
the EEOC the ultimate power to overrule the decisions of the board
of trustees of State institutions of higher learning, and ultimately
control the appointment of every teacher who teaches any subject
any institution of higher learning.

I would say that this bill not only constitutes the most drastic gra
for governmental power on the part of the Federal Government in th
history of this Nation, but I would say that if it is enacted into law i
its present form, without removing the provisions which would be re
moved by this amendment, this bill would represent the most stupi
piece of legislation in the Nation's history.

I can illustrate that by discussing the power which this bill give
to the EEOC to supervise and ultimately control the employment pra
tices of State institutions of higher learning. As the Senator from
North Carolina understands this bill, it does not give the EEOC th
power to compel a State institution of higher learning to employ a ma
whose competency for teaching is inferior. It does not intend to tak
away from a State institution of higher learning the rightful powe
to select as teachers of the various subjects taught in institutions o
higher learning men who are competent to teach those subjects. An
yet it is conceivable that it may, in practical effect, accomplish tha
unintended and that unwarranted result.

There are two questions involved in every case which is concerne
with the application of this bill to any employment situation involve
in State employment. There are two things that the EEOC must d
before it can control the employment practices of a State institutio
of higher learning and order that institution to employ an applica
for a teaching job in lieu of the person selected by the trustees of th

e institution. To do this the EEOC must do two things, and it must these things by the preponderance of the evidence, according to amendment just now adopted. The EEOC must find by the great ght of the evidence, first, that the person is competent to perform function of the employment in question; and, second, that he has denied employment because of his race, or because of his religion, , or religion, or national origin, or sex.

he bill before the Senate puts the same obligation upon the Federal t in respect to State employees and in respect to employees of e institutions of higher learning. The EEOC, under this bill, cises that power with respect to the employees of private institus of higher learning where jurisdiction is given to Federal district ts in cases of State institutions of higher learning. And, so when a eral judge undertakes to exercise control under this bill over teachof State institutions of higher learning and undertakes to order to employ as a teacher an individual selected by the Federal e, in place of the person selected by the authorities of the State intion of higher learning, the Federal judge must find by the prelerance of the evidence these two things: First, that the person he rs the State institution of higher learning to employ is competent ach the subject which he is to be assigned to teach; and, second, he has been denied that employment by that State institution of er learning, because of his race, or religion, or national origin, or

his first requirement manifests the stupidity—and I know of no r way to describe it—of this proposed legislation insofar as it re- to the employment of teachers of a State institution of higher ing.

he University of North Carolina at Chapel Hill is a State institu- of higher learning established and maintained and operated by the e of North Carolina. Under this bill, a Federal judge would have ultimate power to order the University of the State of North lina to employ a specified person selected by the Federal judge, er than by the authorities of the University of North Carolina at el Hill, if the Federal judge found, as a fact, that the person ted for it was competent to teach the subject in question and that ad been denied employment to teach such subject because of his , or religion, or national origin, or sex.

submit, with all due deference to all concerned, that it is the height the depth of legislative stupidity to confer on Federal judges the er to determine the competency of any person to teach any of abstruse subjects in which people receive instructions in a State tution of higher learning. And, while such observation is not tly germane to this particular amendment, I also submit that it oth the height and the depth of stupidity to confer upon the OC like powers with respect to persons who are to teach subjects rivate institutions of higher learning. I submit that if there is hing which is beyond the competency of a Federal judge and nd the competency of the EEOC, it is the task of passing upon qualifications of people who are to teach the various subjects of uction which are presented to the students at institutions of er learning.

I can illustrate that by certain references to the subjects, or so of the subjects, in which the University of North Carolina instru its students.

The University of North Carolina has a department of anthr pology, and virtually every State institution of its caliber in this N tion has a similar department. I might add that the leading priv institutions of higher learning also have such departments.

Let me call the attention of Senators to what instruction is offer in this one field.

They have a freshman seminar:

The seminar will provide an initial small group learning experience in s nificant current topics in anthropology.

I respectfully submit that it would be a legislative absurdity f Congress to enact this bill and give to the EEOC in the case of priva institutions and to Federal judges in the case of State institutio of higher learning, the power to pass on the competency of any perso to provide initial small group learning in the significant current topi in anthropology. Despite all of their legal learning, Federal judg are too ignorant to have any competency to perform that task: an notwithstanding all of its political acumen, the EEOC is too ignoran to be vested by law with the task of performing that function i respect to private institutions of learning.

Let us refer to just a few other subjects which are taught in Sta and private institutions of higher learning.

General anthropology:

The science of man, the culture-bearing animal. Topics considered: Physica evolution of mankind and biological variations within and between huma populations. Prehistoric and historic developments of culture. Cultural dynamic viewed analytically and comparatively.

Now, what Federal judge is competent to determine whether an person possesses the qualifications to teach general anthropology And obviously, the EEOC manifests about as much capacity in tha field as I possess the capacity of directing the kind of activities whic archangels should pursue.

Then these institutions of higher learning, both State and privat teach courses in human origins, which constitute "surveys of physica anthropology, including the place of man among the primates, huma evolution, and racial differences. Consideration is also given in thes courses to osteology and the interrelationship of cultural and bi logical factors."

With all due respect to Federal judges and the EEOC, I woul say that they are totally without the capacity to determine the com petence of any person to teach such a subject in any State or privat institution of higher learning. Yet this bill gives Federal judges tha power in respect to the teaching of such subjects at State institutio of higher learning, and the EEOC that power in respect to privat institutions of higher learning.

I note that one branch of anthropology deals, among other thing with the place of man among his primates in human evolution. Thi bill, in this respect, reminds me of the time I served in the Legislatur of North Carolina, many years ago, when someone offered a bill t

ıibit the teaching of the organic theory of evolution in any of the
e-supported colleges or schools. If the Legislature of North Caro-
had been so foolish as to adopt such a piece of legislative
idity, North Carolina would have enjoyed the very dubious fame
eing the place where the Scopes trial occurred, rather than the
e of Tennessee.
participated in the debate on that bill in the Legislature of North
olina, and I made this observation: That the only good purpose
I saw that such a bill could serve would be to bring the satisfac-
to the monkeys in the jungle of knowing that the Legislature of
th Carolina had absolved them from any responsibility for the
luct of the human race in general, and of the North Carolina Leg-
ure in particular.
e defeated the bill. But the issue did not necessarily die there.
ıring the campaign for the election of the members of the next
lature, one of my good friends, Gus Seff, of Hickory, N.C., was
Democratic candidate for the legislature from Catawba County.
vas opposed by my good friend of a by-gone day, Loomis Kluttz,
Newton, N.C., who was a Republican candidate for the State
lature.
ıring the campaign, these two gentlemen engaged in a joint de-
and Loomis Kluttz charged Gus Seff with believing in evolution,
h Loomis Kluttz explained as a belief that men are descended
monkeys.
ıs Seff said he did not know much about evolution, that he be-
d that evolution taught that as the ages go by, mankind progresses,
that he would like to think that mankind does progress with the
ng of the ages. He said:

on't know anything about this proposition, to the effect that evolution
es that men are descended from monkeys. I don't accept that. But I
the father of my opponent. He was a great, old-time family physician in
ba County. He was a man of good sense and intelligence. I take no posi-
with respect to the theory that men may be descended from monkeys:
ıy knowledge of the father of my opponent, and my observation of my
ent, have led me to the conclusion that sometimes monkeys are descended
men.

aughter.]
ell, I do not mean any harm, and I do not mean to violate any
of the Senate; but I would say that the passage of this bill in
esent form, without my present amendment, might shed no light
ever upon this subject in anthropology, concerning evolution,
ar as it may proclaim—if it does proclaim—that men are de-
led from monkeys. I would say, were it not for the fact that it
t constitute some kind of implicit violation of the Senate rule,
the passage of this bill would afford considerable evidence that
times legislators act with the limited intelligence which is
arily exhibited by monkeys rather than by men.
w, let us talk a little more about a bill which gives a Federal
and the EEOC the ultimate power to pass on the competency
en or women to teach anthropology and the various subjects in
utions of higher learning.
e of the subjects that is taught in this field is genetics and human
tion. A prerequisite to the study of this subject is introductory

biology, by permission of the instructor. This subject deals with t fundamental principles of genetics, population genetics, genetic eq librium, race and species formation, the factors of evolution, and t relation of these principles to man and the primates. Blood groups a other traits are used to illustrate this subject.

Mr. President, I ask this question, not facetiously but solemnl Does any Member of the Senate know of any Federal judge anywhe within our vast borders who has enough understanding of the subj of anthropology to determine the competency of a person to tea genetics and human evolution as a course in anthropology in an i stitution of higher learning?

There is another subject in this field that would certainly tax t ingenuity of a Federal judge or the ingenuity of the EEOC. In the departments of anthroecology is a good word—of presimians, learning, they teach a subject called primate social behavior. Th deals with the social behavior and ecology—ecology is a good word—o presimians, monkeys, and apes, and the evolution of human behavio

I think it is inconceivable that there is any judge on any Feder district court bench anywhere within the vast borders of our land wh is qualified to pass on the competency of any individual to teach pr mate social behavior. Yet, this bill imposes that duty upon a Feder judge in any case where it is alleged, in any action before him, that t institution of higher learning has refused to employ a particular pe son to teach primate social behavior because of that person's race religion, or national origin, or sex.

I submit that this bill imposes the same duty in the same situatio upon the members of EEOC and that their competency to make decision on this point places them in the same state which is inhabite by ignoramuses and the Senator from North Carolina. Yet, we hav this bill, to impose that duty on Federal judges and the members the EEOC. Thank God it does not impose that duty on the Senate from North Carolina, and the Senator from North Carolina is op posed to having it imposed upon him. That is one of the purposes this amendment.

There is another subject that is taught by the department of an thropology in the institution of higher learning, the "Anthropolog of Religion." This course examines over 100 years of speculation. Th is not speculation on Wall Street which they are talking about bu speculation about the origin of religion and its place in our cultur including the thought of Marx, Durheim, and Freud. It gives atte tion to ritual, magic, myth, and revitalization movements as they op erate in modern society and others.

Mr. President, I should like to have some proponent of this bill te me the name of a Federal judge or some member of the EEOC who possessed of sufficient knowledge to pass upon the question of the co petency of any man or any women to teach the anthropology religion.

Senators will note, if they heard what I said, that the course in cluded, among other things, myths. I say it is a legal myth that an Federal judge or any member of the EEOC has the competency t pass on the qualifications of any person to teach the anthropology religion.

There is another subject in this field which is entitled "the develop-
nt of anthropological thought." This course of study is a constitu-
nal review of selected cultural anthropologists and their predeces-
rs to define recurrent as well as innovative perspective with which
y have viewed man, culture, and society.

Mr. President, I think it would be a myth for Congress to assume
t any Federal judge or any member of the EEOC has the com-
tency to pass upon the qualifications of a person to teach that course,
e development of anthropological thought. This course also deals
t only with the subject of myths but also with the subject of magic.
I just do not believe there is a single Federal judge within the
rders of the United States of America, or any member of the EEOC,
o could possibly be appointed to that board who would have pos-
sion of enough magic to empower him to determine the competency
any person to teach this subject in any State or private institu-
n of higher learning. Yet that is one of the duties which this bill,
enacted into law, would impose upon Federal judges and members
the EEOC in exercising the vast powers it would give them to su-
rvise and control the employment practice of institutions of higher
rning.

Mr. President, I have barely scratched the surface of the subject I
now expounding. I have cited only a relatively few instances which
w how stupid it would be for Congress to give Federal judges and
mbers of the EEOC the power to pass upon the qualifications of
rsons employed or to be employed to teach the very subjects of learn-
taught in institutions of higher learning.

might state to my friends that there are many other subjects
ght in these institutions of higher learning, such as intermediate
nting, arts, and crafts, sculpture, elementary bacteriology, gen-
l botany, cells biology, plant physiology, environmental biology,
mistry, physics, and religion.

It would be, as I say, the height and depth of stupidity for Congress
enact a law which would empower and require Federal judges and
mbers of the EEOC to pass upon the qualifications of persons who
ply or are hired by institutions of higher learning to teach those
jects.

Mr. President, as I have just said, I have merely scratched the sur-
e in presenting the view that it is the height and depth of stupidity
Congress to undertake to empower and require Federal judges and
mbers of the EEOC to pass upon the qualifications of men and
men to teach subjects of learning in which students receive instruc-
n in a State or private institution of higher learning.

Mr. President, I do not desire to trespass upon eternity, as I could
in further expounding on this subject. I sincerely trust that the old
pression, "A word to the wise is sufficient," and these few words
ich I have spoken on this subject, will induce the wise Members of
Senate—and, indeed, the foolish ones, if any such there be—to vote
favor of this amendment when it comes up for a vote.

Mr. President, I yield the floor.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 32, line 13, insert the word "fifteen" between the word "has" and the word "or".

2. On pages 32 and 33, strike out everything from the word "during" on line 25 on page 32 through the figure "1971" on line 1 on page 33.

3. On page 33, strike out lines 6, 7, 8, 9, and 10.

4. Renumber (5) as (4).

Amdt. No. 839

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 32, line 13, insert the word "twenty" between the word "has" and the word "or".

2. On pages 32 and 33, strike out everything from the word "during" on line 25 on page 32 through the figure "1971" on line 1 on page 33.

3. On page 33, strike out lines 6, 7, 8, 9, and 10.

4. Renumber (5) as (4).

Amdt. No. 840

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 32, line 13, insert the words "one hundred" between the word "has" and the word "or".

2. On pages 32 and 33, strike out everything from the word "during" on line 25 on page 32 through the figure "1971" on line 1 on page 33.

3. On page 33, strike out lines 6, 7, 8, 9, and 10.

4. Renumber (5) as (4).

Amdt. No. 841

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 32, line 13, insert the word "fifty" between the word "has" and the word "or".

2. On pages 32 and 33, strike out everything from the word "during" on line 25 on page 32 through the figure "1971" on line 1 on page 33.

3. On page 33, strike out lines 6, 7, 8, 9, and 10.

4. Renumber (5) as (4).

Amdt. No. 842

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, strike out everything from the word "or" on line 20 through the word "activities" on line 24, and insert the following in lieu thereof: "or to the employment of any individuals by any religious corporation, association, or society."

Amdt. No. 843

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, strike out everything from the word "or" on line 20 through the word "activities" on line 24, and insert the following in lieu thereof: "or to the employment of any individuals by any educational institution."

Amdt. No. 844

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

Add a new section at the end of the bill appropriately numbered and reading as follows: "No department, agency, or officer of the United States shall require an employer to practice discrimination in reverse by employing persons of a particular race, or a particular religion, or a particular national origin, or a particular sex in either fixed or variable numbers, proportions, percentages, quotas, goals, or ranges. If any department, agency, officer, or employee of the United States violates or attempts or threatens to violate the provisions of the preceding sentence, the employer or employee aggrieved by the violation, or attempted or threatened violation, may bring a civil action in the United States district

Amdt. No. 845

court in the district in which he resides or in which the violation occurred, or is attempted or threatened, or in which the enterprise affected is located, and the district court shall grant him such relief by way of temporary interlocutory or permanent injunctions as may be necessary to redress the consequences of the violation, or to prevent the attempted or threatened violation.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1972
Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: Strike out everything after the enacting clause and insert the following in lieu thereof:

That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 (f) (6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for

the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters."

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it

is based and the person or persons aggrieved) that an employer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within five days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year."

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed

within one hundred and eighty days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided,* That if the Com-

mission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) are redesignated as subsections (g) through (l), respectively, and in newly designated subsection (k) the reference to

subsection (i) is changed to subsection (j), and the following new section is added after section 706(e) thereof:

"(f) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative

action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

SEC. 4. If the court adjudges that the respondent has not and is not engaged in the unlawful employment practice charged in the complaint of the Commission, the respondent

will be entitled to recover from the Commission the costs of the action and a reasonable attorney's fee to be fixed by the court.

899 O - 72 - 71

[From the Congressional Record—Senate, Jan. 31, 1972]

QUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The PRESIDENT pro tempore. Under the previous order, the Chair
rs before the Senate the unfinished business, S. 2515, to further
omote equal employment opportunities for American workers.
Amendment No. 812 is the pending amendment.
The time between now and 2 p.m. will be equally divided between
manager of the bill (Mr. Williams) and the Senator from North
rolina (Mr. Ervin), with the vote on the amendment to occur at
.m.
Time on any amendment, appeal, or point of order relative to the
endment will be limited to 20 minutes, to be divided between the
ver of the amendment and the manager of the bill, if he is opposed
t otherwise, the time will be under the control of the minority leader
is designee.
Time on any amendment to the amendment or appeal or motion is
ome at the end of the time on amendment No. 812.
The clerk will state the amendment.
The legislative clerk read the proposed amendment as follows:

dd a new section at the end of the bill appropriately numbered and reading
ollows: "No department, agency, or officer of the United States shall require
employer to practice discrimination in reverse by employing persons of a
icular race, or a particular religion, or a particular national origin, or a
icular sex in either fixed or variable numbers, proportions, percentages,
as, goals, or ranges. If any department agency, officer, or employee of the
ted States violates or attempts or threatens to violate the provisions of the
eding sentence, the employer or employee aggrieved by the violation, or
mpted or threatened violation, may bring a civil action in the United States
rt in the District in which he resides or in which the violation occurred, or
ttempted or threatened, or in which the enterprise affected is located, and
District Court shall grant him such relief by way of temporary interlocutory
ermanent injunctions as may be necessary to redress the consequences of the
ation, or to prevent the attempted or threatened violation.

The PRESIDENT pro tempore. Who yields time?
Mr. HUGHES. Mr. President, I suggest the absence of a quorum.
The PRESIDENT pro tempore. The clerk will call the roll.
The legislative clerk proceeded to call the roll.
Mr. ERVIN. Mr. President, I ask unanimous consent that the order
the quorum call be rescinded.
The PRESIDENT pro tempore. Without objection, it is so ordered.
Mr. HUGHES. Mr. President, will the Senator yield?
Mr. ERVIN. I yield.
Mr. HUGHES. Mr. President, I ask unanimous consent, with the
ator's permission, that the time consumed during the call for the
rum be equally divided between both sides.
The PRESIDENT pro tempore. Is there objection? The Chair hears
e, and it is so ordered.

Mr. ERVIN. I yield myself the time that I shall consume.

I stated on Friday that this bill, insofar as it seeks to extend this coverage to all the employees of States or the political subdivisions of States, is inconsistent with our federal system of government and that it represents the greatest grab for power ever made by the Federal Government.

The people opposed to this extension of power of the Federal Government over the States are not simply sinful southerners like the Senator from North Carolina. They are found in the offices of the attorneys general of the States of Montana, Tennessee, Oregon, Utah and Washington.

I read a letter from Slade Gorton, attorney general of the State of Washington:

DEAR SENATOR ERVIN: Thank you for your thoughtful letter on the subject of the above-numbered bill.

The state of Washington already has a statute comparable to the proposal contained in that bill, covering state and local government employment as well as private employment. Personally, I prefer an approach through state legislation coupled with firm and fair state enforcement.

I read a letter from Robert B. Hansen, deputy attorney general of the State of Utah:

DEAR SENATOR ERVIN: In response to your letter of Dec. 1, it is the view of this office that the subject bill would be an unwise extension of Federal bureaucracy into state affairs. The principle of the bill, as you note, is commendable, but the mechanics of implementing it is directly contrary to traditional concepts of the right of a sovereign state to manage its own affairs.

It has been our observation that many Federal programs unduly interfere with the proper sphere of local government activities and does so at a cost which is greatly disproportionate to the value conferred.

For instance, in Utah, we have had only three cases of claimed discrimination brought to our attention during the past three years, each of which was settled by a phone call plus a personal interview in one of them. If these cases had been processed by a bureaucrat on the Federal payroll supported by the usual office and staff the cost to the taxpayer would be an astronomical multiple of the cost actually necessary to resolve these problems here.

If we can be of any further help in connection with this matter, I will appreciate hearing from you.

Lee Johnson, attorney general of the State of Oregon, wrote me as follows:

DEAR SENATOR ERVIN: Pursuant to your request to share my views on the above-proposed legislation, please be advised that, although I am the chief law officer of the state, and am familiar with Oregon's civil rights legislation, I am not the administrative agency which enforces that legislation. As far as my office is concerned, Oregon already has complete coverage of governmental employers under our own civil rights statutes. Therefore, there is no need for S. 2515 to solve problems in Oregon.

I am enclosing a copy of Oregon's civil rights statutes (ORS 659.010 to 659.110). You will note therefrom that all levels of government, except federal, are encompassed within the definition of an "employer," although they may employ as little as only one employee [ORS 659.010(6)].

In addition, Oregon's law covers all classes of discrimination covered by federal legislation (race, religion, color, national origin, sex and age). Only in the area of age discrimination is the Oregon law not broad enough to cover all private and governmental employers.

Investigatory, conciliatory and adjudicatory jurisdiction over complaints of discrimination are granted by our state statutes to an administrative agency, with the right of appeal to the State Court of Appeals and the State Supreme Court.

If you have any further inquiries, please do not hesitate to contact me.

also read a letter from David M. Pack, attorney general of the
te of Tennessee:

EAR SENATOR ERVIN: I am writing to acknowledge with appreciation your
r of December 1st with which you enclose a copy of S. 2515, being entitled
l "to further promote equal employment opportunities for American workers."
se be advised that I am entirely in accordance with the sentiments expressed
our letter and in the remarks made by you on the Senate floor when a similar
was considered by the 91st Congress. It is my firm conviction that the effect
his measure would be deleterious to the federal concept of government and
it would further curtail the constitutional prerogatives of the respective
es and increase the impersonal bureaucratic control which weights so heavily
the nation today.
s the foremost constitutional authority in the United States Senate you are
ently qualified to bring the dangerous and pernicious characteristics of this
slation to the attention of the Congress and the nation. Please be assured of
omplete and unqualified support and of my opposition to this proposal as it
resently drafted. It is my purpose to communicate these views when it ap-
s that an expression of my opinion may be effective.

read a letter from the attorney general of Montana, Robert L.
odahl:

AR SENATOR ERVIN: I have reviewed the materials you sent concerning
te Bill No. 2515, the proposed Equal Employment Opportunities Enforce-
Act of 1971.
though this legislation is quite detailed in terms of enforcement procedures,
l that it is lacking in clarification relative to its potential impact on state
rnment. This is indeed unfortunate, since the possible ramifications on in-
ual state governments could be extremely detrimental.
would agree that the inclusion of state governments, governmental agencies
governmental activity within the scope of the Equal Employment Oppor-
y Act amounts to a broad extension of the powers given the Equal Employ-
Opportunity Commission under the Civil Rights Act of 1964. The
lation of employment practices within state government is a matter which
ld properly be left to the individual states, since state governments certainly
n a better position to handle, on an informed basis, employment difficulties
ng in their respective jurisdictions. Also, and perhaps more significantly, I
ve as you do that the principle of federalism as expressed in the Tenth
ndment to the United States Constitution would suffer serious impairment
e enactment of Senate Bill No. 2515.
strongly support the maintenance of the concept enunciated by the Tenth
ndment, and I appreciate your sharing your thoughts on this matter with me.

r. President, as was pointed out in the last letter I read, there is
ing in the bill that clarifies who is a State employee or an em-
ee of a local political subdivision of a State. Does it include the
ernor of the State? Does it include the supreme court justices of
State? Does it include the members of the State legislature? Does
clude all those elected sheriffs in the various counties? Does it
ude the various clerks of the court and other men who exercise
utive and judicial power?
his would give the Federal judge a broad mandate to go out and
ect to his domination all the employees of a State and all the
loyees of a political subdivision of a State.
s I argued last Friday, and I think my argument cannot be suc-
fully contradicted, this would make Federal judges into employ-
bureaus for States, even though they lack capacity to determine
y of the State's employment problems, such as who is competent—
argued last Friday—to say who should teach such subjects as
ropology in a State institution of higher learning.
r. President, this bill represents the greatest assault ever attempted
ny legislative proposal upon the liberties of all the American

people for the supposed benefit of only one segment of the America people.

It is said to be a bill to promote equality in employment. That is hypocritical designation. The bill would destroy equality because would place employers, both public and private, throughout the lengt and breadth of the land, if they employ as many as eight person under subjection to a government agency for the supposed benefit only one segment of the American people. That would be exalting th privilege of this segment of the American people above the liberti of all of the American people.

Now, Mr. President, I yield such time as he may need to the distinguished Senator from Alabama (Mr. Allen).

Mr. ALLEN. Mr. President, I thank the distinguished Senator from North Carolina for yielding to me. I am honored that I have this opportunity to speak alongside the able and distinguished senior Senator from North Carolina (Mr. Ervin), who is the greatest constitutiona authority in the Senate—and I say that without fear of contradiction—and one of the most renowned constitutional lawyers in the entire country.

Mr. President, I oppose the passage of S. 2515, not because I do no want to see equal employment opportunities for all our citizens, fo every Member of the Senate, every fairminded person in the country favors the concept of fair and equal opportunity by all our citizens to obtain employment and to earn a livelihood.

One would think, from hearing some of the debates in the Senate that a large number of jobs or positions that are open for filling are being denied to people.

Let me point out that the bill does not create one single job or position of any sort, aside from the hundreds of Federal bureaucrats who would obtain jobs if the bill is passed.

The bill seeks to make the EEOC, the so-called Equal Employment Opportunity Commission, the court, the jury, and the prosecutor all rolled into one.

Some 7 years ago, originally, when the law was passed, and at the present time, the EEOC was an advisory and conciliation agency, one that sought to eliminate unfair labor practices by investigating charges, by considering them, by seeking to work out differences between the employer and the employee, but not to issue its own orders and not to be a prosecutor, jury, and judge.

But the concept of conciliation will take second rank behind the function of forced compliance with its order.

Is it fair for the same agency which receives the complaint, which investigates the complaint, which prefers charges based upon that complaint, to sit as the judge to determine the validity of the complaint?

Mr. President, I submit that it is not.

This bill is an arrogant effort to extend the scope of operation of the EEOC, to extend its coverage, to extend the powers of the EEOC. It will bring, for the first time, if the bill is passed, and if this amendment of the distinguished Senator from North Carolina and myself is not adopted, the despotic powers of the Commission to every State, county, and city employee, every employee of a State, county, or city public agency, bringing in some 10 million additional citizens covered by this act.

Mr. President, I might say at this point that the bill does provide a ewhat different procedure as regards the county and city employees negotiating and prosecuting unfair labor practices from what is vided for employment in business and industry.

They must have felt that the Senate and the House of Representa- s would not go along with the same sort of rule for State, county, city employees that there is for employees of business and in- try. So, in effect, they have what we might call something on the er of a Dominick amendment for State, county, and city employees hat the forum for deciding the controversy with regard to the al- d unfair labor practices would not be just the Commission itself, would be the Federal court.

hat was what the Dominick amendment sought to do, to require the mission to go into the Federal court to prosecute the alleged unfair r practices. So, the proponents of the bill were wise enough to set his procedure with regard to the State, county, and city employees. they should not have any jurisdiction whatever. The Federal court ld not. There should be a field of operation for the Federal Govern- t, a field of operation for the State government, and, as my dis- uished colleague, the distinguished senior Senator from North olina, has said, the Federal judge should not be the employment ncy for the State.

, Mr. President, it is very unwise in the judgment of the junior tor from Alabama to seek to extend coverage of the EEOC to e, county, and city employees. The amendment now pending would inate the coverage of State, county, and city employees from the nittee amendment. In other words, it would not change the law as ists now at all. It would just say, "All right; you are seeking to r the number of employees required for coverage by the EEOC, n 25 to eight; that in all small businesses you are moving over to EEOC the power of the Justice Department to bring practice and ern suits against employers where it is alleged that the employer t just discriminating in isolated cases, but that it has a practice pattern by which it engages in unfair employment practices, and sferring that power over to the EEOC."

has broadened the coverage to include every single educational in- tion in the entire country. They are not now covered. The pending ndment does not seek to correct those abuses by which there are nsions of the power and jurisdiction of the EEOC over these other cies. All it seeks to do is to prevent the EEOC from reaching out grabbing control of State, county, and city governments and their oyment practices.

would leave the other matters to be settled by subsequent amend- s. It does not withdraw any jurisdiction from the EEOC. It would ly prevent the EEOC from obtaining jurisdiction of the local rnments.

r. President, this amendment, in the judgment of the junior tor from Alabama, is the most important amendment yet remain- o be acted upon by the Senate. Possibly the most important amend- was the Dominick amendment, which finally failed by a vote of 46. That amendment would have required that the charges of ir labor practices be presented and considered and adjudicated in wer Federal court.

That was a most meritorious amendment. However, the Senate by a very narrow margin turned it down. I hope that this amendment, keeping the EEOC from taking over the local government, will be accepted. It will not make the bill acceptable to the junior Senator from Alabama and the senior Senator from North Carolina and many other Senators. However, it would be an improvement if we were to just prevent the EEOC from running roughshod over the rights, the functions, and the obligations of local governments.

Mr. President, when Thomas Jefferson remarked that "eternal vigilance is the price of liberty," he had in mind a vigilance by free men against encroachments of governmental authority.

Mr. President, I am going to direct the remainder of my remarks not just to the amendment, but in opposition to the entire bill, S. 2515.

In adopting the restraints which the Bill of Rights imposed upon the National Government, the authors of the U.S. Constitution espoused the cause of individual liberty against arbitrary, governmental intrusion. In so doing, the patriots who survived the bitter ordeal of tyrannical rule exercised by King George III and his ministers declared to all the world that those who were to be governed knew best how they should be governed and that government should move only as consent flowing from the people.

The words of Jefferson are no less true today, particularly when we view the bill before us. It is an affront, to be sure, to the concept of the authors of the American Constitution and the idea of limited governmental authority which they sought to safeguard.

When legislation similar to S. 2515 was before the Senate during the last Congress, I stated that it was the most dangerous and indefensible measure presented in this Chamber since I came to the Senate. My views have not changed.

I have never personally witnessed such a bold and colossal grab for naked power which is represented by the combined impact of S. 2515. We are being asked to endorse a blank legislative check to vest in an agency of the Federal Government totalitarian authority over the employment practices and internal administration of free enterprise, labor unions, educational institutions, and State and local governments.

This bill is deliberately designed to deny basic rights of the American people and to grant special privileges to a few. Its punitive and oppressive provisions are patently directed at the destruction of the rights of the majority. Its far-reaching and drastic provisions will destroy and negate many more individual rights and liberties than they could possibly protect. If enacted, the measure would, in fact, cripple, and in some instances destroy, the very institutions which brought this great Nation into being and which helped to make it great.

Mr. President, I may say parenthetically, that the EEOC, in seeking to take over the employment practices of institutions of higher learning, is treading, it seems to the junior Senator from Alabama, on dangerous ground. It is hard for our institutions of higher learning to survive in the terrific cost crunch that is affecting our colleges and schools. Not only would the EEOC take over colleges and universities; it would take over educational institutions of any other sort, whether they be private schools, church-supported schools, or even public grade schools, for that matter—any institution that would come within the phrase "educational institution."

lready, Federal courts are pretty well serving as employment ncies for teachers in Alabama and the rest of the South, because Federal courts say whom the school boards may employ, whom may not employ, and where they shall teach. So we do not need further dictation by still another branch or department or agency ureau of the Federal Government to exercise still more control r our educational institutions in Alabama and the rest of the South. t has long been known that one of the things that accreditation rds and other agencies which have the power to accredit or to hdraw accreditation from institutions of higher learning, or of ndary schools, for that matter, consider very carefully is whether nstitution is dominated by politics, whether politicians are in con- of the educational institution or whether educators are in control he institution. If we turn the employment practices of colleges and ersities over to the EEOC and let it decide who shall teach what ect, let it decide who is going to be on the faculty of the institu- of higher learning, what chance will an institution of that sort of continuing its accreditation if it is so embroiled in control, not ducators at the school, but by a bureau of the U.S. Government? el that it is certainly a weakening of our higher institutions of ning to turn over their employment practices to the EEOC.

he distinguished Senator from North Carolina (Mr. Ervin) was rking that even as to religious schools, the only exemption given the EEOC is the control of employment insofar as it affects the hing of religious subjects and the carrying on of religious activi- The EEOC would not exempt the school from its employment tices with regard to persons who might teach history, languages, hematics, or philosophy. All courses outside of religion would be er the control of the EEOC.

a church-supported school which might desire to have only mem- of its particular denomination on the faculty to teach not only gion, but also all other subjects, will find that under the bill its loyment practices with regard to teachers of subjects not having rect connection with the promulgation and carrying on of its re- us activities will be covered. Under the bill, the very foundation es of our American system would be denied. The proposed legis- n is a direct assault upon the free enterprise system.

he number of employees that would be required to bring an enter- a business, or an officer, for that matter, under the provisions of OC is reduced from 25 to eight. Many small businesses today are ng a time keeping their doors open for the purpose of carrying on business. Competition from large corporations, governmental ape, investigations, and heavy taxes are forcing many small busi- es to close their doors. All of this combines to make it very diffi- indeed, for a small business to remain in business.

nder the provisions of the bill, if a man employs as few as eight ons, he is covered by every single one of the outrageous provisions e bill. The bill does not merely require large corporations to main- fair employment practices. It requires that coverage be extended mall businesses, as well. There will be harassment, there will be stigations, charges will be filed against many thousands of small nesses; and I predict that literally hundreds of such businesses be crowded to the wall. I have in mind an incident that occurred

in my State of Alabama. A small industry, employing some 250 persons, is barely making ends meet. A proceeding against it is pendi right now before the EEOC. In talking with some of the officials the company, I was told within the last week that it looked like th were not going to be able to carry on against all of the attacks by t Federal bureaucracy, including, in particular, the EEOC.

Mr. President, if we give the EEOC the power not only to point o these alleged practices to an employer but to sit in judgment on tho charges and issue orders of cease and desist, we are going to find th this company, in all likelihood—a small company employing 250 pe ple—is not going to be able to survive.

While I was home during the Christmas recess a man called m from another section of my State, and he was registering his prote against some of the trends in Washington. He said, "Senator ALLE we are getting to the point where we are afraid of our Government. Mr. President, that sums up the feeling of many thousands of peop throughout this country. They are afraid of their Government.

Governments used to protect the rights of the people, but this ma being buffeted about by red tape, by heavy taxes, by Government i quisition, is just cringing, wondering what the Government is goin to do against him next. I hated to tell him that they are going to ex tend the powers of the EEOC against him and his small business. just did not have the heart to tell him what was in store for him. Tha is what is worrying the people, Mr. President.

We have so many problems facing this country—the dock strike o the west coast, the war in Vietnam and Indochina—and we have bee talking here for some 10 days on this pernicious bill.

The EEOC has managed to get along without the cease-and-desis authority for 7 years. Why cannot it limp along without that au thority now?

It is said that without this bill, there will be 32,000 complaints file with the EEOC in the year which will end June 30, and it is estimate that for the next year starting July 1 they will have 45,000 com plaints. They must be doing some good in calling these matters t the attention of employers. Why cannot the EEOC limp along lik it has done for 7 years without this added authority, and let the Senat get on to more important business?

I dare say when the head of the EEOC appeared before the Ap propriations Committees of the House and the Senate he did not say "Why, Mr. Chairman, we are not accomplishing anything over i the EEOC." He said, "We are doing a good job," I dare say.

Let us leave the EEOC where we find it. Let us not circumscrib its powers. Let us not curtail its powers. Let us not make it harde for them to act. Let us appropriate all the money they can properl use. But, Mr. President, let us not extend their power over 10 millio local government employees. Let us not extend their power over ever educational institution in the country. Let us not extend their powe over every employer of as many as eight persons. Let use not giv them the power to sit as prosecutor, judge, and jury, and sit in judg ment after they have already decided the case, or they would not ha bothered to prefer the charges. That would show they had already de cided the matter, or they would not have preferred the charge. Wh let them sit in judgment on a charge that they themselves preferred

The measure contains a self-starter provision vesting in the Equal
ployment Opportunity Commission authority to initiate investi-
ions and inquiries either on its own motion or whenever an anon-
ous person or organization merely requests the filing of a charge
t an unlawful employment practice has occurred.
There is no requirement of "reasonable cause" as a condition prece-
t to the filing of a charge; therefore, the Commission is given
te blanche authority to conduct roving inquiries into the private
ks and records of a company, a labor union, an educational insti-
ion, or State and local governments, regardless of whether there
ny logical preexisting cause for believing there has been a violation
he law. S 2515 is, in essence, a civil "no knock" bill.
What the people are afraid of is the Government coming in and
assing him by checking over a man's books and checking on him.
t is one fear they have of the actions of their Government.
ight at that point, Mr. President, this bill has a provision in it that
ne of the most amazing provisions present in any bill. We have had
he United States for 100 years a law that provides the Federal
ernment, the agencies and employees of the Federal Government,
not accept the services for the Federal Government of volunteer or
ompensated employees. In other words, a man shows up at the
tice Department and says, "Look, I want to volunteer my services
work in the Department of Justice." Well, the law is that such a
on's services cannot be used by the Justice Department. A man
ws up at the Internal Revenue Service, the Treasury Department,
says, "I want to volunteer my services and work for the Govern-
t. I do not want to be paid anything. I am just interested in carry-
on the work of the Federal Government." Under the law, such a
on cannot have his services used. He has got to become a Federal
loyee. He has got to take a civil service examination in many
s. He has to be checked out by this Government. He has got to be
led in the department and employed as a Federal employee.
ut the bill that is before us now would take the EEOC out from
er this law. Other departments are covered by it. I have not been
l to any other agency that is not covered by it. It is a law that has
on the books, apparently, for 100 years. We have not had any
r bill, since I have been here, seking to take any bureau or agency
from under this law. But we find it now in this EEOC bill. It
ides that the EEOC can avail itself of volunteer or uncom-
sated employees. Is that right, Mr. President?
was brought out here on the floor that at present the EEOC has
1,000 employees. It is anticipated that in that next year or so,
going up to 2,000. Well, there is no limit on the number of vol-
er or uncompensated employees that they could get.
lready, even before they get the authority, the distinguished man-
of the bill, the Senator from New Jersey (Mr. Williams) stated
they have some 300 volunteer employees. He stated that they
used largely in public relations work. But I submit, Mr. Presi-
, there is nothing anywhere in this measure that would prevent 500,
), or 5,000 people, with prejudice, with bias, from coming forward
saying: "I am so definitely committed to this concept of equal and
employment opportunity that I want to volunteer my services, so
I can go out over the country and check employers and see if
are engaged in unfair employment practices."

Mr. President, that is what this bill would allow, and I feel that should be pointed out again and again. We sought to knock th provision out, but the Senate in its widsom saw fit to defeat t amendment.

As I have stated, Mr. President, the amendment at the desk that the pending business would not cure all of these other defects that I a seeking to point out, but it would prevent the EEOC from taking ov State and local governments, and for that reason it ought to be adopte by the Senate.

Under the inquires and investigations directed by the bill, bus ness would be vexed and harassed to the point where orderly pla management and efficient production could become impossible.

The bill brings within its orbit every person in the United State who hires eight or more employees. Thus, the small businessmen— already overburdened—would encounter new regulations, investiga tions, hearings, and appeals far beyond his time, his energy, or h finances.

The bill even goes farther. It says that the Commission can act a the complainant's lawyer and prepare his testimony for him on th very case which will be presented to and ruled upon by the Commis sion itself.

What about a little fair play there, Mr. President? That is denie here. This is consistent with the entire one-sided and dictatoria philosophy of S. 2515. Its potentialities have seeds of malignancy which it would be folly to ignore.

Mr. President, S. 2515 is a delusion designed to create a false sens of security in that it does not create one new job except those in Feder bureaucracy. I repeat, other than the additional army of bureaucrats that would be set up, this bill does not create one new job in the privat sector.

Yet, the bill is presented to us when we are confronted with ou most serious economic crisis in four decades.

We have the first peacetime wage-price freeze in our history. W are constantly faced with what some have called the "twin sixes"— 6-percent unemployment and 6-percent increase in inflation pe annum. The growth in our gross national product has been alarmingl small and capital goods expenditures have hardly grown at all. All o this has been compounded by our serious adverse balance of trade an the accompanying crisis in the position of our dollar abroad.

I am sure all will agree that there is an urgent, if not crying, nee to devise means to bring an early end to economic stagnation in ou country, to curb inflation, and to reduce unemployment levels b putting idle capacity to work and by creating new capacity.

But at the very time production is so badly needed to restore soun and vigorous economic conditions, this bill would create fear an suspicion, friction and division in the business houses, plants, an factories of America.

If this bill should become law, Mr. President, it would give licens for a bureaucrat clothed with all the power of the Federal Gover ment, to come out of Washington and to walk into a business or labo union hiring hall and to dictate to the employer or the business age whom he could employ and whom he could not employ.

Mr. President, touching again on this arm of volunteer employees Those people would have to eat, I suppose, even if they were vo

ering their services. Somebody is going to be paying them, we rest assured of that. They are not going to volunteer their services ss somebody is paying the way. Mr. President, to allow this army olunteer employees, with the indicia, the power, and the authority he Federal Government behind them, is something we ought not o. What check would be made about their criminal background, ny? What check would be made about their fitness to work in a ate position of this sort? What check would be made on their gen- ability? What check would be made on their bias or prejudice?

for no other reason than that it has this vicious provision, the should be defeated.

here is just one other step which could in any way be worse than step I have just described, and that would be for one of those aucrats to go into a man's home—his castle—and try to tell him a he should have around his dining room table or his fireside.

t this is not all. The bill could also punish first and prove the se subsequently. It would permit a Federal judge—a single judge g without a hearing and without any showing by the Government reparable injury—to issue a temporary restraining order against espondent for an alleged unlawful employment practice.

. President, that would be an alternate remedy they would have. would be in addition to the remedy they have of sitting as ecutor, judge, and jury. In addition to that, if they could not rapidly enough by that method, if they have too large a back- f cases, mark my words, Mr. President, we are going to have the C coming in here and saying, "With this mass of added work we got, we do not need just 2,000 employees, we need 4,000, 6,000, 00." Mark my words.

. President, with regard to the advisability of leaving all this r in the EEOC, or requiring it to go into Federal court to have mplaints adjudicated. I might remark that there are 398 Federal ct judges in the country, and by dividing this workload up g 398 Federal judges, it would seem to me to be a better way of ling it than to have one commission here in Washington, with oard members, handle all of these complaints from all over the d States.

t, in addition to the right to decide the matter itself, when it gets and running ahead of the backlog of cases, it can go into the al court. This is an alternate and additional remedy that the C would have—to get the Federal judge to issue a temporary ining order against the respondent for an alleged unlawful em- ent practice. We thus see a reversal of the age-old maxim that a s presumed to be innocent until he is proven guilty.

they have to do is to go into Federal court and have the judge a restraining order preventing the employers from engaging in leged unlawful employment practice, without ever deciding the r. The order will be issued, and then they will wait until they time to hear it, at the bottom of the docket, and all that time they l be restrained from doing what good business judgment required to do.

temporary restraining order could be followed by a preliminary tion. The preliminary injunction could require affirmative action part of the employer, such as the reinstatement of former em- es and the hiring of new employees with back pay.

Under these provisions of the bill, it would be possible, Mr. Pres dent, for an American to be imprisoned if he disagreed with the ordd of a Federal judge, without the benefit of trial by jury.

No wonder the powers sought under this bill have been compare with the English court of the star chamber.

Frankly, I am somewhat surprised to see that some of the peopl who for many decades were subjected to the injustices of the injunc tive process prior to the passage of the Norris-La Guardia Act i 1932 are among those who now come before Congress and clamor for return to the dark days of the past.

Mr. ERVIN. Mr. President, will the Senator yield for a question o that point?

Mr. ALLEN. I yield.

Mr. ERVIN. The Norris-La Guardia Act was enacted at the behest o labor to free labor from what was called "government by injunction."

Mr. ALLEN. That is correct.

Mr. ERVIN. And the Norris-La Guardia Act is still in force.

Mr. ALLEN. Oh, yes.

Mr. ERVIN. Under its terms, a man who suffers a genuine wrong which only an injunction can prevent is denied the right to obtain a injunction to protect his rights and prevent that wrong, is he not?

Mr. ALLEN. That is correct.

Mr. ERVIN. Notwithstanding that labor has sought and obtained for itself protection against government by injunction, labor joins th organizations which have appointed themselves guardians of the mi nority race in demanding the passage of a bill which places every othe person within the borders of the 50 States, employing as many as eigh people, under the tyranny of government by injunction.

Mr. ALLEN. That is correct. It is rather inconsistent.

Mr. ERVIN. It would seem that the freedoms which they woul cherish for themselves, they would wish the other people to enjoy.

Mr. ALLEN. Yes. I thank the distinguished Senator from Nort Carolina for the point he has raised and commented upon.

Samuel Gompers, the pioneer and towering leader in the America labor movement, declared in 1911:

> Modern American Courts assume the right to issue injunctions interferin with the personal [illegible] of men in exercising free speech, free press, peaceable assemblage, and in the[illegible] personal relationship with each other. The right of fre speech, free press, peaceable assemblage are specifically guaranteed by th [illegible]nstitution. They are the fundamental safeguards of a free people, whic neither a Court, king, nor cajolery should be permitted to destroy. The person relationship between man and man comes clearly within the jurisdiction o the [illegible] Courts and has no place in the Courts of equity unless on the assump tion that the Court that man is property, and assumption repugnant to the sens of all civilized communities and specifically forbidden by the 13th Amend ment to the Constitution of the United States. Our contention is that when an injunction is issued in a labor dispute, irreparable injury is done to the parties involved and to the cause of labor, which no court can compute and no bon can indemnify.

Mr. President, I am sure there are few among us who will not say that [illegible] the most shameful chapters of our judiciary history were written by judges in labor relations cases prior to the enactment of the Norris-La Guardia Act. Indeed, the susceptibility to abuse by judges of the injunctive process is clearly illustrated by the example of the years prior to 1932 when judges, acting without juries, in an abuse

roken line of cases, used the injunction to frustrate the efforts abor to secure fair wages and safe working conditions.
would be well for those representing labor who advocate S. 2515 pause and ponder the wise words of Samuel Gompers and to roughly review the cases involving labor disputes prior to 1932.
r. President, this bill would provide a different type of injunction. would provide an injunction against the employer.
he PRESIDING OFFICER. All time of the proponents of the amend- t has now expired, and the committee chairman has all the remain- time.
r. ALLEN. I appreciate the Chair's indulgence, and I will conclude emarks on the bill at a later time.
r. WILLIAMS. Mr. President, first, a parliamentary inquiry.
he PRESIDING OFFICER. The Senator will state it.
r. WILLIAMS. The remaining time before the vote that is fixed for n. is all to be allocated by the manager of the bill?
he PRESIDING OFFICER. That is correct.
r. WILLIAMS. And the vote is at a time certain—2 p.m. Is that ct?
he PRESIDING OFFICER. That is correct—under the order.
r. WILLIAMS. It is my understanding that the time for the quorum that started the proceedings was equally divided between the ponents of the amendment and the manager of the bill.
he PRESIDING OFFICER. That is correct.
r. WILLIAMS. There will be another quorum call shortly. I will not or equal division.
r. ALLEN. We have no time to contribute.
r. WILLIAMS. Following a statement, I will be happy to work n equity of time if not many speakers demand time from the ger of the bill. In the meantime, I suggest the absence of a um.
he PRESIDING OFFICER. The clerk will call the roll.
he second assistant legislative clerk proceeded to call the roll.
r. WILLIAMS. Mr. President, I ask unanimous consent that the r for the quorum call be rescinded.
he PRESIDING OFFICER (Mr. GAMBRELL). Without objection, it is dered.
r. WILLIAMS. Mr. President, I yield myself such time as I may

r. President, one of the most vital provisions of S. 2515 is the which would amend section 701 to broaden the jurisdictional age of Title VII of the Civil Rights Act of 1964 to include State local government employees. Besides including State and local rnment employees, S. 2515 also creates a special enforcement anism for handling complaints against State and local govern- units.
this time in our country's history, it should be beyond question the employees of State and local governments are entitled to the benefits and protections in equal employment as are employees e private sector. In fact, the well-documented and widespread imination among State and local government employees is a eful condition that should be eliminated wherever and whenever ble.

In a report released in 1969 by the U.S. Commission on Civil Rights "For All the People—By All the People," that Commission concluded that:

* * * State and local governments have failed to fulfill their obligation to assure equal job opportunity * * * Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job.

The report's findings indicate that the existence of discrimination is perpetuated by both institutional and overt discriminatory practices and that past discriminatory practices are maintained through de facto segregated job ladders, invalid selection techniques, and stereotype misconceptions by supervisors regarding minority group capabilities. The study also indicates that employment discrimination in State and local governments is more pervasive than in the private sector.

In another report issued by the U.S. Commission on Civil Rights in 1970, "Mexican-Americans and the administration of justice in the southwest," the Commission found that in the five Southwestern States with the highest concentration of Spanish-speaking Americans, their representation in the vital area of law enforcement was significantly disproportionate to their demographic distribution. The report shows that in these five Southwestern States, Spanish-speaking Americans who constitute approximately 12 percent of the population account for only 5.2 percent of police officers and 6.1 percent of civilian employees associated with law enforcement agencies.

Mr. President, I ask unanimous consent that excerpts of these two reports be printed in the Record at the conclusion of my remarks.

The Presiding Officer. Without objection, it is so ordered.

(See exhibit 1, p. 1117.)

Mr. Williams. Mr. President, this failure of State and local governmental agencies to accord equal employment opportunities is particularly distressing in light of the importance that these agencies play in the daily lives of the average citizen. From local law enforcement to social services, each citizen in a community is in constant contact with many local agencies. The importance of equal opportunity in these agencies is, therefore, self-evident.

In our democratic society, participatory government is a cornerstone of good government. Discrimination by government, therefore, serves a doubly destructive purpose. The exclusion of minorities from effective participation in the bureaucracy not only promotes ignorance of minority problems in that particular community but also creates mistrust, alienation, and all too often hostility toward the entire process of government. The public sector should lead the way in the fight to insure equal employment opportunity for all in our society.

The Federal Government's interest in State and local government operations cannot be underestimated. There are approximately 10 million employees of State and local political subdivisions. The Federal Government alone will distribute more than $43 billion of its tax revenues to these levels in the next year.

Mr. President, in order to understand the pervasive influence of the Federal Government on the State finances, I ask unanimous consent to have printed at the conclusion of my remarks a summary of expenditures from the current Federal budget for fiscal year 1973.

he PRESIDING OFFICER (Mr. Cranston). Without objection, it is so
red.
See exhibit 2, p. 1138.)
r. WILLIAMS. Mr. President, it is clear that with the expenditure
ich sums comes the responsibility of making sure that the dis-
ution and use of the funds is without discrimination. The failure
ve adequate minority representation in those agencies of Govern-
t responsible for expending those funds is an element of this
rimination.
2515 seeks to establish a fair and effective means for bringing
t this result, within the boundaries established by our Federal
m. At present, the more than 10 million State and local gov-
ent employees, constitute the largest class of persons exempt from
peration of Federal nondiscrimination laws. By amending the
nt section 701 to include State and local governmental units
n the definition of an "employer" under Title VII, all employees
ese units would have access to the remedies proposed in the bill.
addition to the moral issues raised, the Constitution is imperative
s prohibition of discrimination by State and local governments.
14th amendment guarantees equal treatment of all citizens by
s and their political subdivisions, and the Supreme Court has re-
ced this directive by holding that State action which denies equal
ction of the laws to any person is in violation of the 14th amend-
. It is thus clear that the guarantee of equal protection must
d to discriminatory practices of State and local governments,
e such discrimination is based upon race, color, religion, sex or
nal origin.
rough use of the enabling clause of the 14th amendment, the
ise of equal protection can become a reality. The last sentence of
4th amendment enables Congress to enforce the amendment's
antees by appropriate legislation.
e inclusion of State and local government employees within the
liction of Title VII protections will fulfill the congressional duty
act the "appropriate legislation" to ensure that all citizens are
d equally in this country.
2515 provides a legislative program for fulfilling this duty
gh an extension of coverage and a special procedure for en-
ment. In those cases involving a respondent which is a "govern-
governmental agency, or political subdivision," the Equal
loyment Opportunity Commission is given the authority to at-
to secure voluntary compliance under its normal procedures.
ling deferral of the charge to the appropriate State fair employ-
practice agency, if one exists. I might note at this point that at
33 States have provisions in their antidiscrimination laws that
de enforceable coverage to State and local government workers.
. President, I ask unanimous consent to have printed at the con-
n of my remarks a list of such State laws.
PRESIDING OFFICER. Without objection, it is so ordered.
e exhibit 3, p. 1150.)
. WILLIAMS. Mr. President, if the Commission is unable to secure
iliation agreement it shall refer the case to the Attorney General
rther action, specifically for filing of a civil action against the
ndent in the appropriate U.S. district court. This is the authority

that was requested by the President in his state of the Union messag on January 20 of this year. Further, the bill gives the aggrieved Stat or local government employee or employees the right to intervene i such civil actions. By placing the full weight of the U.S. Attorne General and the authority of the U.S. district courts behind equa employment opportunity in State and local governments, the ma chinery has been provided to insure equal rights. In short, this specia enforcement procedure, when State and local governments are re spondents, provides the necessary power to achieve results without th needless friction that might be created by a Federal executive agenc issuing orders to sovereign States and their localities. To underscor the importance of this provision in the bill, I would like to offer fo inclusion in the Record, a copy of a resolution from the International Association of Official Human Rights Agencies, endorsing the bill in its entirety. This organization is the group that represents the State agencies charged with administering State equal employment laws.

The committee has gone to great lengths to create a fair and equitable enforcement program that is capable of achieving the desired results. We have done so with the conviction that such a program is essential to the viability of State and local governmental units. This conviction is based in large part on the very practical consideration that employment discrimination at the State and local government level reflects very unfavorably upon the ability of those governmental units to deal equitably in their contracts with those groups against whom they discriminate in employment. State and local government employees are in constant contact with the citizens in their jurisdiction. If they are to carry out their jobs with any success whatever, public confidence in their impartiality is vital. This confidence cannot help but be shaken by the widespread existence of employment discrimination in the public sector.

Added importance must be placed upon this latter point if revenue sharing and welfare reform are ever going to maximum their potential. Under both programs, State and local government employes make many important policy and administrative decisions. If these decisions are to be responsive to the needs and desires of the people, it is essential that those making the decisions be truly representative of all segments of the population. Only if such representation prevails can we hope to inspire the confidence in our governmental institutions vital to the success of revenue sharing and welfare reform.

One other practical consideration bears noting. Whenever the State or locality is engaging in activities also engaged in by private parties the potential for labor strife is increased where enforcement of anti-discrimination laws is available in the private sector but not available for similar employes in the public sector.

This potential, with its concomitant effect upon interstate commerce, gives ample employment standards on State and local governmental units. In fact, just such an argument was persuasive to the U.S. Supreme Court in the case of Maryland against Wirtz, regarding extension of the Fair Labor Standards Act to certain classes of public employees. The full impact of this case is to suggest that there are proper situations and proper means to impose Federal standards upon State and local governments. I would suggest that the insurance of equal employment opportunity is just such a situation. The means employed by the bill authorize minimal contacts between the Federal

ernment and State and local governments; public employers will ble to hire whomever they please, so long as it is done in a non-riminatory manner.

n summation, I believe that the moral, legal, and practical con-rations have for some time demanded that State and local govern-tal units meet their responsibilities to insure equal employment ortunity under the law. S. 2515 is a means to that end.

r. President, I ask unanimous consent that all the items I have ested to have printed in the Record be printed at this point in Record.

he PRESIDING OFFICER. Without objection, it is so ordered.

he material ordered to be printed in the Record, is as follows:

EXHIBIT 1

ALL THE PEOPLE . . . BY ALL THE PEOPLE—A REPORT ON EQUAL OPPORTUNITY IN STATE AND LOCAL GOVERNMENT EMPLOYMENT

(A report of the U.S. Commission on Civil Rights, 1969)

FINDINGS

Background of the problem

In recent years State and Local government employment has grown rapidly al numbers, in the range of services provided, and in the occupational cate-s required to perform these services. Because they are relatively large in-ions, have broad potential, and need a variety of talent, State and local nments can provide an important source of jobs for members of minority ps.

State and local governments are the largest single group of employers in nited States for which no comprehensive information is available on the al and ethnic composition of their work forces. These governments also he only large group of employers in the Nation whose racial employment ices are almost entirely exempt from any Federal nondiscrimination re-ments.

Extent of equal opportunity

Minority group members are denied equal access to State and local govern-jobs.

Negroes, in general, have better success in obtaining jobs with central city nments than they do in State, county, or suburban jurisdictions and are successful in obtaining jobs in the North than in the South.

Negroes are noticeably absent from managerial and professional jobs even se jurisdictions where they are substantially employed in the aggregate. ly two central cities, out of a total of eight surveyed, did the overall num-f black employees in white-collar jobs reflect the population patterns of ties.

Access to white-collar jobs in some departments is more readily available nority group members than in others. Negroes are most likely to hold pro-nal, managerial, and clerical jobs in financial administration and general l.

Negroes hold the large majority of laborer and general service worker -jobs which are characterized by few entry skills, relatively low pay, and d opportunity for advancement.

Spanish Americans hold a substantial number of State and local jobs in ouston area governments but hold proportionately fewer State and local in the San Francisco-Oakland area governments. They have been more ssful in obtaining higher level jobs than Negroes but less successful than ity group members.

Oriental Americans are more successful in obtaining State and county han central city jobs. Although the distribution of Oriental Americans in ssional and clerical occupations is equal to or better than that of the ma-group, Oriental Americans have not obtained full access to managerial ons.

Barriers to equal opportunity

4. State and local government employment opportunities for minorities a restricted by overt discrimination in personnel actions and hiring decisions, lack of positive action by governments to redress the consequences of the past d crimination, and discriminatory and biased treatment on the job.

(*a*) A merit system of public personnel administration does not elimina discrimination against members of minorities. It proclaims objectively, but do not assure it. Discrimination occurs both in recruiting and in selection amo final applicants.

(*b*) Governments have undertaken few efforts to eliminate recruitment an selection devices which are arbitrary, unrelated to job performance, and resu in unequal treatment of minorities. Further, governments have failed to undert take programs of positive action to recruit minority applicants and to help the overcome barriers created by current selection procedures.

(*c*) Promotional opportunities are not made available to minorities on a equal basis by governments that rely on criteria unrelated to job performanc and on discriminatory supervisory ratings.

Barriers in police and fire departments

5. Barriers to equal employment are greater in police and fire departmen than in any other area of State and local government.

(*a*) Negroes are not employed in significant numbers in police and fire depart ments.

(1) Although 27 percent of all central city jobs surveyed are in police and fir departments, only 7 percent of the black employees in central cities are police men and firemen.

(2) Fire departments in most of the cities surveyed employ even fewer uni formed personnel than do the police departments.

(3) Negro policemen and firemen hold almost no positions in the officer ranks

(4) State police forces employ very few Negro policemen. Four of the State employed no Negro policemen in the metropolitan areas surveyed.

(*b*) Spanish Americans are employed as policemen and firemen on the average less than half as frequently as Anglos.

(*c*) Police and fire departments have discouraged minority persons from join ing their ranks by failure to recruit effectively and by permitting unequal treat ment on the job including unequal promotional opportunities, discriminatory job assignments, and harassment by fellow workers. Minority group hostility to police and fire departments also deters recruitment, and this has not been over come by the departments.

Impact of the Federal Government

6. The Federal Government has established no effective Federal requirement for equal opportunity in State and local government employment, and no effec tive standards and guidelines for affirmative action to correct past discrimina tory practices and increase opportunities for minority groups. The limited efforts to do so have not been successful.

(*a*) The nondiscrimination clause, included in the Federal merit standards since 1963, applies only to a small fraction of State and local government em ployment and has had no discernible effect in increasing employment opportuni ties for minority groups in State and local government. Present enforcement of the clause provides neither effective protection, nor effective avenues of redress to members of minority groups who encounter discrimination. The Office of State Merit Systems has provided no guidelines for State action either to eliminate discrimination or to increase opportunities.

(*b*) Federal housing agencies have made virtually no efforts to enforce the nondiscrimination clause included since the 1950's in their contracts with local public housing and urban renewal agencies. Neither have they assured that affirmative action has been taken to increase opportunities for minorities.

RECOMMENDATIONS

I. Action needed to achieve equality in State and local government employment

A. Every State and local government should adopt and maintain a program of employment equality adequate to fulfill its obligation under the equal protection clause of the 14th amendment to assure

that current employment practices are nondiscriminatory; and
that the continuing effects of past discriminatory practices are undone.
is report has found that State and local government employment is per-
d by a wide range of discriminatory practices. These practices violate the
irements of the equal protection clause of the 14th amendment and accord-
must be eliminated. Unconstitutional practices include not only those which
urposefully discriminatory, but also those which have the effect of creat-
r reinforcing barriers to equal employment opportunity. Such barriers will
st until affirmative action is taken to overcome them. For this reason, a
e employer can assure that its employment practices are nondiscriminatory
if it maintains a comprehensive, well-planned program of equal employment
rtunity.

e following are examples of discriminatory barriers to equality in public
oyment which may arise in the absence of an effective program of employ-
equality. Evidence of the effects of many of these discriminatory barriers
be found in the pages of this report.

Recruitment through schools or colleges with a predominantly non-minority
up discriminates against minorities wherever comparable recruitment is
one at predominantly minority institutions.

Unless special precautions are taken, use of recruitment sources such as
te employment agencies, informal community contacts, or other sources,
incorporate into the employer's recruitment system the discriminatory prac-
or prejudices of the sources used.

Whenever a work force, or significant levels or components of it, is pre-
nantly nonminority in makeup, recruitment practices which rely upon em-
e "word-of-mouth" contact for new applicants may discriminatorily per-
te the majority predominance.

Unless special precautions are taken, a past history of overt discrimination
continue to deter minority applications for employment or advancement,
ularly with respect to positions which have not traditionally been held by
ity persons. Such a history also may signal to outside employment sources
the employer does not welcome minority referrals, at least for nontradi-
l positions.

Unless special precautions are taken, harassment or unfair treatment by
inority supervisors or coworkers, or other discrimination not countenanced
ie employer, may discourage minority applications for employment or
ncement.

Where minority persons have less access than nonminority persons to in-
l networks of employment information—such as through present employees
icials—relating to such matters as available openings, hiring procedure, or
asis for rejection or other action taken with respect to applications, this
mpede access of minorities to available opportunities.

Since minority persons, competing for positions at the entry level or else-
in the work force, frequently may have limited education or job experi-
the employer may unfairly penalize minority applicants wherever he im-
qaulifications not likely to be possessed by minority applicants and not
ntially related to the needs of the job.

Selection standards may be applied reasonably to nonminority applicants,
nfair if extended on the same terms to minority persons. For example, the
of academic achievement—such as the level of verbal skill—may be one
ire of an applicant's native ability, but when applied on the same basis
group whose schools afford a markedly inferior education, it may cease to
air and equal measure of ability.

he case of many State and local governments, such discriminatory barriers,
ier discriminatory practices, have given rise to patterns of minority under-
ation, including concentration of minority employees at lower job levels.
h discriminatory patterns of minority underutilization themselves give
denial of the 14th amendment right to equal protection of the laws. Such
ns, for example, mean unequal enjoyment by minorities of these public
which are paid as salaries to public employees. Also, since public employees
the conduct of their government, discriminatorily created underutilization
norities in public employment weakens the ability of government to reflect
y the interests of all segments of the governed. Finally, as shown in this
, discriminatorily created patterns of minority underutilization tend to be
einforcing and self-perpetuating; for this reason such patterns themselves
tute vehicles of discrimination which must be corrected.

Accordingly, whenever in public employment discriminatorily created patte
persist, the Constitution requires that they be remedied by measures aime
giving the work force the shape it presently would have were it not for such
discrimination. It should be recognized that such measures are not a "pre
ence" but rather a restoration of equality; one can see inequity in such r
edies only by being blind to the past injustices which they cure.

B. Though the programs of employment equality adopted by individual St
and local governments will vary widely with the particular needs and probl
of each, all such programs should include the following three elements:

1. An evaluation of employment practices and employee utilization patte
adequate to show the nature and extent of barriers to equal opportunity
minorities and of any discriminatory underutilization of minorities.

The first step in the program of employment equality is an assessment of ne
and problems. This requires a thorough evaluation by the State or local gove
ment of the employment practices of each of its constituent agencies, to de
mine the effect of its practices on utilization of minorities. Though the princi
aim is to identify barriers to equal opportunity, the evaluation also should ta
note, for continuation and strengthening, of those policies which have the po
tive effect of overcoming such barriers.

In order to make this assessment, and to identify patterns of minority und
utilization, the State or local government will need to gather and review co
prehensive information, by nonminority-minority classification, on employee d
tribution among the various agency components, job levels and locations, as w
as data on referrals, applications, acceptances, promotion, and other person
action.

This initial evaluation should culminate in a written analysis of discrimi
tory barriers to equal employment opportunity in the State or local governme
as well as an analysis of any patterns of minority underutilization which ha
resulted from the operation of such discriminatory barriers.

2. Preparation and implementation of a program of action which is calculated
(a) to eliminate or neutralize all discriminatory barriers to equal empl
ment opportunity; and
(b) to undo any patterns of minority underutilization which have been brou
about by past discrimination.

Having evaluated employment practices and assessed patterns of minor
underutilization, the next step is to formulate a program which will overco
barriers to equal employment opportunity and, in addition, will bring ab
whatever changes in minority utilization are necessary to undo the effects
past discrimination. Where patterns of minority utilization are to be chang
the program should include specific goals, or estimates, to be achieved with
a specified period of time.

Even in those cases where evaluation has disclosed that the present empl
ment practices of a government or of one of its component agencies fully ov
come all barriers to equal employment opportunity and that no pattern of d
criminatorily created underutilization of minorities is present, formulation
relevant practices into a program is still desirable in order to help assure th
nondiscriminatory practices continue to be followed.

Affirmative programs should be developed in a form which makes clear th
obligations of each component agency of the government. Programs should be p
in writing and made available upon request to public employees, minority lea
ers, and others with a legitimate interest in the status of minorities in pub
employment. Staff responsibilities for implementing the program should be all
cated clearly, and employees informed of the program and of their rights, duti
and obligations under it.

The adoption of affirmative programs by State and local governments may
subject to limitations imposed by statute, State constitution, city charter or
like which inflexibly mandate that certain employment policies be follow
Similar limitations may be created by the amount or terms of budgetary allo
made to governments or to their component agencies.

Questions of the right or duty of individual public agencies or officials fac
with such restrictions can be resolved only on a case by case basis. However
inherent in the supremacy clause of the Constitution is the requirement that St
and local governments must alter any laws, regulations, or practices which sta
in the way of achieving the equality in public employment which is required
the equal protection clause of the 14th amendment.

here follows a sampling of the kind of actions which State and local governts will need to include in programs of employment equality. Use to some ree of most of these techniques will be necessary to assure that all barriers to al employment opportunity are eliminated. In addition, public employers with riminatorily created patterns of employee utilization should use the techues to a degree sufficient to undo the effects of past discrimination.

Recruitment

Maintain consistent continuing communication with the State employment ice and schools, colleges, community agencies, community leaders, minority nizations, publications, and other sources affording contact with potential ority applicants in the job area.

Thoroughly and continually inform sources affording contact with potential ority applicants about current openings, about the employer's recruiting and tion procedures and about the positions (together with personnel specifica-) for which applications may be made.

Inform all applicant sources, both generally and each time a specific request referral is made, that minority applicants are welcome and that discrimina-in referrals will not be tolerated.

Fully inform each applicant of the basis for all action taken on his or her cation. Supply in detail the basis for rejection, including evaluation of tests interviews. Suggest to rejected minority applicants possible methods for dying disqualifying factors.

Make data on minority employment status available on request to employees, inority leaders in the job area, and to others with a legitimate interest in iscrimination by the employer.

Invite minority persons to visit State and local government facilities; ex-employment opportunities and the equal opportunity program in effect.

Have minority persons among those who deal with persons applying for oyment, with clientele, or with other members of the public, in order to nunicate the fact of minority equal opportunity.

Coordinate the employment and placement activities of the various compos of the State or local government, at least for the purpose of facilitating rity applications or requests for transfer. To the same end, maintain minority cations or transfer requests on an active basis for a substantial period of

Participate in Neighborhood Youth Corps, New Careers, other Federal job ing or employment programs, or similar State or local programs. In con-on with such programs, or otherwise, make a particular effort to structure in a way which gives rise to jobs which are suitable for minority persons are available for employment.

Independent of outside training programs, institute on-the-pob training or -study plans, in which persons are employed part-time while studying or wise seeking to satisfy employment requirements; this may include summer-employment for persons in school.

Solicit cooperation of academic and vocational schools to establish curricula n will provide minority candidates with the skills and education necessary lfill manpower requirements.

Selection

Take steps to assure that tests used for the purpose of selecting or placing ants are demonstrated to be valid in forecasting the job performance of rity applicants.

Pending validation, discontinue or modify the use of tests, minimum aca-achievement, or other criteria which screen out a disproportionate number nority applicants.

Do not in all cases give preference to nonminority applicants on the basis of r performance on tests or other hiring criteria, as long as it is apparent competing minority applicants, especially where they have waiting list rity, are qualified to do the job.

Where tests are used, employ them as a guide to placement rather than determinant of whether an applicant is to be hired.

Make increased use of tests comprised of a sampling of work to be per-d on the job.

Make increased use of the probationary period, affording an opportunity n-the-job training and enabling the applicant's ability to be judged on the of job performance.

Placement and Promotion

a. Make available to minority applicants and to present minority employ a complete description of positions for which they may be eligible to apply.

b. In the initial placement of said newly hired employees, wherever possi place minority employees in positions or areas with low minority representati

c. Broaden job experience and facilitate transfers of minority employees creating a system of temporary work experience assignments in other positi or areas of work. Such a system may include temporary assignment betwe jurisdictions, such as a suburban-inner-city interchange.

d. Individually appraise the promotion potential and training needs of nority employees, and take action necessary to permit advancement.

e. Announce all position openings on a basis which brings them to the att tion of minority employees and makes clear that minority persons are eligi and encouraged to apply.

Discipline

a. Formulate disciplinary standards and procedures in writing, and distrib them to all employees.

b. In case of proposed disciplinary action, inform the employees of the infra tion alleged and afford an opportunity for rebuttal. If the rebuttal is deem unsatisfactory, clearly state the reasons why.

Facilities

Assure that facilities, including all work-related facilities and those used employer-sponsored recreational or similar activities, are not subject to segr gated use, whether by official policy or by employee practice.

3. A continuing review of employment practices and of the status of minori persons in employment.

This third step of the program responds to the need for a continuing revie of employment practices—particularly those related to the affirmative program— and of their effect upon minority persons. Such a review requires the regul collection and evaluation of data on employee distribution and personnel actions such as that described under paragraph 1, above.

These data afford an important measure of the effectiveness of steps take to overcome barriers to minority employment, by showing the actual impa of employment practices on minorities; the data may indicate points at whi changes are needed in the affirmative program to make it more effective. Sim ilarly, where patterns of minority under-utilization which arose from past di crimination are being corrected, such comparative nonminority-minority da show the extent to which required changes in minority utilization are in fa being made.

Like the affirmative program itself, current data on minority employme should be made available to persons and groups with a legitimate interest in th status of minorities in public employment.

The following are illustrations of the steps necessary for an effective contin ing review by State and local governments of their employment practices and the status of minorities in employment.

a Maintain records containing for the period covered, and indicating no minority minority classifications and the positions involved, complete data on inquiries, applications, acceptance, rejections, promotions, terminations, an other personnel actions, as well as data as of the end of the period, by no minority minority classification, on employee distribution within the work for

b Maintain for a reasonable period of time, with nonminority minority cla sification, a file on each applicant (including those listed on a civil service re ord) adequate to document the specific grounds for rejection or passing over of the applicant.

c Maintain a record, with nonminority minority classification, of applica to the source, to facilitate review of the impact of each source upon minori utilization.

d Where there are a substantial number of separate components within th State or local government, make periodic inspection and review of employme practices and minority status in the various component agencies.

e Regularly interview minority employees upon termination to determi whether discriminatory acts or policies played a role in the termination.

ethods of enforcement and assistance by the Federal Government to advance equality in employment in State and local government

Congress should amend Title VII of the Civil Rights Act of 1964 (1) by ating the exemption of State and local government from the coverage of VII and (2) by conferring on the Equal Employment Opportunity Com- on the power to issue cease and desist orders to correct violations of VII.

Eliminating the exemption of State and local governments from the cover- Title VII.

present exemption of State and local governments from the nondiscrimina- equirements of Title VII is anomalous since it precludes effective action st discrimination in the one type of employment public employment where scrimination clearly is mandated by the Constitution.

s true that even without the proposed amendment, individuals have the right the Constitution and Federal statutes to obtain judicial relief against dis- ation in public employment. Experience in such areas as voting discrimina- nd school segregation, however, has shown that it is both unjust and unwise ose upon individual victims the entire burden of correcting widespread non- ance with constitutional obligations. To do so makes compliance depend he determination and financial ability of the victim to wage a time-consum- d expensive lawsuit and his success in obtaining the evidence necessary to the charge. The fact that the victims often are impoverished members of ty groups who are ignorant of their rights makes such a remedy even more able. Even with willing litigants, private lawsuits are an inefficient mode ting widespread compliance. Enforcement efforts are not coordinated so as ieve maximum effectiveness but are instead governed by random suits in the identity of the defendant and the nature of the relief sought are deter- by a litigant whose main concern is redress of his particular grievance.

mended, Title VII would provide a means of attacking employment dis- ation in State and local governments since it provides an administrative (the Equal Employment Opportunity Commission) with authority to re- omplaints of unlawful employment practices and to conciliate such com- , and authorizes the Attorney General to bring suit whenever he believes person or persons are engaged in a pattern or practice of resistance to the secured by the Title. The Title also provides assistance to individual com- in providing for court-appointed attorneys and the suspension of normal osts.

Conferring on the Equal Employment Opportunity Commission the power cease and desist orders to correct violations of Title VII.

OC's present lack of power to compel corrective action severely handicaps its to obtain voluntary compliance, for the employer knows that EEOC can do if he refuses to agree to its recommendations and that only aggrieved s and the Attorney General may sue to compel compliance. Many of the which EEOC has found probable cause to believe discrimination was prac- ave not been successfully conciliated under the present law.

experiences of State fair employment practice agencies shows that adequate ment machinery is indispensable to an effective equal employment oppor- law. Of the States presently having fair employment practice laws, the vast ty give the State commission administering the law power to issue cease sist orders. Giving EEOC similar power would enhance its conciliation role ngthening its bargaining power and make it a far more effective agent in g equal employment opportunity.

he President should seek and Congress should enact legislation authorizing hholding of Federal funds from any State or local public agency that dis- ates against any employee or applicant for employment who is or would be sated in any part by, or involved in administering the program or activity d by, the Federal funds.

receipt of Federal grant-in-aid funds and the accompanying responsibility plementing the Federal program supported by the funds engender numerous portunities with the recipient State and local agencies. The obligations of deral Government with respect to discriminatory actions by these recipients ed on the Due Process Clause of the fifth amendment which prohibits gov- tal support or involvement in discriminatory activities. Its involvement programs as financier, prescriber of standards, and supervisor of execu- poses a duty on the Federal Government to ensure that there is no discrimi- in the job opportunities provided by the funds.

The only Federal law directly dealing with discrimination by recipient Federal financial assistance. Title VI of the Civil Rights Act of 1964, prohi employment discrimination only in those programs in which the provision employment is a primary objective. Accordingly, the recipients of funds und large number of grant programs are not presently subject to nondiscriminat employment requirements.

Responsibility for determining whether discrimination exists could be veste the agency administering the grant program, as in Title VI. Alternatively responsibility could be given to the Federal agency with greatest expertise in area of employment discrimination, the Equal Employment Opportunity Com son. If, as previously recommended, Title VII is amended to include State local governments and to provide the EEOC with power to issue cease and de orders, the agency also would be empowered to direct that Federal funds be w held in those cases in which the respondent is a recipient of such funds.

Congress also might provide that in those instances where EEOC finds discri natory employment practices by such a recipient it must give the administer Federal agency a period of time to ensure correction of the practices before funds are withheld.

C. Pending congressional action on Recommendation II B, the President sho (1) direct the Attorney General to review each grant-in-aid statute under wh Federal financial assistance is rendered to determine whether the statute g the agency discretion to require an affirmative program of nondiscrimination employment by recipients of funds under the program; and (2) require all Fe eral agencies administering statutes affording such discretion to impose such requirement as a condition of assistance. In the event the Attorney General de mines that under a particular statute the agency does not have the discretion impose such a requirement, he should advise the President whether he has pow to direct the agency to do so. If the Attorney General advises the President th he lacks such power in a particular case, the President should seek appropria legislation to amend the statute.

As stated in the comment to Recommendation II B, the Constitution forbi the extension of Federal grant-in-aid funds to recipients who discriminate their employment practices. If Congress has neither expressly forbidden su discrimination by recipients in a grant program nor given the Federal agen administering the program discretion to impose such a condition, the Attorn General should determine whether the President, in fulfilling his constitution duty to "take Care that the Laws be faithfully executed . . . ," has the pow and obligation to independently impose such a requirement.

MEXICAN AMERICANS AND THE ADMINISTRATION OF JUSTICE IN THE SOUTHWES
A REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS, MARCH 1970

THE COMMISSION ON CIVIL RIGHTS,
Washington, D.C., March 1970.

The PRESIDENT,
THE PRESIDENT OF THE SENATE
The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIRS: The Commission on Civil Rights presents this report to you pursua to Public Law 85-315 as amended.

Under authority vested in this Commission by the Civil Rights Act of 19 as amended, we have appraised allegations that American citizens of Mexic descent in five Southwestern States are being denied equal protection of th law in the administration of justice. We have found, through extensive fie investigations during 1967 and 1968, three State Advisory Committee mee in 1968, and a Commission hearing in 1968, all in that section of the coun that there is widespread evidence that equal protection of the law in the adm ration of justice is being withheld from Mexican Americans.

Our investigations reveal that Mexican American citizens are subject to [illegible] treatment by law enforcement officers, that they are often arr on [illegible] grounds, receive physical and verbal abuse, and penalties [illegible] severe. We have found them to be deprived of pro [illegible] bail and of adequate representation by counsel. They are substantial [illegible] and petit juries and excluded from full partici [illegible] law enforcement agencies, especially in supervisory positions.

Our research has disclosed that the ability to communicate between Spani speaking American citizens and English-speaking officials has complicated [illegible] equally.

urge your consideration of the facts presented and of the recommendations rrective action in order to assure that all citizens enjoy equal protection aranteed by the Constitution of the United States.

Respectfully yours,

REV. THEODORE M. HESBURGH, *CSC*,
Chairman.

STEPHEN HORN,
Vice Chairman.

FRANKIE M. FREEMAN,
HECTOR P. GARCIA, M.D.*
MAURICE B. MITCHELL,
ROBERT S. RANKIN,
HOWARD A. GLICKSTEIN,
Staff Director.

PREFACE

U.S. Commission on Civil Rights undertook this study against a back- d of written complaints and allegations at Commissions hearings and at ngs of the Commission's State Advisory Committees that Mexican Ameri- in the Southwest[2] were being subjected to discrimination by agencies of nforcement and in the administration of justice.[3] The alleged discrimi- included physical and verbal abuse and harassment by law enforcement s; exclusion from grand and petit juries; improper and discriminatory bail; lack of and inadequate representation by counsel; and employment proportionately low numbers of Mexican Americans in law enforcement es—particularly in higher ranking positions.

objective of this Commission study was to determine what, if any, factual xisted for these allegations. In the course of the study, Commission staff eys conducted field investigations beginning in the latter part of 1967 and uing in 1968, in which they interviewed approximately 450 persons in a, California, Colorado, New Mexico, and Texas. Persons interviewed in- law enforcement officers, probation officers, prosecuting attorneys, judges, defenders, attorneys in private practice, leaders of Mexican American or- ations, and private citizens. Two State Advisory Committee meetings were n 1968 in New Mexico specifically to gather information for this study. At meetings 46 persons, including law enforcement officers, attorneys, and e citizens made statements and were questioned by Committee members taff. A similar State Advisory Committee meeting was held in California ust 1968, at which 21 persons appeared.

Commission hearing held in San Antonio, Texas, in December 1968, which exclusively with the problems of Mexican Americans, sworn testimony eceived from 17 witnesses, including private citizens, law enforcement s, and attorneys, concerning the administration of justice.

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longer member of the Commission.

term "Mexican-American" refers to persons living in the United States who are lves of Mexican origin or whose parents or more remote ancestors came to the States from Mexico or whose antecedents resided in those parts of the South- United States which were once part of the Mexican Nation. This is the most com- esignation used in the Southwestern States. Others are "Spanish American." " and "Latin American."

term "Spanish surnamed or surname" is used in this report where material is from dary source which uses this term or is based on the 1960 Census of Population of the States which used this term to designate persons with Spanish surnames. In the estern States, the vast bulk of this group is Mexican American.

term "Anglo" is used in this report, as it is in the Southwest, to refer to white per- ho are not Mexican American or members of another Spanish surnamed group. The is no derogatory connotations as used in the Southwest or in this report.

zona, California, Colorado, New Mexico, and Texas.

tion 104(a) (2) and (3) of the Civil Rights Act of 1957 (71 Stat. 634), as d, provide:

104. (a) The Commission shall—

study and collect information concerning legal developments constituting a of equal protection of the laws under the Constitution because of race, color, , or national origin, or in the administration of justice;

appraise the laws and policies of the Federal Government with respect to denials l protection of the laws under the Constitution because of race, color, religion, nal origin, or in the administration of justice. . . ."

reports of the Commission dealing with the administration of justice include Vol. 5, 1961 Statutory Report: *Civil Rights: Interim Report of the U.S. Commis- Civil Rights (1963)* and *Law Enforcement: A Report on Equal Protection in the (1965)*. Reports of the Commission's State Advisory Committees which deal with ject include: *Report on California: Police-Minority Group Relations, 1966; Police nity Relations in Peoria, Illinois (1966); The Administration of Justice in Starr , Texas (1967); Employment, Administration of Justice, and Health Services in is-Shelby County, Tennessee (1967); Civil Rights in Oakland, California (1967).*

The resources of the Commission did not permit a comprehensive sur
in response to allegations of exclusion of Mexican Americans from juries,
Commission, however, contracted with the California Rural Legal Assista
Inc. (CRLA), for a study of service by Mexican Americans on grand ju
in selected California counties. The CRLA report, which is printed as an
pendix to this report, is summarized in the text.

A questionnaire was mailed to 793 law enforcement agencies in the five Sta
including nine State agencies, 168 county sheriffs' offices, and 616 munici
police departments seeking information regarding procedures for recruitm
and selection of officers, the extent to which Mexican Americans were employ
policies on officer assignment and training, procedures for dealing with c
plaints against officers, as well as information on police-community relati
The counties selected were those having a minimum of 10 percent Spani
surnamed population and the municipalities selected were municipalities wit
these counties having a minimum total population of 3,000. A total of 331 qu
tionnaires was returned to the Commission, of which 280 contained sufficie
information for tabulation.

INTRODUCTION

Some vital statistics

The Mexican Americans living in the five States of Arizona, California, Co
rado, New Mexico, and Texas constitute the largest minority group in th
part of the United States.[4] In 1960 there were three and one-half milli
Spanish surname persons in those five States, and the current estimate is fo
million. The largest concentrations of Mexican Americans are in Califor
and Texas, whose Spanish surname populations in 1960 were 1,426,358 an
1,417,810 respectively. Each of the five States has a substantial Spanish su
name population, ranging from 9 percent in Colorado to more than 28 perce
in New Mexico.[5]

Mexican Americans share with most other ethnic and racial minorities t
twin problems of discrimination and poverty. Although this report concentrate
on discrimination based on ethnic origin many of the problems discussed
including equal access to bail and counsel—are closely related to the wi
spread incidence of poverty among Mexican Americans. More than one-h
(52 percent) of the rural Spanish surname families of the Southwest and
quite one-third (31 percent) of Spanish surname families living in urban are
had less than $3,000 incomes in 1959.[6] Like other low-income groups, Mexic

[4] In 1960, the combined population of those five States was 11.8 percent Spanish surna
and 7.1 percent Negro. U.S. Bureau of the Census, *U.S. Census of Population: 1960. S
ject Reports, Persons of Spanish Surname*, Final Report PC(2)-1B (1963) [hereinaf
cited as Persons of Spanish surname].

[5] The distribution of Spanish surname persons within the five Southwestern States
shown by the following table:

SPANISH SURNAME POPULATION—5 SOUTHWESTERN STATES, 1960

| State | Total State population | Spanish surname population | Per
Spa
Sur |
|---|---|---|---|
| California | 15,717,204 | 1,426,358 | |
| Texas | 9,579,677 | 1,417,810 | |
| New Mexico | 951,023 | 269,122 | |
| Arizona | 1,302,161 | 194,356 | |
| Colorado | 1,753,947 | 157,173 | |

Source: Persons of Spanish surname.

[6] U.S. Dept. of Agriculture, Economic Research Service, Agricultural Economic R
No. 112, Low Income Families in the Spanish Surname Population of the Southwe
10–11 (1967). The average income level of the Spanish surname population in 1959
higher than that of non-whites in the five Southwestern States. Particularly in N
Mexico and [illegible] where there are large concentrations of Indians, median
incomes [illegible] below those of persons of Spanish surname. Nevertheless
average incomes for Spanish surname fell appreciably below that of the total wh

icans are overrepresented in unskilled occupations[7] and have a high inci- of unemployment.[8] Their educational attainment falls substantially below f both whites and nonwhites in the Southwest.[9]

poverty of Mexican Americans in the Southwest cannot be attributed ir recent immigrant status. About 85 percent of the persons of Spanish ne in the five Southwestern States were born in the United States and than half were native-born of native parents. The Mexican American popu- has grown rapidly in recent years and it is a younger group, on the ge, than the Anglo population.[10]

ican Americans are becoming increasingly urbanized. In 1960, 79 percent Spanish surname population lived in cities.[11] Racial discrimination and nic segregation restrict them in large numbers to identifiable neighbor- frequently referred to as "barrios", within these cities.[12]

s bare statistical outline suggests the social context in which Mexican icans encounter the problems in the administration of justice which are sed in this report.

A capsule history

ief historical background of the Mexican American group is helpful in tanding the basis for its separate ethnic identity within the American ng pot."[13]

Spanish heritage of the Southwest is older than the American Union. ulture was Spanish and the land a Spanish colony until Mexico gained ndence in 1821. As early as 1538, the Spanish had set up a printing press xico City. By 1551, they had established a university in Mexico City. By he Spanish had left a series of missions along the California coast, shed Santa Fe, and ranged as far north as Kansas.

e was little cohesion among the Spanish colonies of North America. power was represented by the Viceroy in Mexico City. Spaniards seldom t wives or families to the New World. In contrast to the British, who

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ion and this pattern was general throughout the Southwest. The income pattern rated by the following table taken from the U.S. Census of 1960:

RCENTAGE OF SPANISH SURNAMED, WHITE NONSPANISH AND NONWHITE AMILIES WITH INCOME LESS THAN $1,000 AND $10,000 OR MORE IN 5 SOUTHWEST- RN STATES

	Spanish surname		White non-Spanish surname		Nonwhite	
	Under $1,000	$10,000 or over	Under $1,000	$10,000 or over	Less than $1,000	$10,000 and over
zona	7.2	4.6	3.7	16.9	26.9	2.8
ifornia	4.5	10.8	2.9	23.8	6.3	9.7
orado	6.4	4.8	3.2	15.6	6.3	6.5
w Mexico	11.3	5.4	3.6	18.7	28.2	3.4
as	13.6	2.7	5.2	14.6	18.0	1.5

.S. Bureau of the Census, U.S. Census of Population: 1960 Supplementary Reports, Series PC) 55, "Population Characteristics of Selected Ethnic Groups in 5 Southwestern States," Table

960, 76 percent of Mexican American males were manual workers, compared to 54 of employed white males. Computations from 1960 census data in Heller: *Mexican n Youth: Forgotten Youth at the Crossroads* (1966), p. 12.

960, the unemployment rate for Mexican American urban males was 8.5 compared r Anglo-Americans, Fogel: *Mexican Americans in Southwest Labor Markets*, p. 20 A. Mexican American Study Project, Advance Report No. 10, 1967).

960, the median number of school years completed was 8.1 years for Mexican ns over 14 compared to 12.0 years for Anglos and 9.7 for nonwhites in the South- rebler: *The Schooling Gap: Signs of Progress* (U.C.L.A. Mexican American Study Report No. 7, 1967).

median age of Mexican Americans in the Southwest in 1960 was 20, while the ge of Anglo-Americans was 30, Heller, *supra* at 27.

icultural Economic Report No. 112, *supra* n. 3.

generally, Moore and Mittelbach: *Residential Segregation in the Urban Southwest* A. Mexican American Study Project, Advance Report No. 4, 1966). This report hat although residential segregation of Mexican Americans is less severe than of it is quite prevalent in southwestern cities.

generally, Maisel: *They All Chose America* 172–14 (1957); Morison and Com- *he Growth of the American Republic* v. 1, 13–37, 578–597 (1942); McWilliams: *rom Mexico*, 26, 49–50 (1948); McWilliams: *Brothers Under the Skin*, 119–121; : (rev. ed. 1951) *Our Spanish Southwest*, chs. III & IV (1960).

usually emigrated as families, or even as communities, the Spaniards ma
Indian women. Thus they created a fusion of races known as the *mestiz*
ethnic wellspring of the Mexican American.

Not until the 19th century, and then only in Texas, was there any appre
settlement by immigrants from the United States in territory under Me
sovereignty. The newly independent Mexican Government offered gran
farm and grazing land to encourage American settlers. Yet by 1834 the En
speaking population of Texas probably did not exceed 18,000 persons.

The Mexicans encouraged the Anglo-Americans to settle in the South
When the first Anglo arrived, the Mexican taught him to survive in the d
to irrigate and cultivate the land, to raise cattle, to use the horse, the l
and the western saddle. He gave him a new vocabulary—bronco, stam
arroyo, mesa, savvy, cowboy. He gave him an architecture suited to the cli
and the land.

The very immigration of Americans into Texas which the Mexican encour
was their undoing. As the American population grew, so did problems bet
the Mexican and American Governments. A new Mexican Constitution of
swept away many local rights; the Americans joined by some Mexicans revo
and proclaimed the Republic of Texas. In 1845, Texas became the 28th Stat
the United States. Mexico regarded the admission of Texas to the Union
hostile act and the two Nations went to war. Hostilities ended following
occupation of Mexico City in 1847, with the treaty of Guadalupe-Hidalg
1848. Except for the territory later acquired through The Gadsden Purcha
1853, all Mexican territory north of the Rio Grande was ceded to the U
States. This embraced all or parts of the present States of Colorado, U
Nevada, New Mexico, Arizona, Texas, and California.

Mexican citizens living in the area were given the choice of returning
Mexico under no penalty of tax, or of remaining and becoming American citi
automatically after 1 year following the ratification of the treaty. Prop
rights were to be respected and protected during the interim period and
rights of citizenship were conferred upon those who elected to stay.

The majority of Mexicans north of the Rio Grande chose American citizens
even though Mexico offered resettlement and land grants. Constitutional g
antees of their rights as United States citizens, continuing political instab
in Mexico, and a 300-year history of settlement in the territory ceded to
United States by Mexico were factors affecting the decision.

Soon after the Mexican War the people of the United States swept west
to the Pacific. The growth of cattle and cotton empires in Texas and the disco
of gold in California brought Anglo-Saxons into the Southwest at such a r
that the Mexican Americans were soon outnumbered. Only New Mexico
tained a majority of Mexican Americans for years after becoming a Un
States territory. The slower pace of American settlement in New Mexico has be
attributed, in part, to the extraordinary hostility of Indian tribes there and to
fact that New Mexico contained few apparent economic opportunities. The
Anglos who settled in the territory generally stayed in the urban areas in
southern half, intermarried at the upper economic levels, and made a pra
and profitable accommodation with the Mexican Americans.

In Texas, however, hostility toward Mexicans, born of the war for Texas
pendence and the Mexican War, continued. The entire area between the Na
and the Rio Grande was the scene of lawlessness and countless border raid
Mexicans, and Texans alike. An imported slave culture influenced Anglo
tudes. Although Mexicans were not considered in as low a category as Negr
they were regarded as racially inferior to Anglo-Americans.

To California, meantime, came Anglo-Saxon banking, land, and business
ideas which were foreign to traditional Spanish ways. Ancient land titles
from the 18th century were difficult to validate, and the American system of
taxation, which was on an assessed value of the land rather than the val
the produce of the land, all but stripped the original Californians of their
Drought and the cattle industry helped to destroy the great *ranchos* cat
plans sold by the 1850's five sixths of the land in southern California
acquired to be delinquent tax payments. More than 40 percent of the land
to the very wealthy and influential Mexican families went for as little as 2
or more. With the decline of economic influence, Mexican American pol
power waned.

After 1930 more than 750,000 persons emigrated from Mexico to the S
western States.[1] Two principal reasons are cited for this movement. One

[1] U.S. Bureau of Census, Historical Statistics of The United States, Colonial Time
1957 Wash. D.C. [1960], Series C 89-114

al instability of Mexico during the 1910–1920 revolution. During this pe- many thousands came over as refugees. The second is the fact that there has been an immigration quota system for Mexico. As economic opportunity in the United States, or waned in Mexico, traffic would flow across the r. The rise of cotton cultivation in Texas, the growth of mining in Arizona griculture in Colorado, and the rapid expansion of the citrus and vegetable tries in California—all these created enormous demands for cheap labor the Anglo population could not or would not supply.

power shortages in two World Wars redoubled these demands. Mexican grant laborers became the principal work force for California agriculture. tially migrant, they increasingly returned at season's end to Los Angeles, ng it their home base. The same pattern developed in Texas, with El Paso an Antonio serving as winter homes for migratory workers.

cotton boom spread into Arizona during World War I, drawing substantial ers of Mexicans to that State. When the demand dropped after 1918, some workers returned to Mexico. But a considerable number stayed to work per mines. By 1930, Mexican Americans represented 25 percent of Arizona's tion.[25]

displacement of Anglo tenant farm workers by cheaper Mexican immigrant fed prejudices in Texas. Mexican American children often were sent to te schools and discrimination was widely practiced. Violence against an citizens and Mexican Americans became so widespread that, in 1922, cretary of State warned the Governor of Texas that action would have aken to protect Mexicans.

Mexican American population was extremely hard hit by the nationwide sion of the 1930's. Traditionally ill-paid, with little or no financial reserves, number were on relief. Some welfare agencies, notably in the Los Angeles orcibly repatriated Mexicans to get them off relief rolls. Labor unrest was n and there were several instances of strikes by Mexican American agri- al workers in southern California. The use of violence to break up strikes hibit union activity was not uncommon.

problems of the depression years were not the exclusive burden of the an Americans. Mexican Americans undoubtedly did, to some degree, share benefits of the labor and welfare programs of the thirties such as TVA, nd AAA; the Fair Labor Standards Act, Social Security Act, and the r Labor Act; and the major advances in farm and housing legislation.

ne same time, the Mexican Americans were not singled out for special bene- attention during this period. One reason may have been the absence of al organizations and politically active leaders among the Mexican Amer- another, the almost total concentration of the Mexican American pop- in the Southwestern States.

he depression eased, some improvements began to appear. In New Mexico, were made to better schools and health services. On a lesser scale, similar es were begun in California, Arizona, and Colorado.

s lagged behind, however. Educational and health levels for Mexican ans in Texas were the lowest in the Southwest. As late as 1943, the n Government refused to permit Mexican laborers to work in Texas be- of discriminatory practices against Mexican nationals and Americans of n ancestry. This led the Governor to establish a Good Neighbor Com- n; the State legislature also adopted a resolution which, without naming n Americans, recognized them as Caucasians and entitled them to en- t of "white-only" public accommodations.[26]

ican American relations with the majority community were jarred in that ear by the notorious "zoot suit" riots which occurred in June in Los s. Anglo sailors claimed to have been attacked by a gang of Mexican an youths dressed in a foppish style of the time which affected heavily shoulders, wide lapels, and pegged pants—so-called "zoot" suits. In re- n for the alleged attack, about 200 sailors, later joined by other service- d by civilians, roamed the streets, attacking Mexican Americans.

June 18, 1943 a special committee appointed by Governor Earl Warren nended that all participants be punished, whether zoot suiters or military; e community be made safe for all, regardless of race; that no group be d to act as vigilants; and that the large number of Mexican American

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. Bureau of Census, *Abstract of the Fifteenth Census of the United States*, 84

te of Texas House Concurrent Resolution No. 105, approved May 6, 1943.

youths arrested created a distorted picture, since juvenile delinquency was lo
in that group than any other group in the community. The committee
recommended that racial and ethnic data be deleted from arrest informat
that the press show more cooperation, that law enforcement agencies pro
special training for officers dealing with minority areas be increased, and
discrimination in public facilities be abolished.

World War II had a multiple impact on Mexican Americans. Thousand
Mexican American men in military service were exposed to attitudes, mores,
ways of life which differed from those of the Southwest. After the war
G.I. bill offered Mexican American veterans educational training opportuni
which they otherwise would not have received.

The period since the end of World War II has also seen the growth of polit
awareness and participation by Mexican Americans. Such organizations as
Political Association of Spanish Organizations (PASO) in Texas; the Mexic
American Political Association (MAPA) in California; and various branc
of the National G.I. Forum (Mexican American veterans organization) h
successfully promoted the candidacy of Mexican Americans in Texas, Califor
and New Mexico.

Although these political movements have contributed to progress in obtain
equal opportunity for Mexican Americans, a number of major issues rem
unresolved. Among these is the ever-present problem of Mexican American r
tions with law enforcement agencies, which constitutes the basis for this rep

Participation by Mexican Americans in Law Enforcement Agencies

IMPORTANCE OF PARTICIPATION

In the course of this study, the opinion was voiced that fear and distrust
Mexican Americans toward law enforcement agencies could be reduced by
creasing the number of Mexican American law enforcement officers. For exam
a Mexican American probation officer who had been a policeman in Phoenix
6 years, stated that more Mexican American police officers were needed in th
city.[1] He thought police teams could operate more effectively in Mexi
American neighborhoods if at least one of the members was a Mexican Americ
The Mexican American officer, he believed, could put Mexican American citiz
at ease, serve as an on-the-spot interpreter when necessary, and thus defu
tense police-citizen encounters and avoid miscarriages of police.

The director of public safety for the city of Las Cruces, New Mexico
Mexican American, stressed the importance of placing Mexican American
enforcement personnel at many levels of responsibility to secure the trust a
confidence of the Mexican American community. He pointed out that in
buquerque, no Mexican American law enforcement officer held a high ranking
policy-making position. In the same city the Spanish-speaking community
tinuously complained of police misconduct. By way of contrast he pointed
another large city in New Mexico where Mexican Americans held positions
police lieutenants and captains. Here police-community relations were excel
because the Spanish-speaking community, represented at all levels within
police department, was convinced that it would receive fair treatment from
police.[2]

Extent of participation.—In order to obtain information of the employment
Mexican Americans in law enforcement agencies, the Commission included
questions on employment statistics in the questionnaire sent in October 196
793 law enforcement agencies. These included 616 police departments, 168 co
sheriffs, and nine State agencies in Texas, Arizona, California, Colorado
New Mexico. The communities represented by these agencies ranged in size fr
less than 10,000 population up to and including metropolitan areas of mor
500,000 persons. The larger cities included Phoenix and Tucson, in Ari
Los Angeles, San Francisco, San Diego, Oakland, and Sacramento, in Calif
Denver, Colorado Springs, and Pueblo, in Colorado; Albuquerque and Santa
in New Mexico; Dallas, Houston, Ft. Worth, San Antonio, El Paso, and Ve
in Texas. Responses were received from 580 law enforcement agencies, a
percent of the recipients. There were 243 responses from police departments
from sheriffs' offices, and six from State law enforcement agencies.

[1] Staff interview.
[2] Albuquerque T. at 193-94.

POLICE EMPLOYEES—UNIFORMED, PLAINCLOTHES, AND CIVILIAN

Position	Uniformed			Plainclothes			Civilian employees		
	Total	Mexican American	Percent Mexican American	Total	Mexican American	Percent Mexican American	Total	Mexican American	Percent Mexican American
Patrolman	17,946	1,001	5.6				8,375	518	6.11
Detective				1,554	151	9.7			
Sergeant	2,625	132	5.0	396	33	8.3			
Lieutenant	898	29	3.2	133	11	8.3			
Captain	413	25	6.0	95	6	6.3	Total civilian employees		8,375
							Total police employees		26,342
Inspector	68	3	4.4	33	None	0	Total all employees		34,717
Chief inspector	27	2	7.4	4	None	0			
Deputy chief	60	2	3.3	32	2	6.3			
Chief	195	12	6.0	52	1	2.0	Total Mexican American civilian employees		518
Unclassified	1,712	41	2.4	99	20	20.0	Total Mexican American police employees		1,471
							Total Mexican American employees		1,989
							Percent Mexican American overall total		5.7
Total	23,944	1,247	5.2	2,398	224	9.3			

Note: Cumulative statistics obtained from answers to Commission October 1968 questionnaires.

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POLICE DEPARTMENTS

Total employment in 243 police departments—uniformed, plainclothes, a civilian—was 34,717. Of this number, 1,989 or 5.7 percent, were Mexican Am ican. This contrasts with the Mexican American proportion of the five-St region's population—11.8 percent.[1] There were found to be 23,944 uniform officers, of whom 1,247 or 5.2 percent were Mexican American. Of the uniform policemen, 10,648, or 45 percent, had never been on duty with a Mexican Am ican officer at any time in their police careers.

Among plainclothes officers, 244 or 9.3 percent were Mexican American, o of a total of 2,398. Of the 8,375 civilian employees, Mexican Americans totah 518, or 6.11 percent.

Significant variations appeared in the extent to which Mexican American were employed by police departments. In some cities the Mexican Americ proportions of the police force approached the Mexican American proportion the population. For example, in a Texas city with a Mexican American popula tion of about 40 percent, 165 of the 623 uniformed police officers, or 26.5 percen were Mexican Americans, and 40 of the 131 plainclothesmen [30 percent] wer Mexican American. In a large city in New Mexico, with a 28 percent Mexica American population, about 20 percent of the uniformed policemen and 31 pe cent of the plainclothesmen were Mexican Americans.

Other cities—and these were in the large majority—had significantly poore records. In a large Texas city which estimated its Mexican American popula tion at 7 percent of the whole, less than 3 percent of the uniformed policem and only 2 percent of the plainclothesmen were Mexican American. A larg Colorado city with an approximate 30 percent Mexican American population ha a uniformed police force that was 13.4 percent Mexican American.

Ethnic breakdowns were not received from the police departments of eithe Los Angeles or San Francisco—the two largest cities in California. The Lo Angeles Chief of Police sent a letter to the Commission's Acting Staff Directo in October 1968, in which he stated that much of the requested information wa unavailable in his office, and that the assembling of what information he di have would require excessive man-hours. He further indicated that if the Co mission would send a staff member to Los Angeles, a representative from his community relations office would assist him in gathering some of the informatio According to the Los Angeles Human Relations Bureau, total employment i the Los Angeles Police Department for 1968 was 5,937 persons. The bureau wa unable to provide any ethnic breakdown of this total, stating that employme statistics by race and ethnic origin were no longer kept by the police depar ment.[4] An official Los Angeles publication for fiscal year 1967-68 indicates tha there were 1,844 new appointments to the police department during that yea of whom 153, or 8.3 percent were Mexican Americans.[5] The 1960 census indicates that 10.5 percent of Los Angeles' population is Mexican American.

The Human Rights Commission of San Francisco informed the Commissio that as of May 31, 1968, there was a total of 2,240 police department employe in San Francisco, of whom 33—slightly over 1.4 percent—were Spanish surname There were 1,722 uniformed policemen, of whom 22—slightly under 1.3 percent were Spanish surnamed.[6] Seven percent of San Francisco's population is Mex can American, according to the 1960 census.[7] In May 1967, the Commission he a public hearing in the Bay Area cities of San Francisco and Oakland. A staf report prepared in connection with that hearing concluded that:

"In the Bay Area, Spanish Americans are underrepresented in local gover mental employment as well as in Federal employment. . . . Of 1,722 uniform policemen, only 22 are Spanish-speaking, of whom 19 are policemen-entrants. [There are 1,253 persons in the police entrants' category.]"[8] According to 19 figures collected by the Commission for its study of patterns of minority grou employment in State and local government, in Oakland, which had a Spanish su

[1] See Introduction, p. 1126 of this volume.
[2] Telephone interview with Charles Sierra, Adviser to the Director, Los Angeles Hum Relations Bureau, June 4, 1969.
[3] Los Angeles City Personnel Department, Fair Employment Practices Survey, 1967-6
[4] Interview with Jack Casford, Human Relations Analyst, San Francis Human Rights Commission, June 4, 1969.
[5] San Francisco has a number of Filipinos and persons from Central and South Americ the majority of whom have Spanish surnames, *Id.*
[6] *Hearing before the U.S. Commission on Civil Rights, San Francisco, Calif., May 1 1967, and Oakland, Calif., May 5, 6, 1967*, at 823.

ied population in 1960 of 6.8 percent, only 0.6 percent of the uniformed police e Mexican American.[9]

another large California city, where Mexicans constituted an estimated 10 ent of the population, only 23 of the 700 uniformed officers, or 3.3 percent, only two of the 123 plainclothes officers, or 1.6 percent, were Mexican Ameri- In another large city in California, the Mexican American percentage was 15 ent of the total population. Of this city's 370 uniformed policemen, 14, or 3.8 ent and of its 79 plainclothes investigators, four, or 5 percent, were Mexi- American.

number of inquiries in the questionnaire related to recruitment and selection tices. The first question asked was whether the agencies had established quali- ions for appointment. Of the 277 agencies which responded, 274 answered af- atively. The requirements of only 164 agencies, however, were in printed n and available to the public.

majority of the responding agencies required that as a condition of em- ment officers live in the jurisdiction. Of 271 agencies responding to a ques- regarding minimum educational requirements for initial appointment, 193 ired high school graduation. The great majority of agencies stated that icants were required to take physical, written, and oral examinations.

ore than 40 percent of the responses listed failure to pass written examina- s as the primary reason for disqualification of Mexican American applicants. ly 30 percent listed failure to meet physical requirements,[10] 25 percent rted failure to meet educational requirements, almost 25 percent listed equate character references, and about 17 percent mentioned lack of facility the English language as the primary reason for disqualification.

ere were 56 agencies which stated that no Mexican American applicants had ied in the previous 3 years; 157 responded that from 1 to 10 percent of their icants had been Mexican Americans. These 213 responses constituted almost ercent of the 271 responses to this question.[11] The questionnaire asked the cies for their views as to the reason why relatively few applications had received from Mexican Americans. Inability to meet the educational re- ements was the most frequent response. Of the 271 respondents, 193 indicated a high school degree was required for police applicants. The second most rtant factor was the existence of written examinations. The third factor, l in almost as many responses as the second, was an unfavorable impression lice work by Mexican Americans.

is last factor frequently was cited during the Commission's field investiga- . Rev. John Luce and Rev. Charles White stated that Mexican Americans in Angeles were reluctant to become policemen for fear of being regarded with vor by other Mexican Americans. The main reason for the fear, they said, is Mexican Americans do not trust the Los Angeles police and are convinced the police do not trust them. Most of the Mexican American police officers

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.S. Commission on Civil Rights, *For ALL the People . . . By ALL the People*, A rt on Equal Opportunity in State and Local Government Employment, (1969) [here- er cited as For ALL the People] at 25.

On Aug. 7, 1968, the Commission's California State Advisory Committee held a meet- n administration of justice problems in Los Angeles. One of the Committee members, el L. Fernandez, questioned city councilman Thomas Bradley about the physical rements for police recruits and what could be done to make them less restrictive. ellman Bradley responded:

he Civil Service Commission establishes the standards, but they take directions from olice department. For a long time Chief Parker was unwilling to drop the minimum t from five-ten down to five-nine, and finally down to five-eight. This was a long agonizing fight that went on. Now, I have not seen that the officers . . . were handi- ed by the fact that their height was reduced. There was a time when they have— forgotten the exact number of teeth, but the question was asked one time, "What are going to do, bite people?"

uncilman Bradley further pointed out that at one time the police department required a recruit have a four-inch chest expansion, and that one almost had to be a good te to meet this standard. He concluded his comments on physical requirements by ving, "I think the reduction in the height from five-eight to five-seven would not ir the ability of the officer to do his job. They don't need muscle and massiveness so as they need tact." Los Angeles T. at 106–08.

Twenty-four responses showed applications from Mexican Americans amounted to en 11 to 25 percent of the total; 12 responses indicated that Mexican American cants constituted between 26 to 50 percent of the total; 10 responses indicated that lexican American applicants constituted between 51 to 75 percent of the total; and 12 nses indicated that more than 75 percent of their applicants were Mexican Americans.

in Los Angeles, they said, are looked upon as "sell-outs" and are often descrit as having become anglicized in their attitudes and practices.[12]

Similarly, a Spanish surnamed police officer in Denver, referring to the attit of the Mexican American community toward any Mexican American police plicant, stated: "He is considered to be a defector."[13] The officer's superior, Anglo division chief, supported this view, saying: "A stigma attaches to a mi ity individual when he becomes a member of a police department."[14] Accordi to an official of the community action program in Roswell, New Mexico, Mexi American community leaders there are unwilling to furnish names of potent Mexican American applicants to the police chief because the leaders are app hensive of subsequent criticism and abuse by the Mexican American communit

Community leaders in each of the five States suggested that special efforts m be made to attract qualified Mexican Americans into law enforcement work majority of the departments, however, have no recruitment program, much programs designed to attract Mexican American and other minority applican Of the 272 agencies responding to the question as to whether the agency h a recruitment program, 162 stated that they had none, and 177 said they had m no special efforts to recruit Mexican American applicants during the past 2 yea

Queried as to which methods the agency utilized in informing the Mexica American community of its desire to receive applications, 56 out of 141 agenc responding, or 40 percent, indicated that they had made announcements wh were distributed by Mexican American community organizations. Only nin agencies, however, indicated that they had arranged for the publication of s information in local Spanish language newspapers; only 16 had made arrang ments for such announcements to be broadcast over local Spanish language ra and television stations; and only two had printed such announcements in Sp ish and had had them distributed in the Mexican American communities.

The larger cities have the poorest records. Of the 141 responses, 17 came fro cities with populations of 250,000 to 500,000. Of these 17, only one stated that had made an announcement in a Spanish language newspaper or on a Spanis language radio or television station.[16]

SHERIFFS

Twenty-seven of the 32 responses from county sheriffs furnished statist concerning their law enforcement personnel by ethnic category. Eleven cam from Texas, seven from California, four from New Mexico, three from Colora and two from Arizona. In these 27 counties the sheriffs and their deputies a other law enforcement personnel totalled 5,251. Of this number 292, or 5.5 pe cent, were Mexican American.[17]

In several counties in Texas the Mexican American proportion of the deputi in the sheriff's office equaled or exceeded the Mexican American proportion the county's population. Thirty-seven out of 39 sheriffs' deputies in Webb Cou [Laredo] Texas—where Mexican Americans constitute 77 percent of the popu tion—and 36 out of 73 in El Paso County [49 percent Mexican American] we Mexican Americans. In both of these counties, the sheriffs also were Mexic Americans. In Bernalillo County, New Mexico—where Albuquerque is located 15 of the 27 sheriff's deputies were Mexican Americans.

These are exceptions to the rule, however. Commission staff members receive information that a relatively low number of Mexican Americans were employe as law enforcement personnel by sheriffs in the majority of areas visited.

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[12] Los Angeles T. at 39. Arthur Garcia of the Police Malpractice Complaint Center of the Los Angeles American Civil Liberties Union, stated that Mexican American police are often more brutal than Anglo officers in their treatment of Mexican Americans. He and White expressed the belief that this is one way in which the Mexican American officer tries to show Anglo officers that he thinks as they do and is not prejudiced [illegible] own people. *Id.* at 61, 71, 72.

[13] Staff interview.

[14] Staff interview.

[15] Roswell T. at 157–58.

[16] Sixteen of the 141 responses came from cities in the 100,000 to 250,000 popul category. Only one response indicated that an announcement had been made in a Spa [illegible] one other indicated that Spanish radio and television stations had [illegible] the category of 50,000 to 100,000 population accounted for 18 of [illegible] agencies only two had made announcements in the local Sp [illegible] and only one had used the local Spanish language radio and T

[17] Unlike police departments, which use the merit system for appointment and pro tion, many deputy sheriffs are hired on the basis of political patronage with merit qualifications considered to be of secondary importance.

or example, in both of the two largest cities in Arizona, the sheriffs had only
n numbers of Mexican Americans on their staffs.[18] One Mexican American
rney in Texas pointed out that there were few Mexican American deputy
iffs in many of the counties located in the Rio Grande Valley, where Mexican
ricans constitute a significant portion or even a majority of the population.[19]
Texas county where the population exceeds 22,000, of which Mexican Ameri-
constitute about 25 percent, had no Mexican American deputies on the sher-
staff, according to a community leader.[20] The sheriff's response to the ques-
naire confirmed this statement. A similar situation existed in Reeves County,
as [population approximately 14,000], where the population is about 50 per-
Mexican American. According to a prominent community leader in Pecos,
county seat of Reeves County, there had not been a Mexican American deputy
iff for many years.[21] Similarly in Culberson County, Texas, where 45 percent
he population is Mexican American, the sheriff had no Mexican Americans
is staff.[22]

STATE LAW ENFORCEMENT AGENCIES

x State law enforcement agencies responded to the Commission question-
—two from California and one from each of the States of Arizona, Colorado,
Mexico, and Texas. The response of the Texas Department of Public Safety
ated that 28 of its 1,740 uniformed and plainclothes officers were Mexican
ricans—1.6 percent of the total officer force—in sharp contrast to the Mexi-
American proportion of the State's population [14.8 percent].
stifying at the Commission's San Antonio hearing, Col. Wilson Speir, direc-
f the Texas Department of Public Safety, reported that there were no Mexi-
Americans among the 62 Texas Rangers in his department. He said that
were 38 Mexican American patrolmen and two Mexican Americans on the
igence staff.[23] In response to the Commission's questionnaire, the total num-
f patrolmen was given as 1,432, of whom only 26 were Mexican Americans—
ercent. At the hearing, in response to Commissioner Hector Garcia's ques-
ng, Colonel Speir admitted that he arrived at the figure 38 by classifying
rmed officers serving in the drivers' license service and the motor vehicle
ction service as "patrolmen."
the hearing Speir testified: "We have had in past year a captain of the
s Rangers that was a Mexican American, Captain Gonzales, one of the most
us of all Ranger captains, who is now retired after 30 years of service."[24] In
nse to a question by Commissioner Garcia, himself a Texan, about the spell-
f this former Ranger's last name, Speir responded "G-o-n-z-a-u-l-l-e-s." When
nissioner Garcia expressed the view that this man was never considered
a Mexican American by the statewide Mexican American community, Speir
nded that he was considered to be a Mexican American by the Texas De-
ment of Public Safety.[25]
e name of the former Ranger captain actually was spelled "G-o-n-z-a-u-l-
."[26] In a newspaper account of an interview with Gonzaullas [which took
the day after the hearing], who had retired in 1951 after 30 years' service
the Texas Rangers, he is reported to have stated that his father was of
ish-Portuguese descent, that his mother was of German descent, and that he
dered himself to be an American. He also was reported to have said that he
never recall a Mexican American holding a high rank in the Texas Rangers
g his 30 years service although he did know of one regular Mexican Ameri-
Ranger.[27]
e California Highway Patrol listed an overall total of 5,010 uniformed of-
, including 4,364 State traffic officers. It failed to indicate whether any of
uniformed personnel were Mexican American. Its covering letter accom-
ing its response stated in part:
nder State law, race, descent, or ethnic group affiliation has no bearing on
ring employment with this Department". Similarly, the California Depart-
of Justice, which returned the Commission's questionnaire unanswered,

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taff interviews with representatives of sheriffs' offices.
taff interview.
taff interview.
taff interview.
taff interview.
an Antonia Hearing at 717, 726.
d. at 719.
d. at 728.
an Antonio Express & News, Dec. 15, 1968 at 3-A.
d.

stated in a letter that it had two law enforcement bureaus within the depar
ment—the bureau of criminal identification and investigation with 33 speci
agents, and the bureau of narcotics enforcement with approximately 100 pea
officers. It did not indicate how many were Mexican American, stating only th
there were a "substantial number" of Mexican Americans in each of the
bureaus.

The Colorado State Patrol response indicated that it had 418 uniformed officer
of whom 350 were patrolmen. All of the 12 Mexican Americans were patrolme
and they constituted slightly more than 2.8 percent of the total 418.

The New Mexico State Police response showed 248 law enforcement personne
Sixty-one of the 229 uniformed officers and 13 of the 19 plainclothesmen wer
Mexican American. Thus, Mexican Americans constituted 74 of the 248 per
sonnel—or nearly 30 percent of the law enforcement officers in the agency. Th
statistics from this one agency compare favorably with the 1960 Populatio
Census for New Mexico which indicates that 28.3 percent of its total populatio
is Mexican American.

SUMMARY

Public officials and private citizens, including judges, lawyers, probation off
cers, all expressed the belief that the fear and distrust which many Mexica
Americans feel toward law enforcement agencies could be significantly dispelle
by increasing the number of Mexican American law enforcement officers at a
levels of authority.

The majority of the law enforcement agencies responding to a Commission
questionnaire stated that they had made no special efforts to recruit Mexica
American applicants in the past 2 years. Many of these agencies indicated tha
the prerequisite of a high school degree, the existence of written tests, and th
high physical fitness requirements were major deterrents against applicatio
by Mexican Americans and the reason why many of those who did apply
failed to qualify. While this may, in part, account for the low number of Mexica
American applicants, the failure to establish specially designed minority recruit
ment programs and to utilize Spanish language advertising media such as news
papers, radio, and television to publicize such programs undoubtedly con
tributes significantly to the fact that so few Mexican Americans apply for
police jobs.

PARTICIPATION

Recommendation 1—Affirmative recruitment program

The Commission recommends that State and local law enforcement agencies
establish:

(a) affirmative recruitment programs specially designed to increase the
number of Mexican American law enforcement personnel;

(b) training programs to increase the ability of Mexican Americans and
other minority persons employed by law enforcement agencies to obtain pro
motions to supervisory positions.

Justification

Additional Mexican American officers can contribute significantly in reducing
the present feeling of apprehension and distrust which generally pervades the
Mexican American community toward law enforcement agencies. Such officers
often can serve as on-the-spot interpreters and thus ease tense situations even
in some instances, preventing miscarriages of justice which result from mis
understandings.

In the report of the Kerner Commission a reference is made to the Crim
Commission Police Task Force's finding that Negro policemen help provide
insight into ghetto problems; often can provide advance information in antici
pation of tensions and grievances that might lead to disorders; and are partic
larly effective in bringing disorders under control once they do break out.[28] The
Kerner Commission's report continued by pointing out that more Negro police
officers were needed at all levels and ranks, and recommended that police
departments intensify their efforts to recruit more Negroes, review their pro
motion policies to ensure that Negro officers are afforded equitable promotion
opportunities, and ascertain that Negro officers are assigned on a fully integrated
basis visible to the Negro community.[29] These findings and recommendations by

[28] Report of the Advisory Commission on Civil Disorders at 165.
[29] *Id.* at 166.

Kerner Commission support the Commission's recommendation for efforts ncrease the number of Mexican American law enforcement officers at all ls of authority. In its recent report on State and local employment, the mission discussed in detail the component elements of a successful affirmative on program. That discussion may be useful to agencies seeking to implement recommendation.[30]

e recognize that in some cases police departments will have difficulty recruit- members of minority groups. The recent report of the Commission on equal loyment opportunity in State and local government indicated that . . . e tension, suspicion and hostility which exists between the Negro com- ity and the police department are obstacles to the recruitment of black emen." [31]

evertheless, those departments that have made an effort to reverse their ge in the minority communities and who have used special recruiting efforts gned to attract minority communities and who have used success.[32] The mission believes that similar efforts especially designed to attract Mexican rican applicants will have a similar effect in increasing the number of ican American law enforcement personnel.

ecruitment of more Mexican Americans by law enforcement agencies would affect the agencies' policies unless Mexican Americans also have opportuni- o be promoted to supervisory positions. If they are not qualified for promotion use of lack of education or training, agencies should provide them with rtunities to make up for such deficiencies. Such programs should offer train- both to recruits and to present law enforcement officers desirous of advancing upervisory positions. Federal funds under LEAA are available for this ose.[33]

Recommendation 2—Qualifications

w enforcement agencies should review their qualifications for appointment eliminate those which may not be job-related and which may tend to dis- inate against Mexican American applicants.

Justification

th Federal and private industry officials have informed the Commission e past that many job requirements have little or no relationship to the l work to be performed. For example, many private companies have abol- l some of their application requirements, since they have determined that had little or no bearing on actual job requirements of new employees was ily attainable through on-the-job training. If such techniques can be utilized rain semi-skilled and skilled technicians, the Commission believes that ar techniques can be developed and employed to properly train Mexican rican law enforcement applicants.

its report *For All the People*, the Commission on Civil Rights has pointed the difficulty that many police applicants encounter in taking lengthy en intelligence tests. Furthermore, the validity of such tests has not been n and at least one police department in a major city—Detroit—is now using eral intelligence test, which takes only 12 minutes to complete, in contrast former 2½ hour intelligence test.[34]

e, weight, height and vision requirements are invariably more stringent for applicants than elsewhere in State or local government employment. How- when police departments have made special efforts to recruit minorities have seen fit to make many of these requirements more flexible. For example, effort to recruit more Negro officers, Detroit has recently liberalized its age, t, and vision requirements.[35] Other large cities have reduced their height rement from 5'9" to 5'7", in response to pressure from their Spanish-speaking unities.[36]

e elimination of lengthy written tests and the substitution of shorter, more ingful job-related tests, together with the relaxation of certain physical fications, can result in the ultimate hiring of greater numbers of Mexican ican applicants.

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or ALL The People at 121–23.
Id. at 72.
Id. at 72–73.
ections 301(b) and 406(b) of the Omnibus Crime Control and Safe Streets Act of 1968.
or ALL the People at 74.
Id. at 75.
Id. at 76.

Recommendation 3—Judges

The President of the United States and the Governors of the five Southwestern States of Arizona, California, Colorado, New Mexico, and Texas should use their powers to appoint qualified Mexican American attorneys to the Federal and State courts.

Justification

The Commission is aware that, with the exception of Colorado, virtually all of the State judges and justices are elected. However, deaths, resignations, and retirements do afford Governors some opportunity for judicial appointments, and the Commission urges them to use their appointive powers to increase the number of Mexican American judges.

Recommendation 4—Department of Justice

The Department of Justice, including the Federal Bureau of Investigation, should take affirmative action under its continuing equal employment opportunity program both to hire additional Mexican Americans in the Southwest and particularly to train and promote their present Southwestern Mexican American employees into supervisory and professional level positions. The Civil Service Commission should review and evaluate the equal employment opportunity of the Department of Justice to ensure that this program will:

. . . provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; . . .[37]

Justification

The employment statistics furnished the Commission on Civil Rights by the Department of Justice clearly show the disparity that exists in the middle and higher grades categories, which include supervisors, lawyers, and other professional personnel. Virtually no Spanish surnamed employees are found in any of these categories.

Robert E. Hampton, Chairman of the United States Civil Service Commission, stated on August 8, 1969:

Despite significant gains in overall employment of minority group persons in the Federal service, too many of our minority employees are concentrated at the lower grade levels, victims of inadequate education and discrimination. . . .

On this same date, August 8, 1969, President Nixon issued Executive Order 11478, which restated the long standing Federal Government policy of equal employment opportunity, pointing out that each department and agency had the duty and responsibility of establishing and maintaining affirmative action programs designed to achieve the goals of equal employment opportunity. In this same Executive order, the President ordered the Civil Service Commission to provide leadership and guidance in the operations of such programs, and to review and evaluate such programs periodically to determine their effectiveness.

EXHIBIT 2

SPECIAL ANALYSES OF THE U.S. GOVERNMENT, FISCAL YEAR 1973

In 1973, Federal aid to State and local governments will total $43.8 billion. This amount will be $4.4 billion more than in 1972—a 12% increase in 1 year, and five times the amount in 1963. Since 1968, major progress has been made in restructuring Federal aid programs to increase their flexibility and effectiveness. Proposals in the President's 1973 legislative program call for even greater changes:

Sharing Federal revenues with State and local governments in the form of unrestricted *General* Revenue Sharing, and six broad purpose *special* revenue sharing programs without matching requirements.

Reforming the welfare system to provide national eligibility standards, improved work incentives, broaden coverage to the working poor, and eventual fiscal relief to the State.

Strengthening the grant-in-aid delivery system through the Federal Assistance Review program (FAR), including: decentralizing decisionmaking to Federal field offices, and expanding the Integrated Grant Administration program from four to 24 major projects, thus enabling State and local governments to apply for several related grants through a single application.

[37] Sec. 2, E.O. 11478, Aug. 8, 1969.

ie fastest growing major Federal aid programs in 1973, as in each of the years
1969, are those related to law enforcement, income support, services for
oor, and environmental protection.

HISTORICAL PERSPECTIVES

deral aid to State and local governments has been a part of the American
al system since the country's earliest days. Under the Articles of Con-
ration, Congress provided grants of Federal land in 1785 to support educa-
in the Northwest Territory.

though Federal grants have a long history, the major growth in the number
ant programs and amounts of money provided has occurred only in the
two decades. The composition of the total grant program has changed signifi-
ly since 1960, as shown in table P–1. The functions comprising human
ource programs—education and manpower, health, and income security
a rapid growth during the 1960–73 period, rising from 47% of Federal aid in
to an expected 55% in 1973. On the other hand, commerce and transportation
rams declined from 43% of the total in 1960 to 14% in 1973.

ABLE P 1.—PERCENTAGE DISTRIBUTION OF FEDERAL AIDS TO STATE AND LOCAL GOVERNMENTS, BY FUNCTION

nction	Actual					1973 estimate
	1950	1955	1960	1965	1970	
ure and rural development	5	8	4	5	3	2
resources and environment	2	3	2	2	3	4
rce and transportation	21	19	43	40	21	14
nity development and housing	(1)	3	3	5	11	10
on and manpower	11	14	10	10	18	17
	5	4	4	7	15	11
security	55	47	33	29	26	27
revenue sharing						11
	1	2	1	2	3	4
otal	100	100	100	100	100	100

than 0.5 percent.

hile Federal grants have been growing, State and local governments pres-
raise from their own sources about four times the amount of aid they
ve from the Federal Government.

TABLE P 2. STATE AND LOCAL GOVERNMENT FINANCES, CALENDAR YEARS 1951 AND 1971

[Dollars in billions]

ource	1951	1971	Average annual percentage increase
:			
n revenue	$18.8	$114.8	9.5
eral aid	2.3	26.9	13.1
otal	21.1	141.7	10.0
tures	22.3	141.7	9.7

This table is based on the national income accounts to permit comparison between levels of government, and
lightly from the measure of aid used in other parts of this analysis. For a more complete discussion of different
s of aid, see the section on definitions in this analysis.

STATE AND LOCAL FISCAL PROBLEMS

te and local governments have been faced with critical financial problems
ent years. An imbalance has existed between the need for higher levels of
services and funds available to finance these services. State and local
nment receipts from their own sources (excluding Federal grants) rose
a war-time low of 4.8% of GNP in 1944 to 11% in 1971, but the need for
ded services and the cost of providing these services rose even faster.

State and local governments rely principally on consumer and property ta
which have not grown at a rate sufficient to keep up with the growth in dem
for public services. Thus, States have been forced to raise tax rates frequent
instituting new taxes or raising tax rates in more than 514 instances since 19
and 64 instances in 1971 alone. These latter actions will augment tax receipts
about $5 billion. This is significantly larger than the $1.3 billion and $2.5 bill
added to State tax receipts in 1965 and 1967, and the record $4 billion in 19
It was only through drastic budget cutting, and tax increases, that State a
local governments achieved an estimated surplus of $25 million in 1971.

The response of the Federal Government to the fiscal problems of State a
local governments has been to increase Federal grants from 71 programs and
billion in 1950 to 530 programs and $24 billion in 1970. The results have be
that while Federal grants have paid for several services previously paid for fr
State and local revenues, such as a highway network, this rapid growth h
been accompanied by many problems, including:

Overlapping programs at the State and local level;

Program delays and uncertainty caused by unnecessarily detailed and cos
application requirements;

Unnecessary limitations on the authority and responsibilities of Governo
mayors, county executives, and city managers;

The creation of competitive State and local governmental institutions; an

Rigid funding arrangements which are unable to adjust to changes in prio
ties over time, such as matching fund requirements.

While Federal grant programs were aimed at problems deemed by their sp
sors to be of national interest, they often ignored their impact on the streng
and ability of the State and local governments to carry out their own particu
responsibilities.

REFORM OF THE GRANT SYSTEM

In recognition of these problems, the administration has proposed basic refor
in Federal Government programs and institutions, and in the structure of Fe
eral aid to State and local governments. These changes embrace three basic co
cepts: sorting out appropriate governmental roles, improving the basic progra
and modernizing management.

Basic reform is being undertaken in such major fundamental areas as welfa
pollution control, unemployment insurance, and mass transit. The proposed w
fare reform should help to alleviate the financial pressures on State and lo
governments after it is enacted and should provide substantial savings in t
long run. It will also be a major step toward reducing poverty in America. A
Environmental Financing Authority has been proposed which will assist
nancing expanded pollution control facilities for those communities which a
unable to borrow for this purpose at reasonable interest rates. The administr
tion has also designed the first fundamental reform of the unemployment co
pensation system since the 1930's.

A long-needed overhaul of management process in Federal aid and other pr
grams is being carried out. The regional boundaries of the major domest
departments of the Federal Government have been modified so that their hea
quarter cities and the regions that they cover conform. This facilitates coope
tion between Federal agencies and makes it easier for grant recipients since t
agencies' regional offices are in the same cities. A new Office of Intergovernmen
Relations was created in the Office of the Vice President. In order to foster bett
decisionmaking on the whole range of domestic programs, the administration h
established a Domestic Council, which provides a forum for considering all of t
various Federal activities and functions that affect the States and their su
divisions, and reorganized the Bureau of the Budget into the Office of Manage
ment and Budget.

Government operations are being simplified and decentralized in sever
ways, through revised grant program procedures, through a proposed overha
of the manpower training programs, and most importantly, through the introdu
tion of revenue sharing. In the grant area, the administration has also recom
mended legislation that would:

Authorize the President to consolidate closely related programs;

mplify funding of those grant programs that are closely related and in the
agency:
thorize joint funding of projects across agency lines; and
fer assistance to Governors and mayors in improving their policy planning
implementation capacity in social welfare programs.

REVENUE SHARING

ne of the most innovative and far-reaching reforms of the federal system
e proposal for a program of sharing Federal revenue with State and local
rnments. In describing the revenue sharing program, the President stated:
time has come for a new partnership between the Federal Government and
States and localities—a partnership in which we entrust the States and
ities with a larger share of the Nation's responsibilities, and in which we
our Federal revenues with them so that they can meet those respon-
ties."

e major characteristics of the administration's revenue sharing plan are:
new program of *General* Revenue Sharing with State and local governments
out any program or project restrictions with the amount granted to grow
year as the personal income tax base of the Federal Government grows:
special revenue sharing programs for State and local governments in
l broadly defined areas of national concern, without any requirement of
ing funds or Federal approval of project plans; and
intenance of those existing grant programs for which there is a clear, con-
ng national requirement.

major features of the *General* Revenue Sharing proposal are:
dictability.—The amounts to be shared will be based on 1.3% of the personal
e tax base.
panding scale.—Because of the natural growth in the base, the absolute
nts are proposed to rise from a budget authority of $5.3 billion and outlays
billion in 1973 to an estimated $10 billion in outlays for 1980.
onditional.—Revenue sharing funds will not be tied to specific programs
se the funds are for use by State and local governments in accordance with
program priorities. The allocation of funds will be based on formulas
ribed by law and linked to data prepared on a regular basis by the Census
u. No costly, time-consuming applications will be required.
tribution by need and effort.—The amount to be shared with any given
will be based on State population, adjusted for combined State and local
ne effort. States with greater relative revenue effort will get more than
would otherwise.
aranteed funds for cities and counties.—To place a minimum guarantee on
nare of funds that cities, counties, and townships will receive, the admin-
ion's bill stipulates that States must "pass through" to each such local
iction its appropriate share.
cial revenue sharing will consist of six broad-purpose programs providing
and local governments with funds for use in the functional area for which
are designated—transportation, education, urban and rural community
opment, manpower training, and law enforcement. The proposed effective
for two of these programs—education and urban community development
y 1, 1972. These funds will be distributed on the basis of formulas appro-
for each broad program area. Funds for *special* revenue sharing will come
the conversion of a set of narrower categorical grants into the new program,
rom additional funds requested by the President.
racteristically, the programs recommended for conversion to *special* reve-
haring deal with high priority national problems which require State and
solutions. In these areas, State and local governments are in a better
on to design and implement responsive and effective programs. Eliminating
al administration of these programs will relieve State and local govern-
of many Federal requirements—including the elimination of matching
rements on the categorical grants converted to *special* revenue sharing.
l civil rights requirements will be retained.

TABLE P–3.—*Revenue sharing, budget authority, 1st full year*

Description	Billi
General revenue sharing	$6
Special revenue sharing:	
Urban community development	2
Rural community development	1
Education	3
Manpower training	2
Law enforcement	
Transportation	2
Total	17

SIGNIFICANT FEATURES OF FEDERAL AID IN 1973

Federal aid expenditures for grants and shared revenues will grow from $29 billion in 1971 to $43.5 billion in 1973. In addition, there will be an estimated $1 billion in loan disbursements resulting in $309 million of net lending to State and local governments. This does not include the lending activity that is being encouraged in the non-Federal sector with Federal interest subsidies and guarantees.

In total, Federal aid programs provided about 18% of State and local revenues in 1971, and will provide an even greater percentage in 1972 and 1973. The largest portion of direct Federal aid is administered by the Department of Health, Education, and Welfare. Due to extreme fiscal pressures on State and local governments, in 1972 the department will make an advance payment to those governments of about $1 billion for welfare payments and services.

TABLE P–4.—FEDERAL-AID EXPENDITURES BY AGENCY (SPECIAL ANALYSES)

[In millions of dollars]

Agency	1971 actual	1972 estimate	19 estim
Funds appropriated to the President	1,468.2	1,286.4	1
Department of Agriculture	3,198.3	3,916.0	4
Department of Commerce	184.9	174.6	
Department of Defense—Military	34.2	36.2	
Department of Defense—Civil	6.9	5.0	
Department of Health, Education, and Welfare	14,650.9	18,511.6	17
Department of Housing and Urban Development	2,140.2	2,573.7	3
Department of the Interior	296.7	405.8	
Department of Justice	195.8	361.5	
Department of Labor	1,866.1	2,918.8	3
Department of State	5.4	5.7	
Department of Transportation	4,882.5	5,143.5	5
Department of the Treasury	143.2	2,409.9	5
Environmental Protection Agency	520.0	964.6	1
Veterans Administration	19.0	21.2	
District of Columbia	139.0	180.0	
Other	94.0	165.0	
Total outlays for Federal aid	29,844.0	39,079.8	43

Note: Detail may not add to totals due to rounding.

Apart from direct Federal aid, many other Federal activities that are not included in this analysis affect the finances of State and local governments. For example, the exemption of interest on State and local bonds from Federal income taxes reduced interest costs to State and local governments by $2.0 billion in 1971. This exemption results in about $3.0 billion in "lost" revenues to the Treasury. Similarly, since taxpayers may deduct State and local taxes from Federal taxable income, a portion of State and local taxes is offset by a reduction in the taxpayers' Federal liability. In 1971, the value of this deduction in terms of tax savings to individuals was approximately $8.5 billion. In addition, in 19 the Federal Government donated an estimated $405 million in excess property to State and local governments for civil defense, public health, and educational purposes. The Federal Government has also donated Federal land for State a

recreation uses, such as for parks and beaches. It is estimated that between and 1973 the Federal Government will have donated 40,000 acres, worth over illion, to State and local governments.

LE P 5. FEDERAL-AID OUTLAYS IN RELATION TO TOTAL FEDERAL OUTLAYS AND TO STATE-LOCAL REVENUE

scal year	Federal aid			
	Amount (millions)	As a percent of—		
		Total Federal outlays	Domestic Federal outlays[1]	State-local revenue
	$6,669	7.2	15.9	12.3
	7,040	7.6	16.4	11.6
	7,112	7.3	15.4	11.0
	7,893	7.4	15.8	11.3
	8,634	7.8	16.5	11.6
	10,141	8.6	17.9	12.4
	10,904	9.2	18.4	12.4
	12,960	9.7	19.2	13.2
	15,240	9.6	19.5	14.2
	18,599	10.4	20.9	15.8
	10,255	11.0	21.3	15.3
	23,954	12.2	21.9	15.9
	29,844	14.1	23.5	17.9
mate	39,080	16.5	25.8	21.1
mate	43,749	17.6	27.0	21.1

ding outlays for defense, space, and international programs.

THE IMPACT OF FEDERAL AID

rapid increase in Federal aid has become an increasingly important factor finances of all levels of government. Federal aid has risen from 7.8% of Federal outlays in 1963 to an estimated 17.6% in 1973. In terms of civilian ne programs, 27.0% of Federal outlays will take the form of aids to State cal governments in 1973. Because State and local revenues from their own s have increased at a much more rapid rate than Federal outlays, the t of the relative increase in Federal aid has not been quite as marked on udgets as it has been on the Federal budget. Nevertheless, Federal aid has as a proportion of State and local revenues, from 12% in 1960 to an esti- 18% in 1971.

pattern of State and local spending has been influenced by those Federal that require the recipient government to match Federal aid funds with n resources. In 1966, State and local governments provided an estimated llion of their own funds to match the $13 billion of Federal grants spent in ear. In the last few years, State and local government matching funds have ted for about 10% of general expenditures out of their own revenue s. This could amount to an estimated $11 to $13 billion in 1971, and an ted $13 to $16 billion in 1973. The elimination of matching requirements e programs absorbed by *special* revenue sharing will save State and local nments about $4.2 billion and allow them greater freedom in the use of resources.

970, the distribution of Federal aids on a regional basis ranged from a f more than $5 billion in the Southeast and Mideast, to a low of $0.77 in the Rocky Mountain area. On a per capita basis, however, the Rocky ain area ranked highest with grant payments of $154 per capita, while the Lakes with $82 and Plains region with $104 per capita were lowest. ation density and per capita income are the two major factors that ac- d for this wide variation. Generally, the level of per capita aid is inversely l to population density primarily because of aid for highway construction ared revenues to thinly populated Western States. The population density Rocky Mountain area is the lowest of the regions, the holdings of Federal are extensive and per capita aid is the highest. At the other end of the per capita aid is lower in the regions where population density is greatest, deral land holdings are small.

TABLE P-6.—REGIONAL DISTRIBUTION OF FEDERAL AID, FISCAL 1970

Region	Total (millions)	Per capita	Perce... State... local gov... ment gen... rev...
New England	$1,406	$118.65	
Mideast	5,180	122.22	
Great Lakes	3,829	82.70	
Plains	1,707	104.55	
Southeast	5,299	120.96	
Southwest	2,013	121.68	
Rocky Mountain	770	153.92	
Far West	4,013	148.55	
United States	23,954	117.89	

Sources: "Federal Aid to States—Fiscal year 1970," Department of the Treasury, and "Government Finances... 1969-70," Bureau of the Census. These reports provide additional information concerning State distribution of fede... grants.

Per capita aid is also inversely related to per capita income. There are t... reasons for this relationship. Some grant programs require lower matching rat... for the relatively poorer States. Other programs such as those for public assi... ance and elementary and secondary education, are designed as aids to the dis... vantaged and tend to flow to States having proportionately more individuals w... lower incomes. This reflects the growing impact of fiscal equalization provisio... characteristic of a number of the more recent grant programs. For a State-... State, program-by-program accounting of Federal grants, see the forthcom... Treasury Department publication "Federal Aid to States—Fiscal Year 197...

Within the rising total of Federal assistance to State and local governmen... another important qualitative shift is taking place—the increasing emphasis ... urban areas. Between 1960 and 1970, the major population growth in Amer... occurred in the metropolitan complexes. Today, about 70% of the population liv... in 268 metropolitan areas. In 1973, approximately $31.5 billion of the $43.5 bill... of total Federal grants will be spent in, or directly affect, standard metropolit... statistical areas (SMSA's). This is an increase of about $27 billion, or near... 700% over the amount of aid provided to these urban areas in 1961, and $17... billion in the last 4 years. The major increase in Federal grants for urban area... occurred in law enforcement and public assistance.

SMSA areas include the bulk of that urban population which places hea... pressure on public service requirements—areas where population growth a... population density are high. The amounts shown in table P-7 are estimat... based on the best information available.

TABLE P-7.—FEDERAL-AID OUTLAYS IN SMSA AREAS

Function and program	1961 actual	1964 actual	1969 actual	19... estim...
National defense	10	28	30	
Agriculture and rural development:				
Donation of surplus commodities	128	231	313	
Other	27	40	104	
Natural resources and environment:				
Environmental protection	24	8	79	
Other	30	10	101	
Commerce and transportation:				
Economic development		158	104	
Highways	1,398	1,948	2,225	
Airports	36	36	83	
Urban mass transportation			122	
Other	1	5	5	
Community development and housing:				
Urban community development revenue sharing				
Community action and related programs				
Urban renewal			432	
Public housing	106	559	786	
Water and sewer facilities	105	136	257	
Model Cities		36	52	
Other			8	
		17	75	

TABLE P–7.—FEDERAL-AID OUTLAYS IN SMSA AREAS—Continued

Function and program	1961 actual	1964 actual	1969 actual	1973 estimate
n and manpower:				
cation revenue sharing				[1] 77
d start and follow through			256	270
mentary and secondary	222	264	1,262	1,520
her education	5	14	210	81
ational education	28	29	179	480
loyment security	303	344	449	745
rgency employment assistance				1,082
power activities		64	530	1,115
er	3	7	77	879
lth services and planning	48	66	109	252
lth services delivery	47	82	219	437
tal health	4	8	77	254
ventive health services				35
ical assistance		140	1,731	2,104
th manpower			107	256
r		4	54	
ecurity:				
tional rehabilitation	37	61	247	521
ic assistance	1,170	1,450	3,022	5,985
l nutrition, special milk and food stamps	131	168	482	1,983
r	3	16	148	77
government:				
enforcement			17	440
nal Capital region	25	38	85	202
r		9	27	216
ictions		2		14
Revenue Sharing				[3] 3,500
tal, aids to urban areas	3,893	5,588	14,045	31,468

tive estimate; excludes outlays in 1973 from programs planned for conversion to special revenue sharing.
notnote 5 to table P–9.
tive estimated impact calculated on the basis of population includes both direct passthrough and discretionary cations.

TYPES OF GRANTS

eral aid to State and local governments, as reflected in budget outlays, everal forms: grants; shared revenues, usually counted as grants; and Shared revenues (not to be confused with the President's revenue shar- ograms) are payments of a share of Federal revenues from a particular —such as receipts from timber sales—which are paid to State and local ments. These payments are frequently in lieu of taxes which would be f the Federal land were privately held. Grants are nonrepayable re- s provided by the Federal Government in support of a State or local pro- f service to the public.

practice, there are two types of grants—those with "strings" attached, ditional grants, and those with "no strings" attached, or unconditional . Only the former type is presently in use in the United States, but the ent's revenue sharing proposal is designed to change this.

litional grants may be divided into project grants and formula grants. t grants are a relatively recent development in the United States and are ed to meet specific problems. That is, a project grant is given for a speci- gram need, such as demonstration grants for education. The recipient ake the initiative in applying for the grant, and it is up to the discretion granting agency whether or not the particular project merits funding. t grants accounted for an estimated $9.4 billion in 1969 and $11.7 billion of total Federal aid.

ontrast, formula grants are allocated to all eligible jurisdictions for se- functions on the basis of some formula. The formula criteria may include al capacity of the recipient government, total or relevant population in ea, such as the number of poor people, or both. Hospital construction , and *special* revenue sharing programs are examples of formula grants. hing requirements on Federal grants specify the portion of the project gram cost that the recipient is required to provide in order to receive the

Federal grant. Matching requirements vary widely depending on the progra
For some programs, the matching rates are uniform for recipient governmen
In other cases, differential rates have been established so that governmen
with lower fiscal capacity are required to meet lower matching requiremen
than those with high fiscal capacity.

Revenue sharing, a third type of grant, has been discussed in another pa
of this analysis.

Three different statistical series showing Federal aid to State and lo
governments are produced by the Federal Government. Table P 8 shows th
principal differences between these three series over a 6-year period.

As the table indicates, there is a growing divergence between the series sho
in this analysis and the other series. The principal cause of this divergen
over these years was the treatment of payments by the Office of Economic O
portunity, research payments, and the distribution of surplus agricultural co
modities. Although these payments will be relatively stable in the years 197
72, the continued growth of food stamps will continue to widen this gap.

TABLE P–8.—3 MEASURES OF FEDERAL AID TO STATE AND LOCAL GOVERNMENTS, 1965–70

[In billions of dollars]

	1965	1966	1967	1968	1969	19
Budget (special analysis P)	10.9	13.0	15.2	18.6	20.3	2
Principal exclusions:						
Agricultural commodities	−.5	−.3	−.3	−.5	−.7	−
Food stamps	(1)	−.1	−.1	−.2	−.2	−
Certain OEO payments	(1)	−.2	−.5	−.8	−.8	−
Add payments for research	.9	.9	1.0	1.1	1.1	
All other (net)	−.2	−.2	−.3	−.1	−.3	
Federal payments (census)	11.1	13.1	15.0	18.1	19.4	2
Exclude low-rent public housing	−.2	−.2	−.2	−.3	−.3	−
All other (net)	(1)	−.2	(1)	−1.	.3	−
Grants-in-aid (national income accounts)	10.9	12.7	14.8	17.8	19.4	2

The series used in this analysis is focused on showing Federal aid for progra
either operated directly by State or local governments or coordinated throu
or approved by State agencies. It includes outlays whether cash payments or i
kind, and includes aid to Governments of Puerto Rico and the Virgin Islands
The basic focus is on programs aimed to serve the public but not directly admin
tered by the Federal Government. Therefore, it excludes payments for purcha
of services to the Federal Government, such as research conducted by publ
universities.

Both the census and the national income accounts (NIA) definitions of gra
are designed to match their other definitions for data encompassing the enti
economy. They exclude payments to private, nonprofit agencies even if coor
nated under a State plan, since this money is reported in the private sector. T
principal example of this is OEO, where a considerable amount of money in
budget includes as grants goes to private nonprofit entities.

Both the census and the NIA definitions exclude payments in-kind fr
grants—such as commodities donated under the school lunch program—and al
exclude payments to territories or possessions. However, they focus on cash pa
ments, so payments for research conducted by public universities are included
their data, as the universities are included as part of the State local sector
their various tabulations. These payments are not considered grants in th
analysis.

There are various other—relatively minor—differences between the three serie
The one major outlay included in the budget and census series but excluded fr
the NIA series is payments for low rent public housing, which the NIA cons
as purchases by the Federal Government rather than grants.

Further information on the NIA series may be found in Special Analysis

TABLE P-9.—FEDERAL AID TO STATE AND LOCAL GOVERNMENTS[1]

[Expenditures in millions of dollars]

Agency and program	Functional code	1971 actual	1972 estimate	1973 estimate
al defense:				
epartment of Defense—Military:				
Civil defense shelters and financial assistance	051	25.7	29.9	37.3
Construction of Army National Guard centers	051	8.4	6.2	8.3
omic Energy Commission	058	7.6	4.8	4.7
Total, national defense		41.7	40.9	50.3
ational affairs and finance:				
epartment of State:				
East-West Cultural and Technical Interchange Center	153	5.4	5.7	7.1
International Center, Washington, D.C.	151			.7
Total, international affairs and finance		5.4	5.7	7.8
ture and rural development:				
partment of Agriculture:				
Commodity Credit Corporation and Consumer and Marketing Service: Removal of surplus agricultural commodities and value of commodities donated	351	387.4	638.2	714.9
Rural water and waste disposal facilities	352	35.9	53.2	48.8
Mutual and self-help housing	352	.1	2.5	3.0
Rural housing for domestic farm labor	352	3.5	4.0	3.0
Resource conservation and development	354	11.7	15.7	19.7
Consumer protective programs	355	28.9	20.6	32.6
Cooperative agricultural extension service	355	133.6	149.7	154.6
Water Bank Act Program	354		1.9	2.9
Agricultural Research Service	355	1.3	1.4	1.4
Cooperative State Research Service	355	67.3	74.8	79.9
Total, agriculture and rural development		659.7	972.0	1,060.9
resources:				
partment of Agriculture:				
Watershed protection and flood prevention	401	73.7	87.3	96.2
Grants for forest protection, utilization, and basic scientific research	402	20.8	27.2	25.7
National forest and grassland funds:				
Payments to States and counties (shared revenue)	402	72.2	57.5	86.8
Assistance to States for tree planting	402	.7	.8	.8
partment of Defense—Civil: Corps of Engineers:				
Flood control	401	4.2	2.2	
Payments to States, Flood Control Act of 1954 (shared revenue)	401	2.7	2.8	2.0
partment of the Interior:				
Payments to States and counties (shared revenue)	402	85.1	90.7	97.9
Bureau of Reclamation	401		.8	.9
Mine drainage and solid waste disposal	403	(*)	.2	.3
Fish and wildlife restoration and management	405	44.9	62.3	62.1
Outdoor recreational areas (Land and Water Conservation Fund)	405	62.0	110.0	129.0
Preservation of historic properties	405	1.3	6.2	7.7
Office of Water Resources Research	401	8.3	8.5	8.7
deral Power Commission: Payments to States shared revenue)	401	(*)	(*)	.2
nnessee Valley Authority: Payments in lieu of axes (shared revenue)	401	20.0	25.7	29.0
ter Resources Council	401	3.5	3.6	3.4
vironmental Protection Agency	401	520.0	964.6	1,179.0
Total, natural resources		920.4	1,450.4	1,731.7

footnotes at end of table.

TABLE P-9.—FEDERAL AID TO STATE AND LOCAL GOVERNMENTS[1]—Continued

[Expenditures in millions of dollars]

Agency and program	Functional code	1971 actual	1972 estimate	1 estim
Commerce and transportation:				
Funds appropriated to the President:				
Public works acceleration	507	.4	1.7	
Appalachian development	507	229.3	279.4	285.
Department of Commerce:				
State marine schools	502	.5	.5	
Regional development	507	2.0	6.6	20.
Promotion of tourism	506		.6	1.
National Bureau of Standards	506	2.2	.5	
National Oceanic and Atmospheric Administration	506	4.5	4.5	4.
Economic development assistance	507	175.6	166.5	183.
Department of the Interior: Resource management	507	2.0	2.6	2.
Department of Transportation:				
Forest and public lands highways	503	22.4	32.8	37.
Highway beautification	503	9.4	28.9	38.
Highway safety	503	68.9	85.0	84.
Federal-aid highways (trust fund)	503	4,562.8	4,595.5	4,801.
Urban mass transportation facilities	503	154.1	261.3	352.
Federal aid for airports and airways [2]	501	61.5	131.0	200.
Other	503	3.6	7.4	4.
Total, commerce and transportation		5,299.3	5,604.8	6,316.
Community development and housing:				
Funds appropriated to the President: Office of Economic Opportunity: Community Action programs	551	714.7	655.9	656.
Department of Housing and Urban Development:				
Model city grants	551	320.3	439.2	622.
Urban renewal	551	1,025.9	1,000.0	1,000.
Open space land and urban beautification	551	38.8	69.4	79.
New community assistance	551		2.0	3.
Grants for basic water and sewer facilities	551	120.6	130.0	150.
Grants for neighborhood facilities	551	22.5	35.0	35.
Urban planning grants	551	49.5	49.5	91.
Community development training programs	551	2.8	3.0	3.
Low-rent public housing programs	555	558.6	844.9	1,026.
Urban community development revenue sharing	552			490.
Total, community development housing		2,853.8	3,228.9	4,158.
Education and manpower:				
Funds appropriated to the President: Office of Economic Opportunity [4]	601	401.5	202.7	25.
Department of Health, Education, and Welfare:				
Elementary and secondary education	601	1,797.9	1,872.4	1,868.
Education revenue sharing	604			113.
Assistance to schools in federally affected areas	601	492.6	473.1	432.
Education of the handicapped	601	29.0	40.2	37.
Civil rights education	601	6.9	9.1	8.
Higher education activities	602	308.7	223.2	125.
(Portion to private institutions)	602	(86.3)	(53.3)	(27.
Vocational education	603	409.9	507.8	545.
Libraries and community services	605	71.4	77.4	90.
Educational renewal	605	112.0	128.0	143.
National Foundation for Higher Education	602		1.0	30.
Work incentive activities	607	122.8	186.7	261.
Emergency school assistance	601	51.4	89.6	313.
Department of Labor:				
Manpower development and training activities	607	1,107.1	1,428.8	1,495.
Grants to States for administration of employment security programs (trust fund)	607	759.0	831.7	887.
Emergency employment assistance	607		650.8	1,088.
Department of Interior: Bureau of Indian Affairs education and welfare services	601	21.4	22.7	24.
National Foundation on the Arts and the Humanities	608	4.9	6.4	6.
Corporation for Public Broadcasting	605	23.0	35.0	45.
Equal Employment Opportunities Commission	609	1.1	1.3	2.
Other		1.5	9.6	2.
Total, education and manpower		5,721.9	6,797.5	7,537.

See footnotes at end of table.

TABLE P-9.—FEDERAL AID TO STATE AND LOCAL GOVERNMENTS[1]—Continued

[Expenditures in millions of dollars]

Agency and program	Functional code	1971 actual	1972 estimate	1973 estimate
::				
ental health:				
Development of health resources	651	105.4	115.0	110.4
Prevention and control of health problems	652	60.1	109.4	211.1
alth services planning and development	651	341.5	317.3	327.9
(Portion to private, nonprofit institutions)		(156.2)	(133.2)	(107.9)
alth services delivery	652	330.1	469.1	496.6
eventive health services	653	5.1	7.1	49.4
alth manpower	651	262.5	253.2	298.4
edical assistance	652	3,362.3	4,400.9	3,432.5
Total, health		4,467.0	5,672.0	4,926.3
security:				
nds appropriated to the President: Disaster relief	703	122.3	146.8	96.6
partment of Health, Education, and Welfare:				
Income maintenance payments	702	5,527.5	7,196.9	6,884.9
Social services for welfare recipients	703	743.9	1,439.5	1,192.3
Vocational rehabilitation	703	507.5	587.6	694.3
partment of Agriculture: Food stamp	702	1,536.5	2,022.1	2,274.8
ld nutrition program and special milk	702	831.7	749.1	679.1
ial Security Administration: Special benefits for inors	701	.9	1.7	
Total, income security		9,270.3	12,143.7	11,822.0
s benefits and services: Veterans' Administration:				
to State homes	804	15.5	16.6	18.5
nts for construction of State nursing homes	804	2.9	4.0	5.3
ministrative expenses	804	.6	.6	.6
otal, veterans benefits and services		19.0	21.2	24.4
government:				
partment of the Interior:				
Grants to territories	909	59.5	85.9	88.8
Internal revenue collections, Virgin Islands (shared revenue)	909	13.2	15.6	16.7
partment of Justice: Law enforcement assistance	908	195.8	361.9	501.7
asury Department: Tax collections for Puerto ico (shared revenue)	909	84.9	90.0	95.0
ional Capital region:				
Federal payment to District of Columbia	909	139.0	180.0	202.0
Washington Metropolitan Transit Agency		34.8	89.4	163.7
er		58.3	69.9	74.8
otal, general government		585.5	892.8	1,142.7
revenue sharing	940		2,250.0	5,000.0
otal, grants and shared revenues		29,844.0	39,079.8	43,478.9

[1] ts-in-aid unless otherwise specified. Excludes loans which are shown separately in table P-10.
eral funds in 1970; trust funds in 1971 and 1972.
ounts added to categorical programs folded into special revenue sharing.
power programs transferred to Labor Department.
th services planning and development incorporates health services research and development, regional medical s, and medical facilities construction. Health services delivery incorporates comprehensive health planning and , maternal and child health, and patient care and special health services.
than $100,000.

TABLE P-10.—FEDERAL LOANS TO STATE AND LOCAL GOVERNMENTS

Agency and program	Disbursements			Net outlays		
	1971 actual	1972 estimate	1973 estimate	1971 actual	1972 estimate	19 estim
Natural resources:						
Department of the Interior: Reclamation loans	6.5	15.7	17.0	5.0	14.0	15.
Total, natural resources	6.5	15.7	17.0	5.0	14.0	15.
Commerce and transportation:						
Department of Commerce: Economic development assistance	16.6	20.7	16.6	13.2	15.7	12.
Department of Transportation:						
Mass transportation facilities				−.2	−.2	
Right-of-way revolving fund	32.9	51.0	55.0	32.9	51.0	55
Total, Commerce and Transportation	49.5	71.7	71.6	45.9	66.5	67.
Community development and housing:						
Department of Housing and Urban Development:						
Low-rent public housing fund	710.2	825.0	900.0	−.1	10.0	10
Housing management: Revolving fund	1.5			1.5	−1.0	−1
Community development	576.4	613.6	656.8	10.1	39.0	35
Total, community development and housing	1,288.1	1,438.6	1,556.8	11.5	48.0	37
Education and manpower:						
Department of Health, Education, and Welfare: Higher education activities	17.7	11.6	4.1	15.5	9.8	4
Department of Housing and Urban Development: College housing	79.7	55.8	49.5	48.3	23.2	18
Total, education and manpower	97.4	67.4	53.6	63.8	32.0	22
General government:						
Department of Defense—Civil				−.4	−.4	
Department of the Interior: Administration of territories	2.5	7.0	5.0	2.2	6.5	4
General Services Administration: General activities				−8.3	−1.1	−1
District of Columbia	91.9	217.8	217.8	57.5	167.3	166
Total, general government	94.4	224.8	222.8	51.0	172.3	168
Total	1,535.9	1,818.2	1,921.8	177.2	332.8	305

Exhibit 3

STATES WITH ANTI-DISCRIMINATION STATUTES COVERING STATE EMPLOYMENT (33 STATES INCLUDING DISTRICT OF COLUMBIA)

Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, and Idaho.

Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, and Minnesota.

Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York,[1] Ohio, and Oklahoma.

Oregon, Pennsylvania, Utah, Washington, West Virginia, Wisconsin,[1] Wyoming, and District of Columbia.

SUMMARY OF COVERAGE

Number of States covered

Specifically covered by legislation
Covered by interpretation of legislation

Total

[1] By interpretation.

[Not Covered by Legislation]

ered by Governor's Code	2
covered in Act of code	[1] 5
statute or code	11
Total	18
Grand Total	[2] 51

Other information—Age

es with specific statutory coverage of State employment with regard age discrimination	5
es with specific exclusion	0

ouisiana and North Dakota have age discrimination laws which make no mention of State as an employer. Both have no other fair employment coverage. For this report are included among those states with no act or code.
otal of 51 States includes the District of Columbia.

COVERED

States specifically covering state employment under the terms of their fair oyment practice legislation: (total of 27).
Arizona—Arizona Civil Rights Act (effective 7/20/65).
) "employer" means . . . the term shall include the state and any political vision thereof. (Sec. 41–1461. Definitions.)
California—California Fair Employment Practice Act (effective 11/8/67).
. 1413(d) "employer", except as hereinafter provided, includes . . . the or any political or civil subdivision thereof and cities (California FEPA).
Colorado—Colorado Anti-Discrimination Act of 1957, as amended (effective 65).
) "Person" shall mean the State of Colorado and all political subdivisions gencies thereof . . . (5) "employer" shall mean the State of Colorado or olitical subdivision or board, commission, department, institution or school et thereof . . . (Colorado Anti-Discrimination Act of 1957 Sec. 80–21–2. itions).
Connecticut—Connecticut Fair Employment Practice Act (effective 5/19/67). ded 6/29/67).
) "Person" shall mean the state and all political subdivisions and agencies of . . . (f) "employer" includes the State and political subdivisions thereof Conn. FEPA, Sec. 31–122. Definitions)
Idaho—Idaho Fair Employment Practices Act (effective 5/2/61).
) "every person" shall be construed to include this state and its political visions, boards and commissioners, engaged in or exercising control over perations of any place of public resort, accommodations, assemblage or ement. (Sec. 2, Chap. 309, Laws of Idaho 1961).
Illinois—Illinois Fair Employment Practices Act (approved 7/21/61. Last dment effective 7/21/68).
) "employer" includes and means . . . (ii) the state and any political subdi- is, municipal corporation or other governmental unit or agency thereof, ut regard to the number of employees . . . (Sec. 2(d)(ii) Illinois FEPA).
Indiana—Indiana Civil Rights Act (last amendment approved 3/11/67).
• term "employer" includes the state, or any political or civil subdivision of and any person employing six or more persons within the state . . . (last dment approved 3/11/67).
Iowa—Iowa Civil Rights Act of 1965 (effective 5/7/65).
(2) "person" means . . . and the State of Iowa and all political subdivisions gencies thereof.
"employer" means the State of Iowa or any political subdivision, board, ission, department, institution, or school district thereof . . . (Sec. 2 ICRA).
Kansas—Kansas Act Against Discrimination (approved 4/13/61).
the term "employer" includes . . . and the State of Kansas and all political unicipal subdivisions thereof . . . (Sec. 44–1002).
Kentucky—Kentucky Civil Rights Act (effective 7/1/66).

(a) "Person includes" . . . the State, any of its political or civil subdivisions, agencies . . . (Sec. 201).

11. Massachusetts—Massachusetts Fair Employment Practices Act (effective 7/27/67).

(1) the term "person" includes . . . the commonwealth and all political subdivisions, boards and commissioners thereof . . . (Sec. 1).

(5) the term "employer" . . . shall include the commonwealth and all political subdivisions, boards, departments, and commissions thereof.

12. Michigan—Michigan Fair Employment Practices Act (approved 6 29 55).

(b) the term "employer" includes the State or any political civil or subdivision thereof. (Sec. 423.302 definitions).

13. Minnesota—Minnesota State Act Against Discrimination (effective 7 1 5).

"Person" includes . . . and the State and its departments, agencies, and political subdivisions . . . (Subd. 7, AAD).

14. Missouri—Missouri Fair Employment Practices Act of 1961 (effective 10/13/61).

(3) "employer" includes the state, or any political or civil subdivision thereof (Sec. 296.010 FEPA).

15. Montana—Montana Fair Employment Practices Act (approved 3 6 65).

(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

16. Nebraska—Nebraska Fair Employment Practices Act (effective, as amended, October 23, 1967).

(Copy of the most recent Nebraska amendment not available at the time of the writing. Amendment covers the State and its political subdivisions, as confirmed by a telephone call to Emmett Dennis, Executive, Director, Nebraska Equal Employment Opportunity Commission on March 5, 1968.)

17. Nevada—Nevada Fair Employment Practices Act (effective 7 1 67).

(4) "person" includes . . . the State of Nevada or any of its political subdivisions, as well as a natural person.

18. New Hampshire—New Hampshire Law Against Discrimination (effective 9/5/65.)

(1) the term "person" includes . . . and the State and all political subdivisions, boards and commissions thereof . . . (5) term "employer" does not include . . . but shall include the State and all political subdivisions, boards, departments and commissions thereof. (Sec. 354–A :3, I.A.D.).

19. New Mexico—New Mexico Equal Employment Opportunity Act (effective 6/10/49).

(b) "employer" includes the state or any political or civil subdivision thereof . . . (Sec. 59–4–3 EEO Act).

20. Ohio—Ohio Fair Employment Practices Act (effective 12 9 67).

(b) "employer" includes the state or any political or civil subdivision thereof (Sec. 4112.01 FEP).

21. Oklahoma—Fair Employment Practices Act (effective 6/27/63).

It is hereby prohibited for any department or agency of the State of Oklahoma, or any official employees of the same for or on behalf of the State of Oklahoma.

The Oklahoma FEP Act provides that complaints may be filed with the State Personnel Board which is empowered to make investigations and hold hearings. The Human Rights Commission may file a complaint with the Board and appear before it also.

Oklahoma Civil Rights Act (effective 5, 17, 69) Sec. 201(5) "person" includes . . . the state or any governmental entity or agency.

22. Pennsylvania—Pennsylvania Human Relations Act (effective 1/26/68).

(b) the term "employer" includes the commonwealth or any political subdivision or board, department, commission or school district thereof . . .

23. Utah—Utah Discrimination Act of 1965 (effective 5 11 65).

(M) "Person" shall mean the State of Utah and political subdivisions and agencies thereof . . .

5) "employer" shall mean the State of Utah or any political subdivision, rd, commission, department, institution or school district thereof . . . (Sec. 7–2. Definitions, Anti-Discrimination).

4. Washington—Washington Law Against Discrimination in Employment (ap- ed 3/19/49).

Person" includes any political subdivisions of the state and any agency or rumentality of the state or of any political subdivision thereof . . . (Sec. 0.040 L.A.D.)

5. West Virginia—West Virginia Human Rights Act (effective 7/1/67).

1) the term "employer" means the state, or any political subdivision thereof. '. 5–11–3 HRA).

6. Wyoming—Wyoming Fair Employment Practice of 1965.

2) "employer" shall mean the State of Wyoming or any political subdivision oard, commission, department, institution or school district thereof, (sec. 2, ').

7. District of Columbia—District Police Regulations (Order No. 61–846, 61).

8. Delaware—Fair Employment Practices Act amendments (approved by rnor 7/15/71).

Employer includes the State or any political subdivision or board, department, nission or school district thereof and any person employing four or more ons within the State . . ."

9. Oregon—Fair Employment Practice Act as amended (effective 8/23/69).

) "Employer" means any person, including state agencies, political sub- ions and municipalities, who in this state, directly or through an agent, ges or utilizes the personal service of one or more employees."

States with laws not mentioning the state as an employer which includes such coverage by interpretation

New York (a)—Law Against Discrimination (effective as amended, 6/1/67).
Wisconsin (b)—Fair Employment Practices Act (effective as amended. 1/67).

) Confirmed by an Attorney General's Opinion issued February 14, 1946.
) Commission interpretation confirmed by telephone call to Steve Reilly, utive Secretary, March 5, 1968.

States which cover statement employment only by Governor's Code

Alaska (except age discrimination, which is covered specifically by stat -Governor's Code of Fair Practices for State Agencies (Article I. Para. I).
New Jersey—Governor's Code of Fair Practices (Article I).

States which include reference to state government, with limitations on enforcement

Maryland—Maryland Anti-Discrimination Act (effective 6/1/67).
b) "the term "employer" means a person engaged in an industry or business has twenty-five or more employees . . . and any agency of such a person; term does include the State of Maryland to the extent as may be provided is Article. . . ."
3. "No officer or employee of a State agency, department or board shall iminate in the hiring, firing or discriminate in any other manner against person because of race, creed, color, sex, age or national origin; provided ver, that no employment practice not unlawful under Sections 17, 18, and 19 is Article shall be deemed as unlawful employment practice by the State. the Commission has received reliable information from any individual or iduals, and after a proper investigation by the Commission, it shall be de- ned by the Commission that an officer or employee of a State agency . . . ngaged in discrimination . . . against any person . . . and if the Commission successful in resolving the complaint, then the Commission shall report such the Governor, and he shall review the case and findings of the Commission. Governor is satisfied that an act of discrimination has taken place, he shall

remove or suspend said officer or employee or take such action as he deems p
propriate under the circumstances. Provided, however, that any removal, s
pension, or other action affecting any officer or employee who is covered by
State Merit System shall be subject to all rules and regulations pertaining the
to. The authority of the Commission relating to discrimination in State agenci
boards or departments shall be limited to investigation, conciliation, mediati
and reporting to the Governor as provided in this Sec. 11B.

2. Florida—Fair Employment Practices, amended (effective 6 26 69).

Bars discrimination against State and municipal employees, and says that
complaint of discrimination should be filed with the offending governmenta
agency for an administrative hearing, and judicial review, as provided in t
State Administrative Procedure Act.

V. *The following states have FEP statutes or codes but no mention is made o
them of the state:*

1. Hawaii.
2. Maine.
3. Rhode Island (covered in Age Law).
4. Tennessee.
5. Vermont.

VI. *The following states have no FEP statute or codes covering state emplo
ment practices:*

1. Alabama.
2. Arkansas.
3. Georgia.
4. Louisiana.
5. Mississippi.
6. North Carolina.
7. North Dakota.
8. South Carolina.
9. South Dakota.
10. Virginia.
11. Texas.

OTHER INFORMATION—AGE

VII. *States which have specific statutory coverage of state employment wi
respect to age discrimination:*

1. Alaska—has separate age discrimination provisions which became effecti
6/5 63. Regular FEP statute does not mention the state.
2. Rhode Island—has separate age discrimination provisions which became e
fective 4/17 62. Regular FEP statute does not mention the state.
3. Texas—has exclusive age discrimination provisions. No regular FEP statu
whatever.
4. Delaware—FEP statute specifically covers age in state employment.
5. Oregon—FEP statute specifically covers age in state employment.

TABLE 5. NUMBER OF PUBLIC EMPLOYEES, BY LEVEL OF GOVERNMENT AND BY STATE: OCTOBER

State	All employees (full-time and part-time)					Full-time equivalent employment of State and local governments					
	All governments	Federal (civilian)[1]	State and local governments			Number			Number per 10,000 population		
			Total	State	Local	Total	State	Local	Total	State	Local
U.S., total	12,553,911	2,837,827	9,716,084	2,613,645	7,102,439	8,159,735	2,179,227	5,980,508	404.1	107.9	296.1
Alabama	205,432	58,092	147,340	44,284	103,056	128,268	37,777	90,491	363.2	106.9	256.2
Alaska	31,996	15,350	16,646	8,837	7,809	14,780	7,962	8,818	524.1	282.3	241.7
Arizona	113,374	27,644	85,730	26,083	59,647	72,195	19,935	52,260	426.4	117.7	308.6
Arkansas	100,545	17,494	83,051	28,005	55,046	70,238	23,113	47,125	352.0	115.8	236.2
California	1,364,131	326,338	1,037,793	230,139	807,654	863,388	191,591	671,797	444.0	98.5	345.5
Colorado	168,397	44,143	124,254	39,951	84,303	100,359	30,605	69,754	477.8	145.7	332.1
Connecticut	144,063	20,065	123,998	41,459	82,539	109,722	37,264	72,458	365.7	123.2	241.5
Delaware	30,282	4,712	25,570	11,343	14,227	23,409	10,666	12,743	433.4	197.5	235.9
District of Columbia	269,982	220,966	49,016		49,016	44,884		44,884	562.4		562.4
Florida	380,216	72,488	307,728	72,420	235,308	275,130	66,597	208,533	433.0	104.8	328.1
Georgia	284,570	79,655	204,915	53,157	151,758	181,359	47,424	133,935	390.7	102.1	288.5
Hawaii	69,472	29,213	40,259	30,305	9,954	35,039	25,389	9,650	441.2	319.7	121.5
Idaho	48,252	3,428	39,824	12,782	27,042	30,701	9,796	10,905	427.5	136.4	291.1
Illinois	621,978	118,339	503,639	122,215	381,424	410,136	97,987	312,149	371.2	88.7	282.5
Indiana	275,179	44,931	230,248	67,331	162,917	188,510	50,540	137,970	368.3	98.7	269.5
Iowa	169,419	18,588	150,831	41,215	109,616	117,857	32,612	85,245	423.7	117.2	306.5
Kansas	154,738	23,988	130,750	39,433	91,317	101,485	29,834	71,651	437.2	128.5	308.7
Kentucky	172,005	38,647	133,358	41,771	91,587	112,695	37,172	75,523	348.6	115.0	233.6
Louisiana	214,036	29,869	184,167	67,507	116,660	158,281	54,001	104,280	422.6	144.1	278.4
Maine	66,919	16,931	49,988	16,543	33,535	39,360	15,312	24,048	402.4	156.5	245.8
Maryland	296,686	124,551	172,135	46,506	125,629	158,791	44,116	114,675	421.7	117.1	304.5
Massachusetts	316,092	68,048	248,044	57,754	190,290	219,675	54,620	165,055	401.8	99.9	301.9
Michigan	494,629	55,275	439,354	115,287	324,067	349,844	88,118	261,726	399.0	100.5	298.5
Minnesota	229,064	29,914	199,150	54,998	144,152	152,939	42,019	110,920	413.3	113.5	299.7
Mississippi	125,660	21,194	104,466	30,295	74,171	88,964	25,742	63,222	376.9	109.0	267.8
Missouri	276,933	68,620	208,313	62,845	145,468	174,248	50,732	123,516	374.6	109.0	265.5
Montana	50,146	10,878	39,268	15,844	23,424	31,302	12,261	19,041	451.0	176.6	274.3
Nebraska	105,901	16,296	89,605	24,968	64,637	71,474	20,588	50,886	493.2	142.0	351.1
Nevada	36,454	9,027	27,427	7,426	20,001	23,930	6,493	17,437	523.6	142.0	381.5
New Hampshire	41,768	5,188	36,580	12,170	24,410	25,498	9,714	15,784	355.6	135.4	220.7
New Jersey	365,724	70,460	295,264	60,364	234,900	253,458	53,263	200,195	354.5	74.5	280.8
New Mexico	83,320	26,974	56,346	22,812	33,534	47,102	18,202	28,900	473.8	183.1	290.7
New York	1,203,820	187,767	1,016,053	192,443	823,610	895,688	177,316	718,372	488.8	96.7	392.1

See footnotes on next page.

TABLE 5.—NUMBER OF PUBLIC EMPLOYEES, BY LEVEL OF GOVERNMENT AND BY STATE: OCTOBER—Continued

State	All employees (full-time and part-time)					Full-time equivalent employment of State and local governments					
			State and local governments			Number			Number per 10,000 population		
	All governments	Federal (civilian) [1]	Total	State	Local	Total	State	Local	Total	State	Local
North Carolina	251,623	38,874	212,749	64,918	147,831	183,043	56,462	126,581	351.6	108.4	243.1
North Dakota	54,005	7,942	46,063	14,139	31,924	27,568	10,264	17,304	448.2	166.8	281.3
Ohio	573,588	105,793	467,795	103,730	364,065	378,955	83,088	295,867	352.8	77.8	275.4
Oklahoma	183,710	57,718	125,992	47,179	78,813	103,075	35,741	67,334	401.3	139.1	262.2
Oregon	139,813	24,936	114,877	40,360	74,517	92,012	30,585	61,427	452.8	150.5	302.2
Pennsylvania	618,041	149,183	468,858	128,488	340,370	403,966	114,458	289,508	342.2	96.9	245.2
Rhode Island	55,131	16,143	38,988	15,747	23,241	33,799	13,466	20,333	371.0	147.8	223.1
South Carolina	144,290	31,314	112,976	34,991	77,985	94,503	30,645	63,858	351.0	113.8	237.2
South Dakota	55,738	9,979	45,759	13,217	32,542	32,217	10,002	22,215	488.8	151.7	337.1
Tennessee	217,312	42,686	174,626	50,893	123,733	157,828	44,474	113,354	396.0	111.6	284.4
Texas	631,514	153,409	478,105	123,161	354,944	421,809	101,124	320,685	377.0	90.3	286.6
Utah	100,968	41,247	59,721	23,022	36,699	44,722	16,410	28,312	427.9	157.0	270.9
Vermont	26,192	3,811	22,381	8,774	13,607	16,818	7,580	9,238	383.0	172.6	210.4
Virginia	348,267	140,798	207,469	74,966	132,503	180,751	64,009	116,742	387.1	137.0	250.0
Washington	248,313	58,100	190,213	64,953	125,260	154,040	51,947	102,093	452.7	152.6	300.0
West Virginia	94,529	13,706	80,823	34,749	46,074	68,265	28,976	39,289	375.2	159.2	215.9
Wisconsin	270,880	26,701	244,179	63,822	180,357	176,529	44,801	131,728	417.0	105.8	311.1
Wyoming	28,814	5,414	23,400	8,134	15,266	19,126	6,434	12,692	597.6	201.0	396.6

[1] Federal civilian employess with the United States as of June 1969. Total accordingly differs from Federal data reported on table 1, which pertain to October 1969 and include employees working outside the United States.

[2] See table 10.

Note: Statistics for local governments are subject to sampling variation; see text. Because of rounding, detail may not add to totals.

TERNATIONAL ASSOCIATION OF OFFICIAL HUMAN RIGHTS AGENCIES,
HARTFORD, CONN.,
January 30, 1972.

or HARRISON A. WILLIAMS, Jr.,
nan, Committee on Labor and Public Welfare,
enate, Washington, D.C.

reas, the membership of the Association of Official Human Rights Agencies
iposed of official state, city and county agencies charged with the respon-
y for improving relations between various groups in our society and, partic-
. for the elimination of discrimination in, among other areas of national
n the vital field of employment; and
reas, many of the member agencies of the aforementioned association have
e responsibility for the elimination of discrimination in employment; and
reas, said agencies have come to the realization that their attempts to
ate such discrimination in employment are substantially more effective
they possess adequate enforcement powers to obtain compliance with laws
iting such discrimination; and
reas, title VII of the Civil Rights Act of 1964 established the Federal Equal
ment Opportunity Commission and designated it as the Federal agency
esponsibility for the elimination of discrimination in employment nation-
and
reas, title VII of the Civil Rights Act of 1964 failed to give the Federal
Employment Opportunity Commission adequate enforcement powers to
ent this important national mandate of eliminating discrimination in
ment; and
reas, the international association of official human rights agencies and
nber agencies are desirous of establishing a more effective mechanism for
nination of discrimination in employment,
hereby resolved:
e Association of Official Human Rights Agencies supports enforcement
ease and desist power for the Equal Employment Opportunity Commission
itle VII of the Civil Rights Act of 1964; and
e association supports Senate Bill 2515 of the 92nd Congress, first session,
rted by the Senate Committee on Labor and Public Welfare on October 28,
and
e association specifically supports legislation which would give the Federal
Employment Opportunity Commission the power to seek direct enforce-
f that statute through the conduct of hearings and the issuance of cease
ist orders; and
e association specifically opposes weakening amendments to that legis-
which would curtail the rights of an individual changing party to file a
court if the Equal Employment Opportunity Commission fails to bring
ment activities; or which would limit the back pay relief available as
a remedy; or which would circumscribe the rights of EEOC and the
courts to provide a remedy eliminating discrimination for an entire class
ed by discrimination; or which would provide that any particular proceed-
exclusive for dealing with employment discrimination; or which would
e right of the Equal Employment Opportunity Commission to control its
igation in court; or which would circumscribe the right of the Federal
Employment Opportunity Commission to initiate a commissioners charge
wn motion; and
ecifically, the association supports retention in title VII of the Civil
Act of 1964 of the provisions in section 706 (b) and (c) thereof which
that State administrative agencies administering enforceable State legis-
prohibiting discrimination in employment shall have a first opportunity
ess any charge alleging discrimination in employment; and
rects that this resolution be communicated to the chairman of the Senate
ttee on Labor and Public Welfare, the chairman of the House Committee
ication and Labor and to such other members of Congress as shall be
riate.

ARTHUR GREEN,
Chairman.

MARYLAND v. WIRTZ, SYLLABUS, MARYLAND ET AL. v. WIRTZ, SECRETARY OF LA
ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYL

No. 742. Argued April 23, 1968.—Decided June 10, 1968.

The Fair Labor Standards Act, as enacted in 1938, required every emplo to pay each of his employees "engaged in commerce or in the production goods for commerce" certain minimum wages and overtime pay. The definit of employer excluded States and their political subdivisions. In 1961 the A coverage was extended beyond employees individually connected to interst commerce to include all employees of certain "enterprises" engaged in comme or production for commerce. In 1966 the Act was amended to cover cert hospitals, institutions, and schools, and to modify the definition of employer remove the exemption of the States and their subdivisions with respect employees of hospitals, institutions, and schools. Appellants, 28 States and school district, sought to enjoin enforcement of the Act as it applies to scho and hospitals operated by the States or their subdivisions. They argued t the "enterprise concept" of coverage and the inclusion of state-operated hospit and schools were beyond Congress' power under the Commerce Clause, t the remedial provisions of the Act, if applied to the States, would conflict w the Eleventh Amendment, and that school and hospital enterprises do not ha the statutorily required relationship to interstate commerce. A three-ju district court declined to issue a declaratory judgment or an injunction, a concluded that the adoption of the "enterprise concept" and the extension coverage to state institutions do not, on the face of the Act, exceed Congr commerce power. That court declined to consider the Eleventh Amendment a statutory relationship contentions.

Held:

1. The "enterprise concept" of coverage is clearly within the power of Congr under the Commerce Clause. Pp. 188–193.

(a) A rational basis for Congress' finding the scheme necessary to the p tection of commerce was the logical inference that the pay and hours of employ of an interstate business who are not production workers, as well as those w are, affect an employer's competition with companies elsewhere. *United State Darby*, 312 U.S. 100, followed. Pp. 188–191.

(b) Another rational basis is the promotion of labor peace by the regulation wages and hours, subjects of frequent labor disputes. Pp. 191–192.

(c) The class of employers subject to the Act, approved in *Darby*, *supra*, w not enlarged by the addition of the "enterprise concept." P. 193.

2. The commerce power provides a constitutional basis for extension of t Act to state-operated schools and hospitals. Pp. 193–199.

(a) Congress has "interfered with" state functions only to the extent that subjects a State to the same minimum wage and over-time pay limitations as o employers whose activities affect commerce. Pp. 193–194.

(b) Labor conditions in schools and hospitals can affect commerce and a within the reach of the commerce power. Pp. 194–195.

(c) Where a State is engaging in economic activities that are validly regula by the Federal Government when engaged in by private persons, the State may forced to conform its activities to federal regulation. *United States* v. *Califor* 297 U.S. 175. Pp. 195–199.

3. Questions concerning the States' sovereign immunity from suit and whet particular state-operated institutions have employees handling goods in c merce are reserved for appropriate concrete cases. Pp. 199–201.

269 F. Supp. 826, affirmed.

Max M. Wilner, Assistant Attorney General of Maryland, and Charles A Wright argued the cause for appellants. With Mr. Wilner on the brief assistant the State of Maryland et al. were the Attorneys General for th jurisdictions as follows: Francis B. Burch of Maryland, Crawford C. Ma of Texas, MacDonald Gallion of Alabama, Darrell F. Smith of Arizona, Joe P ell of Arkansas, Duke W. Dunbar of Colorado, David Buckson of Delawa Earl Faircloth of Florida, Bert T. Kobayashi of Hawaii, William G. Clark Illinois, Richard C. Turner of Iowa, Robert C. Londerholm of Kansas, James Erwin of Maine, Elliot L. Richardson of Massachusetts, Joe T. Patterson Mississippi, Norman H. Anderson of Missouri, Clarence A. H. Meyer of Nebras Arthur J. Sills of New Jersey, Boston E. Witt of New Mexico, T. Wade Bruto North Carolina, Helgi Johannesson of North Dakota, William B. Saxbe of O

Blankenship of Oklahoma, Daniel R. McLeod of South Carolina, Frank L.
r of South Dakota, James L. Oakes of Vermont, Robert Y. Button of Vir-
and James E. Barrett of Wyoming; and A. J. Carubbi, Jr., Executive
ant Attorney General of Texas. Hawthorne Phillips, Assistant Attorney
al of Texas, and James V. Noble, Assistant Attorney General of New
o. With Mr. Wright on the brief for appellant the State of Texas were
s. Martin, Carubbi, and Phillips, and Nola White, First Assistant Attorney
al. Cecil A. Morgan filed a brief for appellant Fort Worth Independent
l District.

icitor General Griswold argued the cause for appellees. With him on the
were Assistant Attorney General Weisl, Louis F. Claiborne, John S. Martin,
d Morton Hollander.

efs of amici curiae, urging affirmance, were filed by J. Albert Woll, Laurence
and Thomas E. Harris for the American Federation of Labor and Congress
dustrial Organizations, and by Henry Kaiser and Ronald Rosenberg for the
can Federation of State, County, and Municipal Employees, AFL–CIO.

JUSTICE HARLAN delivered the opinion of the Court.

riginally enacted,[1] the Fair Labor Standards Act of 1938 required every
er to pay each of his employees "engaged in commerce or in the production
ds for commerce" [2] a certain minimum hourly wage, and to pay at a higher
r work in excess of a certain maximum number of hours per week. The Act
l the term "employer" so as to exclude "the United States or any State or
al subdivision of a State. . . ."[3] This case involves the constitutionality
sets of amendments to the original enactment.

961, Congress changed the basis of employee coverage: instead of extend-
otection to employees individually connected to interstate commerce, the
w covers all employees of any "enterprise" engaged in commerce or produc-
r commerce, provided the enterprise also falls within certain listed cate-

In 1966, Congress added to the list of categories the following:

is engaged in the operation of a hospital, an institution primarily en-
in the care of th sick, the aged, the mentally ill or defective who reside
premises of such institution, a school for the mentally or physically
apped or gifted children, an elementary or secondary school, or an in-
on of higher education (regardless of whether or not such hospital, institu-
r school is public or private or operated for profit or not for profit.)"[5]

ne same time, Congress modified the definition of "employer" so as to re-
he exemption of the States and their political subdivisions with respect
loyees of hospitals, institutions, and schools.[6]

State of Maryland, since joined by 27 other States and one school district,
t this action against the Secretary of Labor to enjoin enforcement of the
sofar as it now applies to schools and hospitals operated by the States
r subdivisions. The plaintiffs made four contentions. They argued that
pansion of coverage through the "enterprise concept" was beyond the power
gress under the Commerce Clause. They contended that coverage of state-
d hospitals and schools was also beyond the commerce power. They as-
that the remedial provisions of the Act,[7] if applied to the States, would
with the Eleventh Amendment. Finally, they urged that even if their
utional arguments were rejected, the court should declare that schools
spitals, as enterprises, do not have the statutorily required relationship
state commerce.

ree-judge district court, convened pursuant to 28 U.S.C. § 2282, declined to
declaratory judgment or an injunction.[8] Three opinions were written.
Winter and Thomsen, constituting the majority, concluded for different

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tat. 1060.
(a), 7(a), 52 Stat. 1062, 1063.
d), 52 Stat. 1060.
minimum wage requirement, 29 U.S.C. § 206 (1964 ed., Supp. II), now reads as
: "'(a) Every employer shall pay to each of his employees who in any workweek
ed in commerce or in the production of goods for commerce, or is employed in an
se engaged in commerce or in the production of goods for commerce, wages at the
g rates . . .' The maximum hours requirement, 29 U.S.C. § 207 (1964 ed.,
I), now contains a similar definition of covered employees. The term "enterprise
in commerce or in the production of goods for commerce" is defined by 29 U.S.C.
(1964 ed., Supp. II) to mean "an enterprise which has employees engaged in
ce or in the production of goods for commerce, including employees handling,
or otherwise working on goods that have been moved in or produced for commerce
erson, and which—[falls in any one of four listed categories] . . . ."
tat. 832, 29 U.S.C. § 203(s)(4) (1964 ed., Supp. II).
tat. 831, 29 U.S.C. § 203(d) (1964 ed., Supp. II).
.S.C. §§ 216(b), 216(c), 217.
F. Supp. 826.

reasons that the adoption of the "enterprise concept" of coverage and the ex
sion of coverage to state institutions could not be said, on the face of the
to exceed Congress' power under the Commerce Clause. Both declined to con
the Eleventh Amendment and statutory contentions. Judge Northrop dissen
concluding that the amendments exceeded the commerce power because
transgressed the sovereignty of the States.

We noted probable jurisdiction of the plaintiffs appeal, 389 U.S. 1031.
reasons to follow, we affirm the judgment of the District Court.

I

We turn first to the adoption in 1961 of the "enterprise concept." Whereas
Act originally extended to every employee "who is engaged in commerce o
the production of goods for commerce," it now protects every employee who
employed in an enterprise engaged in commerce or in the production of go
for commerce." [9] Such an enterprise is defined as one which, along with
qualifications, "has employees engaged in commerce or in the production
goods for commerce . . ." [10] Thus the effect of the 1961 change was to extend
tection to the fellow employees of any employee who would have been prote
by the original Act, but not to enlarge the class of *employers* subject to the
In *United States* v. *Darby*, 312 U.S. 100, this Court found the original A
legitimate exercise of congressional power to regulate commerce among
States. Appellants accept the *Darby* decision, but contend that the extensio
protection to fellow employees of those originally covered exceeds the comm
power. We conclude, to the contrary, that the constitutionality of the "enterp
concept" is settled by the reasoning of *Darby* itself and is independently est
lished by principles stated in other cases.

Darby involved employees who were engaged in producing goods for
merce. Their employer contended that since manufacturing is itself an intrast
activity, Congress had no power to regulate the wages and hours of manu
turing employees. The first step in the Court's answer was clear: "[Cong
may] by appropriate legislation regulate intrastate activities where they hav
substantial effect on interstate commerce." [11]

The next step was to discover whether such a "substantial effect" existed. C
gress had found that substandard wages and excessive hours, when imposed
employees of a company shipping goods into other States, gave the expor
company an advantage over companies in the importing States. Having
found, Congress decided as a matter of policy that such an advantage in in
state competition was an "unfair" one, and one that had the additional
desirable effect of driving down labor conditions in the importing States. [12] T
Court was of course concerned only with the finding of a substantial effect
interstate competition, and not with the consequent policy decisions. In acc
ing the congressional finding, the Court followed principles of judicial rev
only recently rearticulated in *Katzenbach* v. *McClung*, 379 U.S. 294, 303-304:

"Of course, the mere fact that Congress has said when particular activity sh
be deemed to affect commerce does not preclude further examination by
Court. But where we find that the legislators . . . have a rational basis for find
a chosen regulatory scheme necessary to the protection of commerce, our
vestigation is at an end." [13]

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[9] U.S.C. §§ 206(a), 207(a) (1964 ed., Supp. II).
[10] 29 U.S.C. § 203(s) (1964 ed., Supp. II).
[11] 312 U.S. at 119. The Act prohibited both the interstate transportation of goods
duced under substandard labor conditions, and the maintenance of such conditions
ucts. The first prohibition, a restraint on commerce itself, was upheld against the
tention that its real motive or purpose was to regulate manufacturing. The lang
quoted in the text answered a challenge to the second prohibition.
[12] Section 2 of the Act, 52 Stat. 1060, 29 U.S.C. § 202, reads in part as follows:
"The Congress hereby finds that the existence, in industries engaged in commerce or
the production of goods for commerce, of labor conditions detrimental to the maint
of the minimum standard of living necessary for health, efficiency, and general well
. . . (2) burdens commerce and the channels and instrumentalities of commerce
spread and perpetuate such labor conditions among the workers of the se
(3) burdens commerce and the free flow of goods in commerce; (4) constitutes
unfair method of competition in commerce . . ."
[13] In *Katzenbach* v. *McClung*, it appeared that Congress had undertaken extensive
hearings. The commercial need for the statute there involved. A major contention
appellants in the present case is that the legislative history of the amendments now
us has no factual predicate for extensions of the original Act. To the extent that the
is quite incorrect. The original Act stated Congress' findings and purposes
1938. Subsequent extensions of coverage were presumably based on similar findings
purposes with respect to the areas newly covered. We are not concerned with the ma
in which Congress reached its factual conclusions.

re was obviously a "rational basis" for the logical inference that the pay
urs of production employees affect a company's competitive position.
logical inference does not stop with production employees. When a com-
does an interstate business, its competition with companies elsewhere is
d by all its significant labor costs, not merely by the wages and hours of
employees who have physical contact with the goods in question. Conse-
y, it is not surprising that this Court has already explicitly recognized
'ongress' original choice to extend the Act only to certain employees of
ate enterprises was not constitutionally compelled; rather, Congress de-
at that time, "not to enter areas which it might have occupied [under the
erce power]." *Kirschbaum Co.* v. *Walling*, 316 U.S. 517, 522.

"enterprise concept" is also supported by a wholly different line of analy-
the original Act, Congress stated its finding that substandard labor con-
s tended to lead to labor disputes and strikes, and that when such strife
ted businesses involved in interstate commerce, the flow of goods in com-
was itself affected.[14] Congress therefore chose to promote labor peace
ulation of subject matter, wages, and hours, out of which disputes fre-
y arise. This objective is particularly relevant where, as here,[15] the enter-
in question are significant importers of goods from other States.

ough the Court did not examine this second objective in *Darby*, other cases
ound a "rational basis" for statutes regulating labor conditions in order
ect interstate commerce from labor strife. The National Labor Relations
had been passed because "[t]he denial by employers of the right of em-
s to organize and the refusal by employers to accept the procedure of col-
bargaining lead to strikes and other forms of industrial strife or unrest,
have the intent or the necessary effect of burdening or obstructing com-
. . ."[16]

abor Board v. *Jones & Laughlin*, 301 U.S. 1, this Court held that the
al Labor Relations Act (NLRA) was within the commerce power. The
of the decision was contained in two propositions: "the stoppage of those
dent's] operations by industrial strife would have a most serious effect
nterstate commerce," *id.*, at 41; and "[e]xperience has abundantly dem-
ed that the recognition of the right of employees to self-organization and
representatives of their own choosing for the purpose of collective bar-
is often an essential condition of industrial peace." *Id.*, at 42.

Fair Labor Standards Act, including the present "enterprise" definition
erage, may also be supported by two propositions. One is identical with
st proposition supporting the NLRA: strife disrupting an enterprise in-
in commerce may disrupt commerce. The other is parallel to the second
tion supporting the NLRA: there is a basis in logic and experience for
clusion that substandard labor conditions among any group of employees,
r or not they are personally engaged in commerce or production, may
strife disrupting an entire enterprise.

her the "enterprise concept" is defended on the "competition" theory or
"labor dispute" theory, it is true that labor conditions in businesses having
few employees engaged in commerce or production may not affect com-
very much or very often. Appellants therefore contend that defining
l enterprises in terms of their employees is sometimes to permit "the tail
the dog." However, while Congress has in some instances left to the
or to administrative agencies the task of determining whether commerce
ted in a particular instance. *Darby* itself recognized the power of Con-
stead to declare that an entire class of activities affects commerce.[18] The
estion for the courts is then whether the class is "within the reach of the
power."[19] The contention that in Commerce Clause cases the courts have
to excise, as trivial, individual instances falling within a rationally de-
ass of activities has been put entirely to rest. *Wickard* v. *Filburn*, 317 U.S.
7–128; *Polish Alliance* v. *Labor Board*, 322 U.S. 643, 648; *Katzenbach* v.
g, *supra*, at 301. The class of employers subject to the Act was not en-
by the addition of the enterprise concept. The definition of that class is as
l now as it was when *Darby* was decided.

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ion 2, 29 U.S.C. § 202, declares in part that the existence of substandard labor
ns "leads to labor disputes burdening and obstructing commerce and the free flow
in commerce."
infra, at 194–195.
tat. 449, as amended, 29 U.S.C. § 151 *et seq.*
49 Stat. 449.
U.S., at 120–121.

II

Appellants' second contention is that the commerce power does not afford constitutional basis for extension of the Act to schools and hospitals operated by the States or their subdivisions. Since the argument is made in terms of interference with "sovereign state functions," it is important to note exactly what the Act does. Although it applies to "employees," the Act specifically exempts "employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) . . ."[20] We assume, as did the District Court,[21] that medical personnel are likewise excluded from coverage under the general language.

The Act establishes only a minimum wage and a maximum limit of hours unless overtime wages are paid, and does not otherwise affect the way in which school and hospital duties are performed. Thus appellants' characterization of the question in this case as whether Congress may, under the guise of the commerce power, tell the States how to perform medical and educational functions is not factually accurate. Congress has "interfered with" these state functions only to the extent of providing that when a State employs people in performing such functions it is subject to the same restrictions as a wide range of other employers whose activities affect commerce, including privately operated schools and hospitals.[22]

It is clear that labor conditions in schools and hospitals can affect commerce. The facts stipulated in this case indicate that such institutions are major users of goods imported from other States. For example:

"In the current fiscal year an estimated $38.3 billion will be spent by State and local public educational institutions in the United States. In the fiscal year 1965 these same authorities spent $3.9 billion operating public hospitals. . . .

"For Maryland, which was stipulated to be typical of the plaintiff States,[23] of the $8 million spent for supplies and equipment by its public school systems during the fiscal year 1965 represented direct interstate purchases. Over 75% of the $576,000 spent for drugs, X-ray supplies and equipment and hospital supplies by the University of Maryland Hospital and seven other state hospitals were out-of-state purchases." [24]

Similar figures were supplied for other States.[24] Strikes and work stoppages involving employees of schools and hospitals, events which unfortunately are not infrequent,[25] obviously interrupt and burden this flow of goods across state lines. It is therefore clear that a "rational basis" exists for congressional action prescribing minimum labor standards for schools and hospitals, as for other supporting enterprises.[26]

Indeed, appellants do not contend that labor conditions in all schools and hospitals are without the reach of the commerce power, but only that the Act cannot be constitutionally applied to state-operated institutions because that power must yield to state sovereignty in the performance of governmental functions. This argument simply is not tenable. There is no general "doctrine implicit in the Federal Constitution that 'the two governments, national and state, are each to exercise its power so as not to interfere with the free and full exercise of the powers of the other.'" *Case* v. *Bowles*, 327 U.S. 92, 101.

In the first place, it is clear that the Federal Government, when acting within a delegated power, may override countervailing state interests whether these

[20] 29 U.S.C. § 213(1) (1964 ed., Supp. II).

[21] See 269 F. Supp., at 832 (opinion of Judge Winter).

[22] In the court below, Judge Thomsen was troubled by the application of the overtime provisions to school and hospital personnel, who may have different arrangements and hours of work than employees of other enterprises. 269 F. Supp., at 851. Congress addressed its attention to this problem in 29 U.S.C. § 207 (1964 ed., Supp. II), which provides special means of computing hospital overtime. That this provision may seem to some inadequate and that no similar provision was made in the case of schools, are matters not for judicial cognizance. The Act's overtime provisions apply to a wide range of employees with differing patterns of worktime; they were intended to change some of these patterns. It is not for the courts to decide that such changes as may be required will result in the case of some industries and harmful in others.

[23] 269 F. Supp., at 833 (opinion of Judge Winter).

[24] See *ibid.*

[25] U.S. Department of Labor, Summary Release, Work Stoppages Involving Government Employees, 1965.

[26] Both under the present Act and the National Labor Relations Act, numerous cases have held that the employment of an employee in interstate commerce may consist of transportation. E.g. *Wirtz* v. *Hardin & Co.*, 256 F. Supp. 579, aff'd 359 F. 2d 792 (CA8); *N.L.R.B.* v. *Bevco Hotel*, 311 F. 2d 528 (NLRA).

bed as "governmental" or "proprietary" in character. As long ago as
ry District v. *United States*, 266 U.S. 405, the Court put to rest the con-
n that state concerns might constitutionally "outweigh" the importance of
nerwise valid federal statute regulating commerce. Congress had imposed
ory limits on the diversion of water from Lake Michigan. A unanimous
speaking through Mr. Justice Holmes, declared that the sanitary dis-
alleged need for more water than federal law allowed was "irrelevant"
se federal power over commerce is "superior to that of the States to pro-
or the welfare or necessities of their inhabitants." *Id.*, at 426. See *Oklahoma*
inson Co., 313 U.S. 508.

re remains, of course, the question whether any particular statute is an
rwise valid regulation of commerce." This Court has always recognized that
wer to regulate commerce, though broad indeed, has limits. Mr. Chief Jus-
arshall paused to recognize those limits in the course of the opinion that
taked out the vast expanse of federal authority over the economic life
new Nation. *Gibbons* v. *Ogden*, 9 Wheat. 1, 194 195. Mr. Chief Justice
s, speaking only one Term after he delivered the opinion for the Court in
& Laughlin, *supra*, put the matter thus:

subject of federal power is still 'commerce,' and not all commerce but
rce with foreign nations and among the several States. The expansion of
rise has vastly increased the interests of interstate commerce but the
utional differentiation still obtains." *Santa Cruz Co.* v. *Labor Board*, 303
3, 466.

Court has ample power to prevent what the appellants purport to fear,
ter destruction of the State as a sovereign political entity."[27]

while the commerce power has limits, valid general regulations of com-
do not cease to be regulations of commerce because a State is involved.
tate is engaging in economic activities that are validly regulated by the
l Government when engaged in by private persons, the State too may be
to conform its activities to federal regulation.

was settled by the unanimous decision in *United States* v. *California*,
S. 175. The question was whether a railroad, operated by the State, and
y within the State, as a nonprofit venture for the purpose of facilitating
ortation at a port, was nevertheless subject, like other railroads, to the
Appliance Act. The Court first held that although the railroad operated
tween points in California, it was within the reach of federal regulation
state rail transportation. 297 U.S., at 181–183. The Court then proceeded to
r the claim that the State "is not subject to the federal Safety Appliance
nd reasoned as follows:

e think it unimportant to say whether the state conducts its railroad in its
ign' or in its 'private' capacity. That in operating its railroad it is acting
a power reserved to the states cannot be doubted. The only question we
nsider is whether the exercise of that power, in whatever capacity, must
ubordination to the power to regulate interstate commerce, which has been
l specifically to the national government. The sovereign power of the states
ssarily diminished to the extent of the grants of power to the federal
nent in the Constitution.

e look to the activities in which the states have traditionally engaged
king the boundary of the restriction upon the federal taxing power. But
s no such limitation upon the plenary power to regulate commerce. The
n no more deny the power if its exercise has been authorized by Congress
n an individual." 297 U.S., at 183–185 (citations omitted).

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dissent suggests that by use of an "enterprise concept" such as that we have
ere, Congress could under today's decision declare a whole State an "enterprise"
commerce and take over its budgeting activities. This reflects, we think, a mis-
of the Act, of *Wickard* v. *Filburn*, *supra*, and of our decision. The Act's definition
rprise" reads in part as follows:

erprise' means the related activities performed (either through unified operation
ion control) by any person or persons for a common business purpose . . . but
t include the related activities performed for such enterprise by an independent
or. . . ." 29 U.S.C. § 203(r).

ld the enterprise concept on the explicit premise that an "enterprise" is a set of
ns whose activities in commerce would all be expected to be affected by the wages
rs of any group of employees, which is what Congress obviously intended. So
the term is quite cognizant of limitations on the commerce power. Neither here
Vickard has the Court declared that Congress may use a relative trivial impact on
e as an excuse for broad general regulation of state or private activities. The
as said only that where a general regulatory statute bears a substantial relation
erce, the *de minimis* character of individual instances arising under that statute
consequence.

See also *Board of Trustees* v. *United States*, 289 U.S. 48, where the Co rejected a claim of "state sovereignty" and held that a state university that i ported scientific apparatus from abroad could be made to pay import duties i posed pursuant to the power over foreign commerce.

The principle of *United States* v. *California* is controlling here. Appellan argument that the statute involved there was somewhat more directly a obviously a regulation of "commerce," and that the state activity involved the was less central to state sovereignty, misses the mark. This Court has examin and will continue to examine federal statutes to determine whether there is rational basis for regarding them as regulations of commerce among the Stat But it will not carve up the commerce power to protect enterprises indistinguis able in their effect on commerce from private businesses, simply because th enterprises happen to be run by the States for the benefit of their citizens."

III

Appellants raise two further issues, both of which the District Court found inappropriate to explore fully in a declaratory judgment proceeding. We agr In each case we conclude that no showing has been made that warrants declar tory or injunctive relief. In neither instance, however, do we mean to preclu future consideration on the facts of individual cases.

The first question is whether the Act violates the States' sovereign immun from suit guaranteed by the Eleventh Amendment.[28] The Act provides as follows

"Any employer who violates the provisions of section 206 (wages) or section 2 (hours) of this title shall be liable to the employee or employees affected in th amount of their unpaid minimum wages, or their unpaid overtime compensatio as the case may be, and in an additional equal amount as liquidated damage Action to recover such liability may be maintained in any court of competen jurisdiction. . . ." 29 U.S.C. § 216(b).

The Act also provides for suits by the Secretary of Labor to recover unpa minimum wages or overtime compensation, 29 U.S.C. § 216(c) and for injunctiv relief against violations, 29 U.S.C. § 217.

Percolating through each of these provisions for relief are interests of th United States and problems of immunity, agency, and consent to suit. Cf. *Par* v. *Terminal R. Co.*, 377 U.S. 184. The constitutionality of applying the substa tive requirements of the Act to the States is not, in our view, affected by the po sibility that one or more of the remedies the Act provides might not be ava able when a State is the employer-defendant. Particularly in light of the Act "separability" provision, 29 U.S.C. § 219, we see no reason to strike down othe wise valid portions of the Act simply because other portions might not be co stitutional as applied to hypothetical future cases. At the same time, we decli to be drawn into an abstract discussion of the numerous complex issues th might arise in connection with the Act's various remedial provisions. They a almost impossible and most unnecessary to resolve in advance of particular facts stated claims, and identified plaintiffs and defendants. Questions of state i munity are therefore reserved for appropriate future cases.

Appellants' remaining contention presents similar problems. In order to b covered by the Act, an employer hospital or school must in fact have "employee engaged in commerce or in the production of goods for commerce, including em ployees handling, selling, or otherwise working on goods that have been mov in or produced for commerce by any person. . . ." 29 U.S.C. § 203 (s) (1964 ed Supp. II).

Appellants ask us to declare that hospitals and schools simply have no su employees. The word "goods" is elsewhere defined to exclude "goods after the delivery into the actual physical possession of the ultimate consumer there other than a producer, manufacturer, or processor thereof." 29 U.S.C. § 203 Appellants contend that hospitals and schools are the ultimate consumers of th cut of state products they buy, and hence none of their employees handles "goods in the statutory sense.

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[28] Nor is it relevant that Congress originally chose to exempt all state enterprises f later partially removed that exemption. Congress was as free to include state activi within the general regulation at a later date as it would have been to omit the exempti in the first place.

[29] "The judicial power of the United States shall not be construed to extend to any su at law or equity, commenced or prosecuted against one of the United States by Citize of another State, or by Citizens or Subjects of any Foreign State."

think the District Court was correct in declining to decide, in the abstract
n general, whether schools and hospitals have employees engaged in com-
or production. Such institutions, as a whole, obviously purchase a vast
of out-of-state commodities. These are put to a wide variety of uses, pre-
ly ranging from physical incorporation of building materials into hospital
hool structures, to over-the-counter sale for cash to patients, visitors, stu-
and teachers. Whether particular institutions have employees handling
in commerce, cf. *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, may be
ered as occasion requires.
judgment of the District Court is *affirmed*.
JUSTICE MARSHALL took no part in the consideration or decision of this

JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs, dissenting.
Court's opinion skillfully brings employees of state-owned enterprises with-
reach of the Commerce Clause; and as an exercise in semantics it is un-
ionable if congressional federation is the standard. But what is done here
theless such a serious invasion of state sovereignty protected by the Tenth
lment that it is in my view not consistent with our constitutional federa-

case has some of the echoes of *New York* v. *United States*, 336 U.S. 572,
a divided Court held that the Federal Government could tax the sale of
l waters owned and marketed by New York. My dissent was in essence that
ision made the States pay the Federal Government "for privilege of exer-
the powers of sovereignty guaranteed them by the Constitution." 326 U.S.,

present federal law takes a much more serious bite. The 1966 amendments
Fair Labor Standards Act require the States to pay school and hospital
ees a minimum wage escalating to $1.60 per hour in 1971.[30] As a general
ne amendments make the States pay their employees who work over 40
week overtime compensation of 1½ times their regular wage.[31] There are
nctions against the State and its political subdivisions,[32] and state officials
parently, be subjected to criminal penalties.[33] The impact is pervasive,
g at all levels of state government. As Judge Northrop said in his dissent
269 F. Supp. 826, 852:
this Act Congress is forcing, under threat of civil liability and criminal
es, the state legislature or the responsible political subdivision of the

o increase taxes (an impossibility in some of the political subdivisions
t a state constitutional amendment); or
) curtail the extent and calibre of services in the public hospitals and edu-
l and related institutions of the state; or
) reduce indispensable services in other governmental activities to meet
lgets of those activities favored by the United States Congress; or
) refrain from entering new fields of governmental activity necessitated by
ng social conditions."
e can be no doubt but that the 1966 amendments to the Fair Labor Stand-
ct disrupt the fiscal policy of the States and threaten their autonomy in
ulation of health and education. Yet, the Court considers it irrelevant that
deral regulations are to be enforced against sovereign States and limits its
ration to "whether there is a rational basis for regarding them as regula-
commerce among the States."
States are not totally immune from federal regulation under the com-
power of Congress. *Parden* v. *Terminal R. Co.*, 377 U.S. 184, and *United*
v. *California*, 297 U.S. 175, subjected state-owned railroads to the Federal
ers' Liability Act, 45 U.S.C. § 51 *et seq.*, and the Safety Appliance Act,
C. § 1 *et seq.*; *Board of Trustees* v. *United States*, 289 U.S. 48, required a
niversity to pay federal customs duties on educational equipment it im-
In *Oklahoma* v. *Atkinson Co.*, 313 U.S. 508, the Federal Government was
ed to condemn 100,000 acres of state land for a reservoir to control com-
paralyzing floods. In *Sanitary District* v. *United States*, 266 U.S. 405, a

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.S.C. §§ 203(d), 206(b) (1964 ed., Supp. II).
.S.C. § 207(b) (1964 ed., Supp. II). Special rules are applicable to hospitals under
based on an 80 hour 14-day work period. No special rules apply to school em-
See discussion of the overtime pay provisions by Chief Judge Thomsen, 269 F.
t 851–852.
.S.C. §§ 203(d), 216(b).
.S.C. §§ 203(a), 215, 216(a).

State was prohibited from diverting water from the Great Lakes necessa
to ensure navigability, a phase of commerce.

In none of these cases, however, did the federal regulation overwhelm sta
fiscal policy. It is one thing to force a State to purchase safety equipment f
its railroad and another to force it either to spend several million more dolla
on hospitals and schools or substantially reduce services in these areas. Th
commerce power cases the Court relies on are simply not apropos.

In the area of taxation, on the other hand, the Court has recognized that th
constitutional scheme of federalism imposes limits on the power of the Nation
Government to tax the States. *E.g., New York* v. *United States*, 326 U.S. 57
The Court will not permit the Federal Government to utilize the taxing powe
to snuff out state sovereignty. *Metcalf & Eddy* v. *Mitchell*, 269 U.S. 514, rec
ing that the power to tax is the power to destroy. *M'Culloch* v. *Maryland*, 4 Whea
316, 431. The exercise of the commerce power may also destroy state sovereignt
All activities affecting commerce, even in the minutest degree, *Wickard* v. *Fil
burn*, 317 U. S. 111, may be regulated and controlled by Congress.

Commercial activity of every stripe may in some way interfere "with the [in
terstate] flow of merchandise" or interstate travel. *Katzenbach* v. *McClung*, 37
U. S. 294, 299-300. The immense scope of this constitutional power is demo
strated by the Court's approval in this case of regulation on the basis of th
"enterprise concept"--which is entirely proper when the regulated "businesses
are not essential functions being carried on by the States.

Yet state government itself is an "enterprise" with a very substantial effe
on interstate commerce, for the States spend billions of dollars each year on
programs that purchase goods from interstate commerce, hire employees who
labor strife could disrupt interstate commerce, and act on such commerce in
countless subtle ways. If constitutional principles of federalism raise no "limi
to the commerce power where regulation of state activities are concerned, can
Congress compel the States to build superhighways crisscrossing their territo
in order to accommodate interstate vehicles, to provide inns and eating place
for interstate travelers, to quadruple their police forces in order to prevent
commerce-crippling riots, etc? Could the Congress virtually draw up each State
budget to avoid "disruptive effect[s] . . . on commercial intercourse."? *Heart
Motel* v. *United States*, 379 U.S. 241, 257.

If all this can be done, then the National Government could devour the esse
tials of state sovereignty, though that sovereignty is attested by the Tenth
Amendment. The principles which should guide us in this case are set forth in
the several opinions in *New York* v. *United States*, *supra*. As Mr. Chief Justic
Stone said there, the National Government may not "interfere unduly with the
State's performance of its sovereign functions of government." 326 U.S., at 58
It may not "impair the State's functions of government." *id.*, at 594 (dissenting
opinion of Mr. JUSTICE DOUGLAS, joined by Mr. JUSTICE BLACK). As Mr. Justic
Frankfurter observed, "[t]here are, of course, State activities . . . that pe
take of uniqueness from the point of view of intergovernmental relations." *Id.*
at 582.

Whether, in a given case, a particular commerce power regulation by Congres
of state activity is permissible depends on the facts. The Court must draw the
"constitutional line between the State as government and the State as trader."
New York v. *United States*, *supra*, at 579 (opinion of Mr. Justice Frankfurter
In this case the State as a sovereign power is being seriously tampered wit
potentially crippled.

I would reverse the judgment below.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TAFT. Mr. President, I ask unanimous consent that the order f
the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I yield to the Senator from Ohio suc
time as he may require.

Mr. TAFT. Mr. President, I associate myself with the remarks of th
distinguished Senator from New Jersey. I feel very strongly that
there is another issue involved that he touched upon, one that, it seem
to me, is more important to this amendment, perhaps, than perhaps

other issue that is raised, and that is the exemplary nature of the dment. In other words, how can we expect patterns of discrimina- in private employment to be changed to promote full and equal oyment of all Americans if Government itself does not set an ple in this regard. It seems clear to me that that example should be n fact, I feel very strongly that if any truly effective progress be made in this area, it will be made more as a matter of volition, as a matter of example, than by means of compulsion, even gh compulsion, or at least legal endorsement of the principle, be necessary to effect progress.

hat I should like to mention particularly in this regard is that in ommittee, with regard to the employing of personnel by State ocal governments, there were a good many comments and a great of discussion as to whether or not constitutional problems that occur from the Federal Government's attempting to regulate and local governments might be serious and might result in vindictive aspects in the bill itself.

the Senator from New Jersey has stated, there are already holdings on this subject. However, we went further than that in scussions.

Senator from Missouri offered an amendment, and I and other bers of the committee on the minority side, as well, questioned the mies under which the Federal Commission might issue orders to te or a local government. We felt that in order to avoid any prob- n that respect, we should establish separate procedures, and this is ated in the language of the report, page 25, from which I should read:

enforcement scheme provides the necessary power to achieve results with- needless friction that might be created by a Federal executive agency orders to sovereign States and their localities. In short, the committee s that the objective of equal employment opportunity can best be achieved viding this particular means of enforcement where State or local govern- units fail to comply with the law.

required that there be direct access or direct referral to U.S. dis- ourt in these cases, rather than to go through the procedures of ommission.

el that with that practical problem, whether or not it will be a tutional problem, having been resolved, the provisions of the e desirable and necessary and will achieve, in a measure of time, emplary nature of open and equal employment opportunity in and local governments, an opportunity that is so necessary to ccess of this program, overall, and throughout our society.

that reason, I feel I must oppose the amendment offered by the guished Senator from North Carolina (Mr. Ervin).

JAVITS. Mr. President, will the Senator yield?

TAFT. I yield.

JAVITS. Mr. President, one thing that interests me greatly, what- ay be our differences with the administration on the question of and desist, is that it is a fact that the President's state of the message says:

o support legislation to strengthen the enforcement powers of the EEOC viding the Commission with authority to seek court enforcement of its ns and by giving it jurisdiction over the hiring practices of State and local ments.

So, I think it is important to point out that the administration itself has this feeling about this particular proposition, and we have findings of fact, which I am sure the Senator from Ohio has discussed, not only of the U.S. Civil Rights Commission, but from our own hearing record, as well, which indicate that this remedial power is needed, so far as actual serious discrimination is concerned, which is of a kind inhibited by the Constitution and statute in respect of State and local employment, since we are dealing with an enormous number of employees—10 million. So it is really a very necessary part of the bill.

I am very grateful that we have support of our position by the Senator from Ohio.

Mr. TAFT. I thank the Senator from New York and certainly concur in his remarks.

Supplementing those remarks, I might read briefly at this point in the same connection from the summary of the Report of the U.S. Commission on Civil Rights, on page 2, under:

PATTERNS OF MINORITY GROUP EMPLOYMENT IN STATE AND LOCAL GOVERNMENT

The basic finding of this study is that State and local government have failed to fulfill their obligation to assure equal job opportunity. In many localities minority group members are denied access to responsible government jobs and often are totally excluded from employment except in the most menial capacities. In many areas of government, minority group members are excluded almost entirely from decisionmaking positions, and, even in those instances where they hold jobs carrying higher status, these jobs usually involve work only with the problems of minority groups and tend to limit contact largely to other minority group members. Examples include managerial and professional positions in human relations commissions or in welfare agencies.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. ERVIN. The Senator from Ohio, as I understand, was a member of the committee which phrased this bill.

Mr. TAFT. The Senator is correct.

Mr. ERVIN. The Senator from North Carolina has read the bill very carefully and has found that there is no express limitation whatever on the employees of States and political subdivisions of States that are subjected to the jurisdiction of Federal courts under the bill. Can the Senator from Ohio tell me whether there is any implied limit upon the jurisdiction of Federal courts to ultimately control the employment practices in respect to any State employees or employees of political subdivisions of States?

Mr. TAFT. As far as I know, there is no such limitation. I understand the Senator from North Carolina has an amendment which is pending which would go into the subject further, and I have studied that amendment, and, with certain changes in the amendment, I might well be inclined to go along with the Senator from North Carolina to work out some practical alternatives, but I will not agree to taking out the guts of the particular provision he is attempting to eliminate.

Mr. ERVIN. Is the Senator from North Carolina correct in inferring from the statement just made by the distinguished Senator from Ohio that the bill in its present form would give Federal district courts the ultimate power to compel States and subdivisions of States to yield to high decrees with respect to the employment of persons who exercise the legislative, executive, and judicial powers of the States and political subdivisions of States?

r. TAFT. As to elected officers, we certainly think not, under the stitution of the United States. I think as to elected officers that d not be true. As to any other positions, I believe it would be true.
r. ERVIN. Why would it not be true with respect to elected officers, se elected officers are undoubtedly employees of the States, and d officers of counties are undoubtedly employees of the State he counties?
r. TAFT. The selection process there is by the voters of the State. not believe there is any inference in the legislation proposed h would include elected officers. As I have indicated to the Senator North Carolina, I would be quite willing to go considerably ier and perhaps to cover other personnel as well, and to cover those e top decisionmaking levels in the executive and judicial branch ll.
r. ERVIN. Does the Senator from Ohio take the position that an of the State is not an employee of that State?
. TAFT. No, I do not take that position. I say there is an inference bill that it does not transcend what I think would be the constitu- l limitations involved.
. ERVIN. Is it not a fact that constitutional legislation by Congress sedes the State constitutions and the laws of the States?
. TAFT. It might supersede it if not prescribed in the State con- ion. In this case, I believe the State constitution would be the ng factor that would be involved.
. ERVIN. The U.S. Constitution authorizes the Congress to enact ation in the form in which this bill is at present, giving Federal s the ultimate power to determine the employment practices of s with respect to all State employees and the Governors of the s and the supreme court justices of the States and members of ate legislatures, who are now employees of the States, as I under- the Senator has admitted.
. TAFT. I think the Senator from North Carolina well knows, his tremendous knowledge of the Constitution—and I respect owledge of that document more than almost anyone in this body— he Federal Constitution does guarantee to the States a republi- rm of government—with the little "r"—this, it seems to me, im- g the fact that elected officers can be elected only by the people State involved, under its constitution.
ERVIN. The Constitution of the United States also says that the itution and the acts of Congress enacted pursuant thereto will be preme law of the land, and, as the supreme law of the land, will sede all State constitutions and all State laws. If this were a tutional enactment, then the Federal courts would be given juris- n to control the ultimate decision as to who is to be the Governor tate or the members of the supreme court of the State or the legis- of the State. I think that conclusion is inescapable.
TAFT. With all due respect to the legal ability and experience Senator from North Carolina, I respectfully disagree with that sion. I believe the Federal Constitution would be clear on that. lition, under its interpretation, no court would make a decision nder this bill a Federal commission could require a State to certain individual, because it would deprive that individual of hts and privileges and immunities, as well as that of all citizens.
ERVIN. Perhaps the Senator from Ohio will agree with the

Senator from North Carolina on one thing: That if the Federal Government is to take the jurisdiction of exercising the ultimate power to determine who the officers and employees of the States are to be, the old statement of Chief Justice Salmon Chase, in Texas against White, that the Constitution and all its provisions look at an indestructible Union composed of indestructible States, has ceased to have validity. Is that not correct?

Mr. TAFT. I would not say that. I think the Senator from North Carolina may not have been on the floor when I quoted from a section of the committee report earlier, but there is another section to which I particularly call his attention. I think the question of legislative intent of the committee would control in any event, but I call the Senator's attention to page 11 of the committee report in which it states:

> A question as raised in the Committee concerning the application of Title VII in the case of a Governor whose cabinet appointees and close personal aides are drawn from one political party. The Committee's intention is that nothing in this bill should be interpreted to prohibit such appointments unless they are based on discrimination because of race, color, religion, sex or national origin. This intention is reflected in sections 703(h) and 706(w) of the law.

While it goes to the State elective office, I think it does infer that when we are talking about people appointed as personal aides of those individuals, it certainly was not intended to cover the officers themselves.

Mr. ERVIN. Unfortunately, however there is nothing to that effect in the bill, and where there is a conflict between a piece of legislation and a committee report, the piece of legislation controls and the committee report's effect becomes null and void.

Mr. TAFT. Well, of course, I am not saying, and the Senator I am sure will recognize that I am not saying, that the language of the bill in any way is in conflict with the committee report. In fact, I think quite the contrary is true. I think that the bill, within the Constitution, makes it perfectly clear, although there is no specific language to that effect, as to whether there is any intent to cover them, that there is in fact no intent to cover elected officials.

Mr. ERVIN. The bill in its amended form says that political subdivisions and States are employers, and then it says that an employee is anyone who is employed by an employer. The Senator from Ohio admits that the Governor of a State is employed by the State, and that the assistants to the Governor are employed by the State, and they are clearly covered by the provisions of the bill, and cannot be excluded from the provisions of the bill by any notions which may have been expressed by a committee member in the committee report.

Mr. TAFT. Well, I suspect that discussion of the subject has been pretty well extended. I cannot agree with the Senator's interpretation of the Constitution. I think it is a point which we ought to discuss when we get to a later amendment. I may not agree with the Senator on the exact language of that amendment, but if he would like to offer an amendment to make the language of the bill consistent with the committee report, I would be happy to go along with him to achieve that purpose.

Mr. ERVIN. The committee report says, in effect, that we do not intend to cover members of a Governor's cabinet who are appointed on the basis of politics. I have difficulty knowing just exactly what man in a State is appointed on the basis of politics. I do not take too much

ation out of the reference of the Senator from Ohio to the clause
Constitution which guarantees to every State a republican form
ernment. My Constitution says that all powers not granted by
nstitution to the Federal Government are reserved to the States,
he people.

TAFT. Well, of course, the powers——

ERVIN. Perhaps that no longer means anything.

TAFT (continuing). The powers intended to be exercised are
y exercised, as a matter of fact, I think, under the Equal Em-
ent Opportunity Act. We have already resolved that question:
urts have resolved and are resolving the question as to whether
ower is exercised in accordance with the Federal Constitution.
question is not fully resolved, the remedy lies in the courts.

ERVIN. I suppose that logically we might just as well repose all
wers with the Federal Government.
o the Senator's reference about the Constitution guaranteeing
State a republican form of government, having lived in a
which has long had a democratic form of government, I have
ty understanding what such a constitutional provision guaran-
a republican form of government would mean.

TAFT. I believe the Supreme Court would be glad to help the
r out, if we pass this provision.

ERVIN. I have read the previous decisions on this point, and they
ft me in a state of total unenlightenment.

TAFT. I thank the Senator from North Carolina for his remarks.

STENNIS. Mr. President, will the manager of the bill yield me
minutes? I wish to speak in favor of the amendment.

WILLIAMS. Yes, Mr. President, under the situation existing,
e opponents have no time remaining, and since we do have time,
appy to yield 3 or 4 minutes to the Senator from Mississippi.

STENNIS. Mr. President, I hope that this amendment can be
d by a majority vote of this body. Otherwise we are going to
ll the counties in this Nation, large and small, all the villages
wns large and small, the cities large and small, and the States,
e drainage districts and the little township governments that
ist in some places, the school districts, and every other subdivi-
our various States, subject to the control and the regulations
bill.

ke my remarks on this basis, Mr. President. I am ashamed to
it, but as I see things, the quality of work that is being per-
by a great many people, a great many employees today, is not
up to the standards that it did a few years ago. I think pride in
s either deteriorating or totally lacking. We do not have the
f responsibility—I am not trying to paint a bad picture, but as
and feel it, there is not that sense of responsibility in the minds
itudes of a great number of employees, public and private, that
eat country used to have. The sense of gratitude as I used to
nanifested is lacking now, and this trend is nationwide.
nk one of the reasons for that is that there is so much govern-
egulation and so much direction to employers as to what they
uired to do that so many of the employees feel so independent,
y, that they are lacking in gratitude, and they are lacking in
se of responsibility that we used to try to instill and could instill
ost everyone.

I believe that this measure is just another step in that direction. have been doing recently some reading about the Constitutional Co vention. I do not believe it would be possible to have a provision law that would be further from the intent of all the delegates. Th disagreed on many points, but this bill, in many of its points, is t the reverse of the intent of the original founders, and I do not thi there has been any amendment on this subject that has become a pa of the Constitution since then.

So I believe, if we are going to go on with these trends, if in t little county, the little village or town, if there is nothing left there their officials to do or to control because of being harassed at every t about whom they will employ, we will be unable to get people to s for those offices.

I think they are doing a fairly good job, by and large. They f a responsibility to the electorate. The people have a way of getting of office a man who does not have the right attitude toward hum itarian problems, who does not have some compassion. Such an offi does not last long. It just seems to me we are piling problem on top problem for those little officials and boards. We are taking away t basis for pride and gratitude and the things that go to make qua in our people, and that have been the distinct American strength, my opinion, for almost 200 years.

On top of all this, the people themselves are being taxed to de with taxes, taxes, and more taxes, and they are being regulated at ev turn. I think this bill goes a long way—a long way in accentuat those evils that are causing the deterioration in the attitudes of a gr many of our people; and I lament that.

I am not just bringing up troubles, but we have got to meet th troubles, in my view.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. STENNIS. I am happy to yield to the Senator from North Ca lina, if I have time.

Mr. ERVIN. Does not the Senator from Mississippi agree with t Senator from North Carolina that Woodrow Wilson was the mo knowledgeable student of the American Government who has ev occupied the White House?

Mr. STENNIS. I believe the Senator is correct. I noticed his pict in the White House the other day, in the Cabinet Room.

Mr. ERVIN. Woodrow Wilson once stated this:

> Liberty has never come from government. Liberty has always come from t subjects of government. . . . The history of liberty is a history of the limitat of governmental power, not the increase of it.
>
> When we resist . . . concentration of power, we are resisting the power death, because concentration of power is what always precedes the destru of human liberties.

Does not the Senator from Mississippi agree with the Sena from North Carolina that the passage of this bill would do more to troy human liberties than any piece of legislation that has come bef Congress throughout its history?

Mr. STENNIS. The Senator from North Carolina has stated the well. I agree wholeheartedly. In fact, I shudder to think of this being enacted into a law that is enforceable. With all deference believe it is invalid on its face.

Mr. President, in addition to these matters, people do not kn

to turn. People are afraid of their own Government, and they
ot committed any crime. There are so many regulations that
e afraid to go into a little business, because they hear people al-
n business talking about the difficulties, the obstacles, and the
ions.
nk that we absolutely must make a turn in going in the other
on. This entire bill tends to accentuate the very evils to which
referred.
s leave people in the little villages, townships, districts, towns,
ates, and subdivisions thereof—most of whom are chosen by
ple and are up for reelection in a very short time—some re-
ility. Let us leave them some obligation, and let us leave a
ntrol of these affairs in the hands of the people. Otherwise,
ill be the reason for even registering to vote or to go to the
to get involved in these elections? Let us do all these things by
g this amendment.
nk the Senator from New York for the time he has given me.
Williams. Mr. President, I yield whatever time he requires to
tor from New York.
Javits. Mr. President, it is very important, as we are about to
this amendment, that we recognize that of all the provisions in
, this has the most solemn congressional sanction, because it is
ot on the commerce clause, which relates to the relationships
individuals as well as with governments, but is based on the
endment. This is a paramount right which is created for all
ans.
4th amendment has been held applicable to just employment
ination by the States. Also, in Maryland against Wirtz, in 1968,
rt upheld the application of the Fair Labor Standards Act to
classes of public employees as a legitimate exercise of congres-
egulatory authority under the commerce clause.
President, this is critically important, because of all the people
re just referred to as having the right to feel they would be
d in terms of any inquisitorial denial of equal opportunity, it
y is the employees of units of Government elected by them but
ften do not operate in such a way as to serve them—all of
ncluding minorities.
is no fanciful thing. This involves an enormous block of em-
—10 million—of whom almost 3 million are dealing with educa-
recently as 1969, this was the subject of special consideration
.S. Commission on Civil Rights, as a factfinder, which held
nd I read from page 10 of the committee's report:

nd local governments have failed to fulfill their obligation to assure
opportunity.

tates, themselves, have recognized this; and 33 of the 34 States
ave fair employment practices statutes have made those
applicable to State and local employees; and indeed they must,
ost common and obvious equity.
Constitution is imperative not only in respect of employment
in respect of all other matters dealing with the equal protec-
he laws by all citizens of States and their political subdivisions.
reme Court has reinforced this directive in a whole host of
ne could go through a list of citations that would take 3 days,
cases in which the 14th amendment has been applied to the

relationships between the citizen and his State. What more sacred more important relationship is there in terms of the life of the dividual than the extent to which he shall have a fair and even bre in respect of employment?

Not only is this applicable to minorities; it is also applicable on ground of sex. The committee report reflects that very clearly in te of the differentiation not only between members of minorities others in respect of income, and so forth, and having opportunities the higher levels of employment by States and their local subdivisio but also, it applies to women where, based upon overall figures, obvious that something is not right in terms of the way in which alleged concept of equal opportunity is being administered now.

It is for that reason, Mr. President, that one of the greatest refor in this bill is its applicability to those who are engaged in State local employment—I repeat, 10 million employees, the largest sin block in any one calling of all the employees, as there are now about million in the entire American work force. If anybody, as a matter morality, is entitled to equal employment opportunity, it certainly those people; and the only way they can get it, because the author so far as they are concerned is the State, is at the hands of the Uni States, under the 14th amendment. Section 5 of the 14th amendme giving the power to Congress to enforce by appropriate legislation provisions of this article, it seems to me, makes it mandatory, discretionary, in terms of the highest morality, that we act affir tively on this aspect of this bill.

For all those reasons, with the highest respect for the State and lo governments—because in this case there is no cease-and-desist pow but there is simply the power to litigate—that is the very least we give the individual—the aid of the Attorney General in litigating case through the courts, insofar as the paramount rights under 14th amendment are concerned. I think this is the very least we do. To me, it is one of the most unchallengeable parts of this bill.

For those reasons, I hope very much that the Senate will reject t amendment.

Mr. Cooper. Mr. President, will the Senator yield for a question?

Mr. Javits. I yield.

Mr. Cooper. I have listened to part of the Senator's argument, I understand its reasoning and rationale. I ask the Senator this qu tion: I think it is evident that there is discrimination in employm by a State when there is a clearcut case of State action. Is it not p sible, following another course and a very simple remedy, for the co to proceed against the State to require compliance with the 14 amendment?

Mr. Javits. That is entirely right, and the thrust of this bill is c sistent with that approach. In other words, we feel that where the dividual who is being denied equal opportunity under the 14th a ment faces the power of his own State, of which he is an employee is entitled to have the aid of the United States in order to assert a which the United States gives him—a constitutional right. The Sen is perfectly right. There is a legal right and a legal remedy, ev that the legal remedy is not affected in the absence of this kind of h ing which this particular statute gives it.

Mr. Cooper. It would seem to me that a court decision against a St requiring the termination if there is discrimination in employm

be one of the clearest and simplest remedies which could be used
hich could be enforced by the courts.
Javits. When the individual is an employee of a State, he is
asked to take on a very tough assignment if he is asked to pro-
gainst that State; hence, the high desirability of the interposi-
the United States on the process to protect these rights.
Williams. Mr. President, a parliamentary inquiry—how much
emains?
Presiding Officer (Mr. Cranston). All time has now expired.
as and nays have not been ordered.
Javits. Mr. President, I ask for the yeas and nays on the amend-

yeas and nays were ordered.
Presiding Officer. Pursuant to the previous order, the hour of
k having arrived, the Senate will now proceed to vote on the
g amendment.
his question the yeas and nays have been ordered, and the clerk
l the roll.
ssistant legislative clerk called the roll.
Fulbright (when his name was called). On this vote I have a
ith the Senator from Missouri (Mr. Eagleton). If he were
and voting, he would vote "nay"; if I were at liberty to vote,
vote "yea." I withhold my vote.
Hollings (when his name was called). On this vote I have a pair
e Senator from Maine (Mr. Muskie). If he were present and
he would vote "nay"; if I were at liberty to vote, I would vote
withhold my vote.
Griffin (after having voted in the negative). On this vote I
pair with the Senator from Texas (Mr. Tower). If he were
and voting, he would vote "yea"; if I were at liberty to vote,
vote "nay." I withdraw my vote.
Byrd of West Virginia. I announce that the Senator from Texas
entsen), the Senator from Missouri (Mr. Eagleton), the Sen-
om Alaska (Mr. Gravel), the Senator from Oklahoma (Mr.
), the Senator from Indiana (Mr. Hartke), the Senator from
ota (Mr. Humphrey), the Senator from Washington (Mr.
), the Senator from Washington (Mr. Magnuson), the Sen-
om South Dakota (Mr. McGovern), the Senator from Maine
uskie), the Senator from Alabama (Mr. Sparkman), the Sen-
m Illinois (Mr. Stevenson), the Senator from California (Mr.
) are necessarily absent.
is vote, the Senator from South Dakota (Mr. McGovern) is
with the Senator from Arizona (Mr. Fannin). If present and
the Senator from South Dakota would vote "nay" and the
from Arizona would vote "yea."
ther announce that, if present and voting, the Senator from
(Mr. Gravel), the Senator from Oklahoma (Mr. Harris), the
from Indiana (Mr. Hartke), the Senator from Washington
ckson), the Senator from Washington (Mr. Magnuson), the
from California (Mr. Tunney), the Senator from Minnesota
umphrey), and the Senator from Illinois (Mr. Stevenson)
ach vote "nay."
Griffin. I announce that the Senator from Tennessee (Mr.
, the Senator from New Hampshire (Mr. Cotton), the Senator

from Arizona (Mr. Fannin), the Senator from Texas (Mr. Tower) and the Senator from North Dakota (Mr. Young) are necessarily absent.

The Senator from Tennessee (Mr. Brock), the Senator from Wyoming (Mr. Hansen), and the Senator from Maryland (Mr. Mathias) are absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

On this vote, the Senator from Arizona (Mr. Fannin) is paired with the Senator from South Dakota (Mr. McGovern). If present and voting, the Senator from Arizona would vote "yea" and the Senator from South Dakota would vote "nay."

The pair of the Senator from Texas (Mr. Tower) has been previously announced by me.

The result was announced—yeas 16, nays 59, as follows:

[No. 20 Leg.]

YEAS—16

Allen	Ellender	McClellan
Bennett	Ervin	Stennis
Buckley	Gurney	Talmadge
Byrd, Va.	Hruska	Thurmond
Curtis	Jordan, N.C.	
Eastland	Long	

NAYS—59

Aiken	Fong	Pastore
Allott	Gambrell	Pearson
Anderson	Goldwater	Pell
Bayh	Hart	Percy
Beall	Hatfield	Proxmire
Bellmon	Hughes	Randolph
Bible	Inouye	Ribicoff
Boggs	Javits	Roth
Brooke	Jordan, Idaho	Saxbe
Burdick	Kennedy	Schweiker
Byrd, W. Va.	Mansfield	Scott
Cannon	McGee	Smith
Case	McIntyre	Spong
Chiles	Metcalf	Stafford
Church	Miller	Stevens
Cook	Mondale	Symington
Cooper	Montoya	Taft
Cranston	Moss	Weicker
Dole	Nelson	Williams
Dominick	Packwood	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED

Fulbright, for.
Griffin, against.
Hollings, for.

NOT VOTING—22

Baker	Harris	Muskie
Bentsen	Hartke	Sparkman
Brock	Humphrey	Stevenson
Cotton	Jackson	Tower
Eagleton	Magnuson	Tunney
Fannin	Mathias	Young
Gravel	McGovern	
Hansen	Mundt	

Mr. Ervin's amendment (No. 812) was rejected.

Javits. Mr. President, I move to reconsider the vote by which endment was rejected.

Byrd of West Virginia. Mr. President, I move to lay that n on the table.

motion to lay on the table was agreed to.

* * * * * *

Senate continued with the consideration of the bill (S. 2515) ther promote equal employment opportunities for American rs.

AMENDMENT NO. 833

Gambrell. Mr. President, I call up my amendment No. 833.

Presiding Officer (Mr. Weicker). The clerk will report the ment.

assistant legislative clerk read the amendment.

opy of Amendment No. 833 to S. 2515 appears on page 1019.)

Gambrell. Mr. President, the amendment I have offered at this xtends relief to small businesses under the pending bill. That is it provides for an allowance for attorneys' fees for certain bed small businesses against whom enforcement proceedings ught under this act.

ve under discussion with the committee the possibility of a time ion on the amendment. I am agreeable to limiting the time. n as the committee members have conferred, perhaps we could ether on that matter. I would say that if any Senator is inter- n supporting the amendment and would like to speak on it, d appreciate it if he would let me know before a time limitation ed to.

President, the amendment I have offered is a revision of an ment which I filed on January 21. At that time I made a state- n the Record describing the amendment and my reason for g it. I would not at this time repeat at great length my think- that subject as expressed at that time other than to say that mplate as we go into the situation, particularly with respect to nd-desist procedures, that more and more businesses, and par- ly those smaller businesses, will be imposed upon, not in an ef- destroy them but with that effect, by the court proceedings his act.

nk that Senators will recognize that it is not uncommon for all sinesses under Federal investigation under various pieces of ion to find themselves in a position from an economic point v of being unable to compete with the tremendous and over- ng resources available to the Federal Government with such ment procedures.

result, rather than to fight it out and determine the issues of ular investigation or enforcement and to submit proof to make arison—which I think is an un-American type of proceeding— large corporation against whom proceedings are brought, a tion which is able to set aside a certain amount of money for pose of defending itself to wear the Government out, if that ible, in order to fight the impact of the legislation, the im- of ability to defend against the Government means that small

businesses are imposed upon in the enforcement of various types Federal legislation.

There is no question that this imbalance of relative strength d nies small businesses a fair opportunity for self-defense against Go ernment regulations.

In specific terms, the amendment provides that a business or union which has 25 or fewer employees or members will get its e tire expense and attorney's fee reimbursed by the Federal Gover ment through the EEOC in any proceeding against it.

Under the act, businesses and unions having from 25 to 100 mem bers or employees would be reimbursed up to $2,500. But in ea case, the Commission or the court before which a proceeding is pen ing would have to determine, before the amount could be paid, th the defenses made by small businesses were put on for purposes i consistent with the purposes of the act itself. That is to say, the cou or the EEOC would have an opportunity to determine whether t union or the small business was defending itself in bad faith. If s the payment of fees and expenses could be denied.

The amendment also provides that this compensation would ha to be paid prior to any enforcement proceedings being brought agai the small business or the small union. In other words, after the i vestigation, or after the Commission proceedings, the Commissi would determine the amount of award of a fee, and that fee wou have to be paid in cash before the Commission could go to court to g a restraining order.

It seems to me that this is only fair, in order to give small bus ness or small unions an opportunity to say, "Well, up to at least $2,5 or $25,000, I can fight the matter equally with the Federal Gover ment. I am the first, the fourth, the seventh, the 10th, or the 10 person being proceeded against under the act. I have some genui questions of fact or question of law that I want to litigate. I have competent attorney who advises me that I am not obligated to d what the Government says I am supposed to do, and I should ha to have that question determined.

Of course, I would prefer to have the case determined in court, b under the law I have got to go through the Commission. In any eve I do have an opportunity, within those limits, to defend myself in go faith against the overwhelming economic power at the command of th Federal Government.

Mr. President, the Civil Rights and Equal Employment Opportuni Acts themselves, which are being amended under the pending legisl tion, already provide discretionary authority for the Commission t pay costs and attorney fees to a prevailing party in such a case. In oth words, if I am proceeded against, and I win, the Commission can sa "We are sorry about the harassment we have caused, and we will p your costs and attorney fees."

We make this change or this addition: We leave the amendme without change except that we provide for discretionary authority the c— of the prevailing party. We say that any respondent—that a labor union or an employer—who qualifies as a small business or small union can be compensated for his expenses, or expenses and fe even if he loses or even if he is found at fault, so long as it is not de

ied that he conducted his defense in a manner inconsistent with the ievement of the purposes of the act.

)ur thought in offering the amendment is simple. We feel that if a all business or a small union in good faith wishes to test some of the stions that are raised, it should have a right to do so without bank- ting itself. It should not have to depend upon its ultimately prevail-, because it could be wrong in good faith about the law, or it could vrong in good faith about the facts. It seems to me that certainly in early stages of enforcement under the act these questions should be ject to exploration by small businesses in the same manner as they uld be by large businesses.

t has been demonstrated time and again that what we fear will come pass. I should like to give some examples of the type of thing that erns me.

think the Senate is aware that northwest Georgia is the tufted pet capital of the world. More tufted carpet is manufactured in that than in any other single area of the world. In the fall of last year, ond march through Georgia took place—in this case, not by Gen- Sherman, but by the Federal Trade Commission, under the Flam- le Fabrics Act. Virtually all of the manufacturers in this fine istry undertook to comply with the standards applied by the Fed- Trade Commission, under this act, for reducing the flammability extile materials. The smaller manufacturers had a little more trou- complying with the standards than the larger ones. All of a sudden, Federal Trade Commission announced that it was going to initiate rcement proceedings and in that connection were going to require e who had not complied to invite their customers to return their peting in the manner we are all familiar with in connection with utomobile industry.

e immediately began to receive calls of concern, stating, "Well, are trying our best to comply with this and we would like to go ugh this procedure, but if we make a public announcement that or part of our carpet does not comply, we might as well go into kruptcy, because we would not be able to sell the carpet while it is er this shadow."

here was a lot of going back and forth and filling and reevaluat- with the Trade Commission. We finally developed a concept from Commission: It felt they could not give any exception to smaller nesses because it would interrupt the consistency of their law en- ement procedures. They say they have to apply the uniform, regu- standards to small businesses that they apply to large businesses. if it bankrupts a few along the way, that is their problem, and ours.

would not charge the Trade Commission people in that instance undertaking to act unfairly or insensitively. They thought it was istent with good enforcement practices that they should apply the standards to everyone. But it seems to me—and I think it is ous—that small businesses cannot meet the changing standards of ernment regulation as quickly and as completely and to the satis- ion of the regulatory authorities as large businesses can, and I k it is very important that the law make a distinction between e and small businesses if the purpose is—and in fact I think the

purpose and intent of our laws relating to small businesses is—to make such a distinction.

In this connection, I should like to bring to the Senator's attention some comments of the Senator from Nevada (Mr. Bible), as reported in the hearings before the Subcommittee on Small Business of the Committee on Banking, Housing and Urban Affairs on April 21, 1971. The Senator from Nevada said:

Small businesses, which constitute 95 percent of every line of commerce, have played an indispensable part in the growth of the country. As we come further into the period of multiplying environmental and consumer concerns, however, it is natural that the role of small business would require some redefinition at this point, and continuing evaluation in the future.

I shall not read the quotation in its entirety at this point, but I ask unanimous consent that the statement, which appears on page 38 of the report, be incorporated at this point in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

[Reprinted from the Congressional Record, Dec. 17, 1970]

THE 91ST CONGRESS ACTION GIVES HISTORIC RECOGNITION TO SMALL BUSINESS IN ENVIRONMENTAL AND CONSUMERS ERA

Mr. BIBLE. Mr. President, as chairman of the Senate Small Business Committee, it is gratifying to be able to report that the 91st Congress has distinguished itself by granting what I feel should be considered an historic recognition of the role of small business in this era of increasing environmental and consumer concerns.

Small businesses, which constitute 95 percent of every line of commerce, have played an indispensable part in the growth of the country. As we come further into the period of multiplying environmental and consumer concerns, however, it is natural that the role of small business would require some redefinition at this point, and continuing evaluation in the future.

Those who work with small business are aware of its valuable place in the new economic circle if we want to make our daily life more livable and pleasant. We know that small businesses make merchandise and amenities widely and conveniently available in every part of our cities and small towns. We have seen that they can combat inflation by competing to keep prices lower and quality higher. They give services which tend to be more personal and reliable; they maintain community control and local flavor and variety in our commercial life. New and small firms are a natural outlet for young people and the energetic and imaginative of all ages with better ideas. In short, we need more and stronger small businesses to improve the quality of life in America.

However, the long list of worthy consumer, health, safety, pollution, and sanitary standards which Congress has placed on the statute books during the past 5 years has had the unintended and unfortunate side effect of imperiling the very existence of entire segments of the small business community.

Deadline dates were imposed, and Government administrators were given the power to permanently shut down noncomplying firms without compensation. As a result literally thousands of firms—about 7,000 in the meat packing industry alone—in the small business community felt threatened, and actually were threatened, at many points by our citizens who sincerely wished to upgrade our environment through the avenue of legislating higher environmental and consumer standards.

Accordingly these two groups appeared to be in direct conflict. This situation was aggravated when businessmen setting out to comply with the new standards had to face high interest rates and tight money at their banks, coupled with a shortage of Small Business Administration loans. As compliance deadlines approached inexorably interest rates touched peaks not seen since the Civil War. Small firms found the required new plants and equipment were virtually unavailable in many parts of the country. As firms struggle under these conditions, we found an increasing atmosphere of desperation among small business.

SACRIFICE OF SMALL BUSINESS WOULD BE A TRAGEDY

was my feeling that it would be a national tragedy if the country's obvious re to upgrade our technical standards greatly diminished the quality of our nomy and commerce, and eventually the quality of daily life for all of us. It ned to me a manifest injustice for the Federal Government to be closing down hout legal recourse, thousands of small businesses which were making every sonable effort to comply with the laws.

hus, during the 90th Congress—in May 1968—I submitted a resolution—ate Resolution 209—asking the Small Business Administration to study the act of the new laws, as exemplified by the Wholesome Meat Act, on small iness. Of course, the new meat standards were having a direct impact in my State of Nevada and other neighboring Western States. Then, on April 1, 9, I was joined by the ditsinguished chairman of the Senate Banking and rency Committee (Mr. Sparkman) and 11 other Senators from every part of country in introducing a bill which would provide emergency loan assistance ugh the disaster loan program of the SBA. This bill, S. 1750, was designed to w the small business community to adjust to the environmental and con-er era; and to continue their record of good service to their owners and em-ees, their customers and communities.

CONGRESS RISES TO THE QUESTION

r. President, I am proud of the record of the 91st Congress in this regard. ree committees each in both the House and the Senate accorded recognition hese questions. Hearings were held followed by deliberations in executive ion which brought legislation to the floor of both of these great bodies. Then, Senate and the House of Representatives, in Congress assembled, acted sively.

et me cite the milestones in this record:

irst. In December, 1969, Congress approved the Federal Coal Mine Health Safety Act—Public Law 91-173—which provided relief to small mine oper-s required to meet the new requirements imposed by this legislation;

econd. In mid-December of this year, the House-Senate Conference considered occupational safety and health bills—H.R. 19200 and S. 2193—and approved nal version which contains similar provisions for relief to small firms in plying with this measure; and

hird. On December 14, the Senate completed congressional enactment of . 19888, which extended similar emergency loan eligibility to firms affected he Wholesome Meat Act of 1967, the Wholesome Poultry Products Act of , and the Egg Products Inspection Act of 1970.

y the terms of the legislation we have proposed, the loans will be for the ose of complying with specific standards erected by Federal—or equivalent e—legislation under definite deadlines. The loans will not be subsidized are intended to be at an interest rate equal to the cost of money to the eral Government plus one-fourth of 1 percent.

owever, the significant point is that Congress has acted to resolve the conflict ween consumers, conservationists, and all concerned with our environment on side and businessmen on the other. Congress has accorded this recognition mall business not only in rhetoric, but in a tangible way, by making money lable to ease the dilemma. This series of enactments will, in my opinion, make l businessmen full partners in progress again rather than its imminent ims.

am pleased that our Small Business Committee could play a part in this na by its work in the technical drafting of the language which served as a cle for the wider congressional consideration of the issues, and by providing ground to those committees and Members who were interested. We can rejoice at this kind of creative lawmaking.

believe the committees concerned, the leadership of both the House and the te, and Representative Neal Smith of Iowa, Representative Graham Purcell, Texas, and Representative Tom Foley, of Washington, as House sponsors of agribusiness provision, should be commended by all concerned with these ers.

FOCUS NOW SHIFTS TO IMPLEMENTATION

hese enactments will leave some gaps, which we can attempt to fill in the ng years. We also have still ahead the implementation of these statutes by

the SBA and the executive branch of the Government. It will be of prime importance to inform small firms under Federal deadlines of their alternatives, and to have simple and workable procedures so that the needed loan capital can be obtained in time.

I have conferred with the House sponsors of these measures, and we have agreed that the next step to be taken is to ask the Small Business Administration for its views on how these acts should be implemented without delay.

With the background of Senate Resolution 260, the Small Business Administration has been pursuing its study of the financial needs of the meat industry in complying with the deadlines of the Wholesome Meat Act of 1967. We feel that this work should now be well along toward completion. This extensive effort will give the agency an excellent factual basis for prompt recommendations to the Congress and the president to keep small meat, eggs, and poultry businesses, as well as small coal mines and others subject to new occupational safety standards, in the business in cities and towns across the Nation.

I have undertaken to make this request of the Small Business Administration, stating that we wish to be helpful in bringing about prompt and full implementation of these relief laws.

STEP TOWARD COMPASSIONATE GOVERNMENT

In my opinion the precedents have now been established by the three acts which I have cited. Congress has shown it continues to care about small business as a part of our national life in the environmental and consumer era, and that it will back up this concern by appropriate action. By doing so, a giant step has been taken toward keeping our Government and our economy more compassionate and more serviceable for all of our people.

Mr. GAMBRELL. Mr. President, the substance of those remarks had to do with what the Senator from Nevada describes as a long list of worthy consumer health, safety, pollution, and sanitary standards which Congress has placed on the statute books, but wherein the administration of those acts threatens to destroy our small business community.

In particular, in connection with the clean rivers bill, which the Senate passed late last year, an amendment was adopted granting specific relief to smaller businesses to aid them in complying with the provisions of that act.

Here again is an illustration of this Congress' and this Government's intention not to impose on small businesses through the provisions of any regulatory legislation.

One other instance that I would like to call to the Senate's attention in this area is in the Safety Standards Act; and this has been brought to my attention on a number of occasions. It appears that the regulations published by the Department of Labor under and pursuant to the Construction Health and Safety Act has worked a tremendous hardship on those contractors and builders who are engaged in light construction, and particularly in residential construction.

Again, I would assume that this harm is unintentional and unwitting on the part of the Department of Labor; that the Department of Labor has no discriminatory intent against small businesses in this field; but from all the reports received in my office—and I am sure in the offices of other Senators—compliance with these regulations has made the cost of construction of small residences or residences intended for lower income people go up tremendously. These people typically employ what we call casual labor, labor that may be available one day and not the next day, or that may be available two or three days. As one man told me, "I have to buy a $13 helmet and give it to him on Monday, when he may not be back Tuesday, and this total day's wage may not be more than $13."

t is in this type of thing and this type of regulation that Congress, enacting bills, and the regulatory agencies, in carrying out those entions, should be more sensitive to the impact of such legislation on aller businesses.

it has been said that the amendment which I have offered will en- rage litigation, will encourage small businesses in the classification erred to, to be more litigious, and to insist on a lot of unworthy de- ses and that type of thing. We have tried to deal with that possi- ity in the act in a number of ways, although I do not conceive of it a real difficulty, because the average businessman has much more to than to want to go before the EEOC or a Federal court on an unfair ployment practices charge.

But the limits that are built into the amendment, aside from the ctical restrictions on what one will do and what he is to do, are, first. t the provision applies only to small businesses. Someone who em- ys up to 25 gets full compensation. Someone who employs between ind 100 gets only half of his fees and expenses taken care of. So first, pplies only to small businesses. Second, there are limits built into t. A very small one can get only up to $5,000 in total, and the slight- mall one, you might say, gets only $2,500. But there again there are ie practical limits built into it. The man going into litigation can see re is no bonanza of fees and expenses with which to defend himself. nother limitation is that the reasonableness of the charges that he mits must be comparable to those which the EEOC itself has spent prosecuting the charges against him.

So if the EEOC has spent only $1,000 on the claim, he would be en- d to only $2,500 or $5,000.

ly guess is that, in most cases, the EEOC will spend enormously re money in dealing with any of these claims than any private busi- s could possibly afford to do. But there are limits -that he cannot ive more for defending himself as was spent against him.

Finally, a limitation which is most important is that he does not get thing if the manner in which he conducts his defense is found by Commission or the court to be inconsistent with the purposes of the

n my judgment, this amendment will encourage settlement rather n discourage it. The reason for that is this: A small business might into litigation thinking in good faith that he has a defense or that has a question of fact that would be adjudicated in his favor, and n ultimately find that he was mistaken.

So, Mr. President, I think the amendment will encourage settlement, ause a man, in considering whether to settle with the EEOC some im that is under adjudication, would be entitled to be compensated e will admit that he was in the wrong.

He might say, "Well, yes, you have proved to my satisfaction that id violate this act, and rather than going to the Commission or be- e the courts and have a knockdown, drag-out lawsuit about the tter, I would like to enter into consent, but I have these expenses l attorneys' fees incurred, and I would like for you to allow them." Under the present law, as I understand it, with a consent of that e, the Commission could not allow expenses and attorneys' fees, ause the respondent in the case would not have been a prevailing ty. This amendment says that so long as he has conducted his de-

fense in a manner consistent with the purposes of the act itself, he can and in fact must be paid his expenses and attorneys' fees.

On this basis, from my own experience in observing the conduct of people in litigation, if a man found out that he was in the wrong, he would hurriedly admit it if he could just make himself whole on the question of his outlays for expenses and attorneys' fees at that point.

The limitations I have refered to would prevent anyone from being what we call, in our State law, "stubbornly litigious," simply fighting and blustering around in order to delay the day of ultimate justice.

Mr. President, I would suggest to the committee that they accept this amendment, because it would in fact encourage the settlement of cases when the respondent has found himself to be in the wrong. Therefore, Mr. President, I submit that the amendment should be agreed to.

Mr. WILLIAMS. Mr. President, I have reservations about some of the details of the amendment, including the fact that the assessment of fees and costs in certain areas is mandatory and not discretionary, and the fact that they must be paid in advance. These are the two major reservations I have. Yet, a provision for the fair assessment of costs and fees certainly is a principle that I would like to agree to, and it should be included in this legislation.

As it stands, the fact that the fees and the costs are mandatorily assessed, win, lose, or draw, cause me to hesitate.

I should like to state to the Senator from Georgia, who is probably a lot closer to the practice of law than I, that I cannot think of any situation that we can look to for guidance from experience, any other area of law where there is an advance assessment of fees and costs before trial, where it is mandatory and it has no relationship to the outcome of the litigation.

Is there such an area?

Mr. GAMBRELL. First, Mr. President, I should like to clarify the interpretation that the Senator has put on the matter. I think he is mistaken in saying that it is payable in advance. In fact, I know he is, because as I understand the bill, you do not go to court and you do not have any rendering of any kind of decision until after there has been a very thorough investigation or until after the conciliation —

Mr. WILLIAMS. I said in advance of litigation, or I meant to say that.

Mr. GAMBRELL. The Senator did say before going to court, but the way the committee has insisted on doing it, in setting up a procedure, there will be a full scale, knock down and drag out fight before the Commission itself, and the court proceedings will be a simple aftermath, the court has its hands tied, and there will not be much for the law students to make of it. Under the type of cease-and-desist procedure the committee insists on, I think it should be recognized that the whole ball game is there in front of the Commission itself. This amendment is not to provide for payment prior to that, but it is a provision for payment under the order issued by the Commission in the proceeding itself.

Mr. WILLIAMS. Mr. President, if the Senator will yield, that is helpful in clarifying it. I had read the amendment, on page 2 at line 24, to me it sounds different than the Senator has just described it. Where the amendment says, "No enforcement procedure under this title may be initiated against a respondent employer or union until

costs provided for herein shall have been paid in full," I inter-
ted that to mean payment before the hearing on the complaint
ore the trial examiner under cease and desist, at the Commission
el. Am I in error? Is this to be paid only on appeal, then, to the
uit court of appeals?

Mr. Gambrell. Of course, at the time we drew this, we did not know
at type of enforcement procedure would be adopted; but the inten-
n of that language is to mean an enforcement procedure in court.
n other words, I do not interpret the proceedings before the Com-
ssion to be an enforcement procedure, in my own terminology be-
se it is not self-executing; it has to be taken to court to be made
rative. But I would certainly not object to some clarifying change
ng made in that language, in order to make it clear that we are
king about at the end of the Commission proceedings, rather than
he beginning.

Mr. President, I suggest the absence of a quorum.

The Presiding Officer. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Mondale. Mr. President, I ask unanimous consent that the order
the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Mr. Mondale. Mr. President, I send to the desk an amendment in
form of a substitute to the pending amendment, No. 833, and I ask
nimous consent that the reading of the substitute amendment be
ensed with.

The Presiding Officer. Without objection, it is so ordered; and,
hout objection, the substitute amendment will be printed in the
ORD.

The substitute amendment is as follows:

lieu of the language in amendment No. 833, insert the following new
on:

e) subsection (w) of Section 706 of such Act, as redesignated by this section
mended to read as follows:

(w) in any action or proceeding under this title the Commission or Court,
he case may be, may allow the prevailing party, other than the Commission
he United States, a reasonable attorney's fee as part of the costs, and the
mission and the United States shall be liable for costs the same as a private
on. Any prevailing party that is an employer of less than twenty-five em-
ees or a labor organization of less than twenty-five members shall, upon
ication to the Commission, be indemnified by the United States for the cost
is defense against the charge in an amount not to exceed $5,000, including
easonable expenses and attorney's fees incurred after the serving of notice
im of the charge."

Any prevailing party that is an employer of twenty-five to one hundred em-
ees whose average income from such employment is less than $7,500, or a
r organization with twenty-five to one hundred members, shall, upon applica-
to the Commission, be indemnified by the United States for one-half of the
of his defense against the charge not to exceed $2,500, including all reason-
expenses and attorney's fees incurred after the serving of notice on him of
charge. The costs evidenced by repondent's vouchers of his expenses and
rney's fees shall be deemed reasonable so long as they are comparable to the
l amount of the expenses and attorney's fees incurred by the Commission in
stigating and prosecuting the charge. Disallowance of any part of such re-
t shall be made a part of the Commission's order in such proceedings. Any
ed States court before which a proceeding under this title shall be brought
upon request by the respondent make the determination provided for in this
ection. The Treasurer of the United States shall indemnify the respondent
rovided for herein upon certification by the Commission.'"

Mr. MONDALE. Mr. President, I ask unanimous consent that there be a 30-minute limitation on the proposed substitute, to be evenly divided between the proposer of amendment No. 833, the distinguished Senator from Georgia, and the floor manager of the present proposal, the distinguished Senator from New Jersey.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MONDALE. Mr. President, I ask unanimous consent that following that, should the substitute not prevail, there be a limitation of 10 minutes on the amendment offered by the distinguished Senator from Georgia, to be equally divided and controlled by the same parties.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, what is the request?

Mr. GAMBRELL. Mr. President, reserving the right to object——

The PRESIDING OFFICER. In response to the Senator from New York, as the Chair understands it, a substitute amendment to the amendment of the Senator from Georgia has been sent to the desk by the Senator from Minnesota.

Mr. MONDALE. The Chair is correct.

The PRESIDING OFFICER. The Senator from Minnesota requested that there be 30 minutes on the substitute amendment, to be equally divided. Then he made a further request that if the substitute amendment does not prevail, there be 10 minutes, to be equally divided, on the original amendment of the Senator from Georgia.

Is there objection? The Chair hears none, and it is so ordered.

Mr. GAMBRELL. Mr. President, reserving the right to object, I should like the record to show that I object to the substitute, but I do not object to the time limitation.

The PRESIDING OFFICER. As the Chair understands the Senator from Georgia, he has not objected to the unanimous-consent request of the Senator from Minnesota.

Mr. GAMBRELL. That is right. He stated it all together, and I want it to be clear that I object to the substitute.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. MONDALE. I yield.

Mr. CRANSTON. I simply want to request the Senator from Minnesota to list my name as a cosponsor of his very fine substitute amendment.

Mr. MONDALE. Mr. President, I ask unanimous consent that that request be granted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. MONDALE. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged against either side.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

. MONDALE. Mr. President, I ask for the yeas and nays on my sub-
e amendment.
e yeas and nays were ordered.
. MONDALE. Mr. President, I yield 5 minutes.
e PRESIDING OFFICER. The Senator from Minnesota is recognized
minutes.
. MONDALE. Mr. President, the amendment offered by the Senator
Georgia, for which I wish to offer my amendment in the form
ubstitute, is designed to preserve a basically valid proposition in
mendment—but seeks to substitute language which I think is
ial.
underlying law, which is unchanged by the bill, provides that
action or proceeding under this title, the court, in its discretion,
llow the prevailing party—other than the Commission or the
l States—a reasonable attorney's fee as part of the cost; and the
ission and the United States shall be liable for the costs the
s a private person.
proposed substitute would liberalize that provision in two basic
ts. First, it would add authority to award costs to the prevailing
with respect to the cost of a proceeding before the Commission.
nderlying law to which I have referred does not permit the
ing of fees with respect to proceedings before the Commission.
iberalizes the fee awarding powers in that respect.
nd, it makes awarding of such fees mandatory for small busi-
and for unions, when they prevail before the Commission or be-
e court, rather than leaving it discretionary as it now is.
ould provide that employers having between eight to 25 em-
s or unions having between eight to 25 members, could receive
able attorneys' fees up to $5,000, and large employers and unions,
aving employees or union members in a number between 25 and
uld receive up to $2,500—if they are the prevailing party.
cipally, Mr. President, my objection to the amendment offered
Senator from Georgia is that while I think it justifiably recog-
he question of costs that may be visited on small businesses or
nions, it has built within it an unfortunate dimension—a di-
n allowing Government funds to be used to finance resistance
timate cases; under the original amendment, it is not necessary
e small business or the union be the prevailing party. Thus, they
e a case that is without any foundation and, at Government ex-
nd for long periods of time, hold proceedings before the Com-
n or hold procedings before the courts and be awarded fees—
ter how groundless the case is.
ems to me that this could encourage, at Government expense,
ce through the assertion of groundless claims; and it could
age litigation in cases that should otherwise be settled. Our
ute would bring much needed relief to small business and small
in cases where there was some hope that they would be the
ing party. It would bring relief to that extent, and also bring
or the cost of such proceedings before the Commission as well
re the courts.
nk that modification retains the basic validity of the amend-
ffered by the Senator from Georgia without risking, in addi-
e problem to which I have made reference.

Mr. JAVITS. Mr. President, will the Senator from Minnesota yie
for one or two questions?

Mr. MONDALE. I yield.

Mr. JAVITS. These questions need to be answered. Does the amen
ment take into consideration where the Commission or the Attorn
General is not a party to litigation, where it is strictly private litig
tion between a complainant and a respondent? Is it then expect
that the United States will reimburse the prevailing party if he is
small business?

Mr. MONDALE. It is not contemplated that that be the case. If the
is some vagueness in the amendment, it should be modified to avo
that possibility.

Mr. JAVITS. I think the amendment will have to be clarified if th
is the intention of the moving party.

Mr. MONDALE. We can prepare a modification——

Mr. JAVITS. That will have to be submitted by someone as a
amendment to the amendment by unanimous consent——

Mr. MONDALE. I realize that; but I do not believe there will be an
objection to it.

Mr. JAVITS. We should try, and time may not allow, but we shou
try, before we wind this up, to put some estimate on record as to th
expected cost. Someone should get in touch with the Commission an
get some estimate. After all, this is not an inappreciable sum of mone
There are 20,000 complaints before the Commission already, so tha
if the cost there would be $5,000 apiece, it could well run into a con
siderable sum of money and we should have some idea on record a
to how frequently this is likely to occur.

Mr. ERVIN. Mr. President, I hate to see my good friend from Ne
York grieving over the problem of lack of money. I understand tha
we are going to have a national debt limit of some $480 billion, s
that we will have plenty of deficit in which to finance anything.

Mr. MONDALE. I think the Senator from North Carolina is correct.

Mr. GUMBRELL. Mr. President, I object to the amendment, becaus
it would wholly thwart the purpose of the amendment, which is t
offer some relief, some meaningful relief, to small business. I can ap
preciate the concern of the Senator from New York over the cost o
this to the Government. I think that no one can claim to have expresse
any greater concern over the cost of the Government than I hav
during the past year. However, I think that as long as we are goin
to inquire about what the cost of this is to anybody, we might get th
Small Business Administration or even the EEOC, if it has any fee
ing for small business, to ascertain the cost of the 20,000 investigator
proceedings that the Senator from New York has mentioned to th
small businesses around this country, which small businesses hav
defended themselves in good faith in these proceedings.

I suggest to the Senate and to the Senator from New York that thi
has a devastating impact on small business which we are undertak
to relieve. And we are talking about proceedings against someon
who has enormous resources.

We are talking about small businesses that are going to be used a
games guns to determine the force and effect of this act. There
are any questions, as the Senator from Minnesota has indicated, about
encouraging groundless defenses. In many cases, as the Senator from

nnesota and other lawyers know and clients know, we do not know
ther the defenses are groundless or not until they have been sub-
ted for adjudication.
The limits that I have mentioned provide that only so much can be
into this. And specifically the limit that the respondent should
e of conducting his defense in a manner consistent with the pur-
of this power will prevent any groundless defenses.
n other words, the Senator from Minnesota said they would be
hout any foundation or for a long period of time. Actually his sub-
ute would encourage people to prevail in a case rather than pursu-
an effort to settle. If we hold out that he has a mandatory fee com-
to him if he wins, and he has a 50-50 chance by either settling or
tinuing, he will say, "By golly, I have a 50-50 chance if I get my
litigated and win." And even if he has defended himself in good
h, even though he would lose, my experience would be that he
ld say, "Let's settle this case. I will agree that I have violated the
n certain minor particulars. I will have my fees allowed."
seems to me the incentive is entirely different from that suggested
he Senator from Minnesota. That, in fact, perfectly clearly indi-
s the intention of my amendment and the defects of his, referring
ne incentive built in under the measure he advocates, whereas the
ntive is to try to settle the case and get it out of the way.
o give that discretion to the Commission, as he has indicated, is
ply to say that the Commission can use this as bait to get people
gree to things that they would not otherwise agree to.
think the Commission already has too much discretion and that
should be put into statutory law, because the courts and the legis-
re ought to tell the people what their rights are and they ought
to have to be weighed in the balance on a case-by-case basis to see
t today's discretion or today's Commission might say.
or that reason I very strongly oppose the substitute amendment
red by the Senator from Minnesota, because it actually runs in the
of making any fair provision for small business.
nder the situation suggested, in legal aid cases where we have,
er our legal services program, provisions in the Federal law for
ng the fees for defendants in Federal courts, if a defendant is
d guilty of a bank robbery, the court cannot allow the lawyer any
However, if he is found to be innocent, the lawyer will get a big

submit that if a man enters a plea of innocent, he is entitled to a
defense regardless. And the same principle applies here if the
ernment has any commitment at all against the abuse of small
ness.
r. President, I hope the substitute amendment is rejected.
r. MONDALE. Mr. President, what is the time situation?
he PRESIDING OFFICER. The Senator from Minnesota has 7 minutes
ining, and the Senator from Georgia has 10 minutes remaining.
r. MONDALE. Mr. President, I ask unanimous consent to modify
mendment to add in the second sentence of subsection (w) of my
itute amendment, following the word "Any prevailing party"
words "in any proceeding brought by or against the Commission
e United States under this title," and further to add in the first
of the second paragraph of subsection (w) after the words "Any
iling party" the words "in such a proceeding."

The modification is designed to deal with a problem which t
Sentor from New York brought up; namely, a wholly private proce
ing in which the Commission is not involved. I would hope that the
would be no objection.

The Presiding Officer. Will the Senator from Minnesota send
modification to the desk?

Is there objection? The Chair hears none, and the amendment
so modified.

Mr. Mondale. Mr. President, I hope that there is no misunderstan
ing on the desirability of bringing relief to the small businesses a
small unions in legitimate cases where they are the prevailing par
What we have proposed by way of substitute here greatly liberaliz
that relief. To the credit of the Senator from Georgia, it was
amendment which helped to make the need for such action appare

We do so in two ways.

First, we make fees available on a discretionary basis with respe
to proceedings before the Commission, as well as to proceedings befo
the court.

Second, we make the provision of such costs mandatory for sma
businesses and for small unions when they are prevailing partie
these fees would not be discretionary for small unions and for sma
businesses.

To go beyond that is to bankroll resistance and to encourge basele
litigation. It would put the Government in the business of financi
resistance to the very legislative objective we seek to obtain here.

Mr. President, both the Senator from Georgia and I are attorney
We know that one of the sobering realities in the practice of law, a
one which prevents many groundless lawsuits from being brought
defended, is the practicalities and the legitimacy of the case itself.
lawyer is not likely to take a case which has no basis to it simply t
resist or to delay or to slow down justice.

Under the principle embodied in the amendment offered by the Sen
tor from Georgia, we would be saying, "Never mind how baseless yo
law suit is and never mind how discriminatory you have been in yo
employment practices, you will get your fees anyway, as long as yo
do not act in an unethical fashion, up to $5,500." We say, instead, "I
you are the prevailing party, you will be entitled to part or all of th
cost of this litigation."

That encourages litigation of responsible lawsuits. But to go beyon
that, in my opinion, would be to encourage and to bankroll resistanc
to the objectives of this legislation. I, therefore, hope that my amend
ment in the nature of a substitute will be adopted.

Mr. Gambrell. Mr. President, if it is appropriate, I should like
this time to offer a clarifying amendment to the pending amendmen
No. 833, in accordance with the comments of the Senator from Ne
York (Mr. Javits).

The Presiding Officer. The Chair advises the Senator from Georgi
that an amendment to the amendment would be in the third degre
and would not be in order. It is possible to modify the amendment b
unanimous consent.

Mr. Gambrell. Mr. President, if it is in order at this time to clarif
the amendment, I ask unanimous consent, in accordance with the co
ments of the Senator from New York, to modify the amendment.

The PRESIDING OFFICER. The Chair wishes to ask the Senator from orgia whether his amendment is to the amendment of the Senator m Georgia.

Mr. GAMBRELL. It is to the amendment of the Senator from Georgia.

The PRESIDING OFFICER. That would be in order. The Chair withws his comments as to the proposed amendment being in the third ree.

Mr. GAMBRELL. Mr. President, I will state what the amendments are. The first amendment would be on line 7, page 1, after the word "reondent," insert "in a proceeding brought by Commission or by the ited States under this title."

On page 2, line 4, after the word "respondent," insert "in such ceeding."

On line 24, prior to the words "no enforcement," insert "following inal determination whether respondent engaged in an unlawful ployment practice."

The purpose of the amendments is to make it clear that the fees ld be payable only in the event that the proceeding was brought by Commission or the United States, and also to make it clear that would not be payable until after the Commission had made its rmination in such proceeding.

ask unanimous consent that the modifications be made.

The PRESIDING OFFICER. Is there objection? The Chair hears none, it is so ordered.

Will the Senator please send his modifications to the desk?

Mr. GAMBRELL. I send the modifications to the desk. I yield back remainder of my time.

Mr. MONDALE. I yield back the rest of my time.

The PRESIDING OFFICER. All time has been yielded back. The yeas nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from as (Mr. Bentsen), the Senator from Missouri (Mr. Eagleton), Senator from Alaska (Mr. Gravel), the Senator from Oklahoma . Harris), the Senator from Indiana (Mr. Hartke), the Senator n Minnesota (Mr. Humphrey), the Senator from Washington (Mr. kson), the Senator from Washington (Mr. Magnuson), the Sen- from South Dakota (Mr. McGovern), the Senator from Maine . Muskie), the Senator from Alabama (Mr. Sparkman), the Sen- from Illinois (Mr. Stevenson), the Senator from California (Mr. ney), and the Senator from Wyoming (Mr. McGee) are neces- ly absent.

I further announce that, if present and voting, the Senator from fornia (Mr. Tunney), the Senator from Illinois (Mr. Stevenson), Senator from South Dakota (Mr. McGovern), the Senator from shington (Mr. Magnuson), the Senator from Washington (Mr. kson), the Senator from Oklahoma (Mr. Harris), and the Senator n Minnesota (Mr. Humphrey) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. er), the Senator from New Hampshire (Mr. Cotton), the Senator n Arizona (Mr. Fannin), the Senator from Texas (Mr. Tower), the Senator from North Dakota (Mr. Young) are necessarily nt.

The Senator from Tennessee (Mr. Brock), the Senator from Wy
ming (Mr. Hansen), and the Senator from Maryland (Mr. Mathia
are absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because
illness.

The Senator from Nebraska (Mr. Curtis), and the Senator fro
Maryland (Mr. Beall) are detained on official business.

On this vote, the Senator from Nebraska (Mr. Curtis) is pair
with the Senator from Texas (Mr. Tower). If present and voting, t
Senator from Nebraska would vote "yea" and the Senator from Tex
would vote "nay."

The result was announced—yeas 54, nays 21, as follows:

[No. 21 Leg.]

YEAS—54

Aiken	Fong	Packwood
Allott	Goldwater	Pastore
Anderson	Gurney	Pearson
Bayh	Hart	Pell
Bellmon	Hatfield	Percy
Boggs	Hruska	Proxmire
Brooke	Hughes	Randolph
Buckley	Inouye	Ribicoff
Burdick	Javits	Roth
Byrd, W. Va.	Kennedy	Saxbe
Cannon	Mansfield	Schweiker
Case	McIntyre	Scott
Church	Metcalf	Smith
Cook	Miller	Stafford
Cooper	Mondale	Stevens
Cranston	Montoya	Symington
Dole	Moss	Weicker
Dominick	Nelson	Williams

NAYS—21

Allen	Ervin	Long
Bennett	Fulbright	McClellan
Bible	Gambrell	Spong
Byrd, Va.	Griffin	Stennis
Chiles	Hollings	Taft
Eastland	Jordan, N.C.	Talmadge
Ellender	Jordan, Idaho	Thurmond

NOT VOTING—25

Baker	Hansen	Mundt
Beall	Harris	Muskie
Bentsen	Hartke	Sparkman
Brock	Humphrey	Stevenson
Cotton	Jackson	Tower
Curtis	Magnuson	Tunney
Eagleton	Mathias	Young
Fannin	McGee	
Gravel	McGovern	

So Mr. Mondale's amendment to Mr. Gambrell's amendment wa
agreed to.

The PRESIDING OFFICER. The question recurs on agreeing to th
amendment of the Senator from Georgia (Mr. Gambrell) as amended

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays.

he yeas and nays were ordered.
Ir. Mondale. Mr. President, I ask unanimous consent that the
ie of the distinguished Senator from West Virginia (Mr. Ran-
)h) be added as a cosponsor of the substitute amendment.
he Presiding Officer. Without objection, it is so ordered.
Ir. Pastore. Mr. President, may we have order?
he Presiding Officer. The Senator's observation is well taken.
Senate will be in order. Senators will take seats or retire to the
kroom.
Ir. Gambrell. Mr. President, may I inquire what the time situa-
is?
he Presiding Officer. There is no limitation on time. The 10-min-
agreement was entered into as between the Senator from Minnesota
the Senator from Georgia on the amendment to the amendment of
Senator from Georgia. There is no time limitation on the amend-
t of the Senator from Georgia as amended by the amendment of
Senator from Minnesota.
r. Gambrell. Mr. President, I would like to state, then, while other
itors are here, that I consider the substitute offered by the Senator
1 Minnesota to be a tremendous improvement on the present law,
while still not adequate in accordance with the amendment which
fered, it is certainly an improvement in favor of the interests of
il business. Therefore, I shall vote in favor of the amendment as
nded by the substitute amendment offered by the Senator from
nesota, and encourage my colleagues to do likewise.
do not intend to take up the time of the Senate in dealing further
the matter, unless someone else wishes to speak.
he Presiding Officer (Mr. Weicker). The question is on agreeing
ie amendment of the Senator from Georgia (Mr. Gambrell) as
nded by the amendment of the Senator from Minnesota (Mr.
idale). On this question, the yeas and nays have been ordered, and
clerk will call the roll.
he legislative clerk called the roll.
r. Byrd of West Virginia. I announce that the Senator from Texas
. Bentsen), the Senator from Missouri (Mr. Eagleton), the Sena-
from Alaska (Mr. Gravel), the Senator from Oklahoma (Mr.
ris), the Senator from Indiana (Mr. Hartke), the Senator from
nesota (Mr. Humphrey), the Senator from Washington (Mr.
kson), the Senator from North Carolina (Mr. Jordan), the Sena-
from Washington (Mr. Magnuson), the Senator from Wyoming
. McGee), the Senator from South Dakota (Mr. McGovern), the
itor from Maine (Mr. Muskie), the Senator from Alabama (Mr.
rkman), the Senator from Illinois (Mr. Stevenson), and the Sena-
from California (Mr. Tunney) are necessarily absent.
further announce that the Senator from Mississippi (Mr. East-
l) is absent because of illness.
further announce that, if present and voting, the Senator from
ska (Mr. Gravel), the Senator from Oklahoma (Mr. Harris), the
itor from Minnesota (Mr. Humphrey), the Senator from Wash-
on (Mr. Jackson), the Senator from North Carolina (Mr. Jor-
), the Senator from Washington (Mr. Magnuson), the Senator
n South Dakota (Mr. McGovern), the Senator from Illinois (Mr.

Stevenson), and the Senator from California (Mr. Tunney) wo
each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (M
Baker), the Senator from New Hampshire (Mr. Cotton), the Senat
from Arizona (Mr. Fannin), the Senator from Texas (Mr. Tower
and the Senator from North Dakota (Mr. Young) are necessar
absent.

The Senator from Tennessee (Mr. Brock), the Senator from Wy
ming (Mr. Hansen), and the Senator from Maryland (Mr. Mathia
are absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because
illness.

The Senator from Nebraska (Mr. Curtis) is detained on official bus
ness.

If present and voting, the Senator from Nebraska (Mr. Curtis) a
the Senator from Texas (Mr. Tower) would each vote "yea."

The result was announced—yeas 72, nays 2, as follows:

[No. 22 Leg.]

YEAS—72

Aiken	Ellender	Moss
Allen	Ervin	Nelson
Allott	Fong	Packwood
Anderson	Fulbright	Pastore
Bayh	Gambrell	Pearson
Beall	Goldwater	Pell
Bellmon	Gurney	Percy
Bennett	Hart	Proxmire
Bible	Hatfield	Randolph
Boggs	Hollings	Ribicoff
Brooke	Hruska	Roth
Buckley	Hughes	Saxbe
Burdick	Inouye	Schweiker
Byrd, Va.	Javits	Scott
Byrd, W. Va.	Jordan, Idaho	Smith
Cannon	Kennedy	Spong
Case	Long	Stafford
Chiles	Mansfield	Stennis
Church	McClellan	Stevens
Cook	McIntyre	Symington
Cooper	Metcalf	Talmadge
Cranston	Miller	Thurmond
Dole	Mondale	Weicker
Dominick	Montoya	Williams

NAYS—2

Griffin	Taft

NOT VOTING—26

Baker	Hansen	McGovern
Bentsen	Harris	Mundt
Brock	Hartke	Muskie
Cotton	Humphrey	Sparkman
Curtis	Jackson	Stevenson
Eagleton	Jordan, N.C.	Tower
Eastland	Magnuson	Tunney
Fannin	Mathias	Young
Gravel	McGee	

So Mr. Gambrell's amendment, as amended, was agreed to.
Mr. Javits. Mr. President, I move to reconsider the vote by which e amendment was agreed to.
Mr. Williams. I move to lay that motion on the table.
The motion to lay on the table was agreed to.

AMENDMENT NO. 830

Mr. Chiles. Mr. President, I send to the desk a modification of my nendment No. 830 and ask that it be stated.
The Presiding Officer. The amendment as modified will be stated.
The assistant legislative clerk read as follows:

On page 59, line 25, following the comma, insert the following: "for the limited rpose of publicizing in the media the Commission and its activities".

Mr. Chiles. Mr. President, I ask for the yeas and nays on the nendment.
The yeas and nays were ordered.
Mr. Chiles. Mr. President, last week, the distinguished Senator om Alabama (Mr. Allen) offered an amendment to section 705, bsection (e), to strike that section, whereby the Commission could, ntrary to present statutes, accept voluntary and uncompensated rvices. That amendment was rejected.
At that time, the distinguished chairman of the committee, the nator from New Jersey (Mr. Williams), made statements in the ecord to the extent that it was necessary or that they felt it was od for the Commission to be able to accept voluntary services solely be able to publicize the work and activities of the Commission. think the example was given that it was valid to have a provision nereby a personality like Bill Cosby could say on television, "If you n't think you have been treated fairly, there is a commission, and u can go to that commission and find out what your rights are."
Mr. President, I am not sure that it is necessary to have any lan-age in the bill, regardless of our present statutes, for any person be able to speak through any of the media to publicize anything it is the law of the United States.
The first amendment of the Constitution and the other provisions ould certainly give to every citizen the right to speak but, at the ne time, I was concerned that the amendment by the Senator from abama did fail, and the language now in the present law certainly sufficiently broad which would lend itself to the Commission, re-rdless of what the present purpose is today, and regardless of what ngress is today. Certainly the language was there, and sufficiently oad, and would allow the Commission to accept any number of lunteers up into the thousands for anyone, regardless of what the otivation and the interest is, to go to the Commission and, the way law is now framed, have the right not only to make findings of t but also to issue cease-and-desist orders of those findings.
If that is not the purpose, and we say it is not, then we should narrow scope of the law. That is what the amendment I have introduced oposes to do. In the language, where we seek to accept voluntary or compensated services, we would strike the express limitation or iting language for the limited purpose of publicizing in the media Commission and its activities. This would allow the Bill Cosby uation—it is allowable anyway—but if we strike the whole thing it

is allowable, but certainly allowable under the language and, at the same time, we would narrow it, as I think the Senator from Alabama was attempting to do in his amendment; that is, to clarify that it would not have this open for any group of volunteers which felt it had to or expressed itself as wanting to come in and be clothed with authority to investigate and perhaps to prosecute activities of the Commission when we do not do this anyway in any agency of Government.

I first considered that we bring this to the attention of the Senate by way of drawing up an amendment which would say that any of the volunteers who were so accepted by the Commission would also be entitled to be volunteers with the FBI or the Internal Revenue Service. I think, when we think in those terms, none of us would consider having volunteers for any purpose; and yet the express purpose of this, we are told, is not for that but only to publicize it. If that is so, then I would think this amendment would clarify and narrow it.

I urge adoption of my amendment.

Mr. WILLIAMS. Mr. President, there was an amendment offered to strike from the bill the provisions that permitted acceptance of volunteer services. It was an amendment which did not carry. This provision stayed in. Notwithstanding that vote, there has been some discussion of just what services are contemplated under the provisions in the bill.

As I have listened to the Senator from Florida, it seemed to me that some of the anxieties expressed were expressed in extravagant terms as to what it really meant.

As I debated, in opposition to the original amendment, I indicated that it was the basic purpose of the provisions in the bill to permit the Commission to receive the services of volunteers who wanted to publicize the work of the Commission and what it was all about. I mentioned certain people who do work and are prominent in the media. I recall mentioning particularly Bill Cosby. It may be my impression but the limitations we were contemplating is that this is an amendment that clarifies in bill language the purpose that I thought were the intentions in the bill and, for that reason, it clarifies and pinpoints the activities that can be accepted publicizing in the media the Commission and its activities. It is certainly acceptable to me. The Senator from New York and I have discussed this and he shares my view. It is acceptable to him as well.

The Senator's clarification is in good order.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER. All time on the pending amendment has been yielded back.

The question is on agreeing to the amendment, No. 830, as modified, of the Senator from Florida (Mr. CHILES).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Missouri (Mr. EAGLETON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY),

he Senator from Washington (Mr. Jackson), the Senator from Louisna (Mr. Long), the Senator from Washington (Mr. Magnuson), the enator from Wyoming (Mr. McGee), the Senator from South Dakota Mr. McGovern), the Senator from New Hampshire (Mr. McIntyre), nd the Senator from Maine (Mr. Muskie) are necessarily absent.

I further announce that the Senator from Alabama (Mr. Sparkan), the Senator from Illinois (Mr. Stevenson), and the Senator om California (Mr. Tunney) are necessarily absent.

I further announce that the Senator from Mississippi (Mr. Eastnd), is absent because of illness.

I further announce that, if present and voting, the Senator from alifornia (Mr. Tunney), the Senator from Washington (Mr. Magnun), the Senator from Washington (Mr. Jackson), the Senator from innesota (Mr. Humphrey), and the Senator from Illinois (Mr. Steuson) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. ıker), the Senator from New Hampshire (Mr. Cotton), the Senator om Arizona (Mr. Fannin), the Senator from Texas (Mr. Tower), d the Senator from North Dakota (Mr. Young) are necessarily sent.

The Senator from Tennessee (Mr. Brock), the Senator from Wyong (Mr. Hansen) and the Senator from Maryland (Mr. Mathias) e absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of ness.

The Senator from Nebraska (Mr. Curtis), the Senator from Arizona Ir. Goldwater), and the Senator from Pennsylvania (Mr. Scott) e detained on official business.

If present and voting, the Senator from Nebraska (Mr. Curtis), the nator from Pennsylvania (Mr. Scott), and the Senator from Texas Ir. Tower) would each vote "yea."

The result was announced—yeas 67, nays 3, as follows:

[No. 23 Leg.]

YEAS—67

ken	Ellender	Pastore
en	Ervin	Pearson
ott	Fong	Pell
derson	Gambrell	Percy
all	Griffin	Proxmire
lmon	Gurney	Randolph
nett	Hatfield	Ribicoff
le	Hollings	Roth
gs	Hruska	Saxbe
oke	Hughes	Schweiker
kley	Inouye	Smith
rdick	Javits	Spong
d, Va.	Jordan, N.C.	Stafford
rd, W. Va.	Jordan, Idaho	Stennis
mon	Mansfield	Stevens
e	McClellan	Symington
les	Metcalf	Taft
rch	Miller	Talmadge
k	Mondale	Thurmond
per	Montoya	Weicker
nston	Moss	Williams
e	Nelson	
minick	Packwood	

NAYS—3

Bayh	Hart	Kennedy

NOT VOTING—30

Baker	Gravel	McGovern
Bentsen	Hansen	McIntyre
Brock	Harris	Mundt
Cotton	Hartke	Muskie
Curtis	Humphrey	Scott
Eagleton	Jackson	Sparkman
Eastland	Long	Stevenson
Fannin	Magnuson	Tower
Fulbright	Mathias	Tunney
Goldwater	McGee	Young

So Mr. Chiles' amendment, as modified, was agreed to.

Mr. CHILES. Mr. President, I move that the Senate reconsider th vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 815

Mr. ERVIN. Mr. President, on behalf of the distinguished Senato from Alabama and myself, I call up amendment No. 815 and ask tha it be stated.

The assistant legislative clerk read as follows:

On page 33, strike out everything from the word "or" on line 20 through th word "activities" on line 24, and insert the following in lieu thereof: "or to th employment of any individuals by any educational institutional institution or b any religions corporation, association, or society."

Mr. BYRD of West Virginia. Mr. President, for the information o Senators, there will be no more rollcall votes today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous con sent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. Byrd of West Virginia at this point, on th introduction of S. 3097, on behalf of the Senator from Washingto (Mr. Jackson), are printed in the earlier part of the Record unde Statements on Introduced Bills and Joint Resolutions.)

[From the Congressional Record—Senate, Feb. 1, 1972]

QUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 848 THROUGH 851

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted four amendments intended to be proposed him to the bill (S. 2515) to further promote equal employment portunities for American workers.

A copy of Amdts. Nos. 848 through 851 begins on p. 1263.)

* * * * * * *

The PRESIDING OFFICER. The hour of 11:30 having arrived, and pur- nt to the unanimous-consent agreement, the remaining time from y until the hour of 12:30 will be equally divided between and con- lled by the manager of the bill, the Senator from New Jersey (Mr. lliams) and the Senator from North Carolina (Mr. ERVIN).

The clerk will report the pending business.

The legislative clerk read the bill by title, as follows:

bill (S. 2515) to further promote equal employment opportunities for erican workers.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The rk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, acting for the distinguished senior Sen- from North Carolina (Mr. ERVIN), I yield myself 6 minutes.

The best way to save the time of the Senate and of the Congress is vote against the cloture motion. If cloture fails today and fails morrow, in all likelihood the proposal will be laid aside, and the ate can go on to more important matters. We have a west coast k strike. We are in the midst of a recession. We are in a period of ation. We are at war. The Secretary of the Treasury has requested increase in the debt limit by $50 billion. Yet we spend the time of Senate on a proposal which is a power grab on the part of the OC, a proposal that would seek to make of this Federal Bureau or ney a court, a jury, a judge, and a prosecutor in investigating and dicating complaints of unfair labor practices.

Mr. President, if cloture should prevail, the proponents of this sure can write any bill that they see fit to write. Out the window be any chance of knocking out the cease-and-desist provision, though the House used the court enforcement procedure. The

House bill, which we sought to substitute on the floor for the comm tee amendment, provides for enforcement of such complaints throu court procedures. Forty-six Members of the Senate, out of 94 Senato voting, voted for the same plan. More than 48 percent of the Senato voted for the court procedure rather than for making this Comm sion a court and jury and prosecutor.

It is not often that a Senator or a Member of the House has opportunity to cast a vote which is so important as this cloture vo It will be striking a blow against expanding, mushrooming Feder bureaucracy. It will be striking a blow against further control of e everyday lives by Federal bureaus and agencies here in Washingto It is a most important vote, and if the 46 Members of the Senate wh voted to adopt the amendment substituting court procedure for Com mission determination will stand together on this vote and on th succeeding vote, we will be able to kill this bill.

Mr. President, some suggestion has been made that possibly a retur will be made to the House plan. If the Senate votes for cloture, ther will be no chance of returning to the House plan of court action, cou determination, court adjudication, court enforcement, because all bar will be down. There is a majority in the Senate that wants cease-and desist powers for the EEOC, but 46 Members of the Senate do no along with a majority of the Members of the House.

So, Mr. President, if cloture is invoked, if the debate does end, wha then will be the procedure? In time, the bill will be passed in the Sen ate, with cease-and-desist powers for the EEOC. It will go to th House, where there will be additional debate. On passage of the bil in the House, it will return to the Senate, where further lengthy debat can be held on whether to concur in the House amendment or sen the bill to conference. After that issue has been debated for days o end, then, in all likelihood, the bill would go to conference, and then on the question of agreeing to the conference report on its submissio to the two bodies, there again there will be an opportunity to debat this issue.

On the other hand, if 34 Members of the Senate will vote agains the cloture motion today and tomorrow, the chances are that will b the end of this pernicious bill, which is the biggest grab for powe that has been asserted by those who wish to lodge all power in Gov ernment, all power over our everyday lives in bureaus and agencie here in Washington.

I urge my fellow Senators to vote "no" on the cloture motion.

I reserve the remainder of my time.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) to further promote equal employment opportunities for American workers.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

Who yields time?

Mr. WILLIAMS. I yield myself 5 minutes.

Mr. President, the Senate is now in its 10th day of debate on S. 15, a bill to further promote equal employment opportunities for merican workers. For a good deal of the time we have been engaged extremely productive and valuable analysis of the most appropriate d efficient way to provide the Equal Employment Opportunity Com- ssion with enforcement powers.

To date the Senate has given this legislation extremely careful and ose consideration. In doing so it has achieved a number of worthy jectives:

First. It has required the exhaustion of administrative remedies ior to contract cancellations;

Second. It has required that Commission findings be based on a ponderance of the evidence;

Third. It has created an independent General Counsel;

Fourth. It has provided financial assistance to small business and all union defendants; and

Fifth. It has limited the use of voluntary services to publicity in the dia.

Over and above these achievements the committee itself in reporting bill took into account the views of a majority of the Members of s body by:

First. Providing for a special Attorney General procedure for the orcement of the law against State and local governments;

Second. Retaining the functions of the Civil Service Commission Federal employment while authorizing individual lawsuits in the leral courts;

Third. Permitting a phase-in period for the transfer of "pattern l practice" jurisdiction from the Department of Justice to the OC; and

Fourth. Eliminating the provision authorizing a Commissioner's rge.

We have already had 18 rollcall votes on this legislation. We have n had substantial debate on two significant amendments which have yet been voted on: the coverage of educational and religious insti- ons and the coverage of employers and unions with between eight 25 employees and members.

Mr. President, the ultimate goal of this debate has been to increase employment opportunities of our minorities and women by pro- ing the necessary machinery to bring an end to job discrimination e and for all in our country.

very much respect the views that have been expressed in this mber about the merits of court enforcement as opposed to the inistrative cease and desist hearing approach together with court ew.

seems to me that no useful purpose is served by continuing the og on the subject of enforcement powers or at least on the mecha n of the enforcement powers any longer. The Senate has worked vill and it is my sincere desire to respectfully suggest that we get with the legislative process, mindful particularly of the very heavy burdensome load of legislation which awaits us at the end of this ate.

There should be no doubt that the Senate has decided the issue an that the Members of this body have had ample opportunity to registe their views.

Two years ago, after debate, the Senate voted for cease and desis This year the Senate has already had six rollcall votes on that or aspect of this legislation.

I recognize that the Senate was closely divided on which procedur would be more effective. But, under our principles of Government, th Senate has decided. And now again I respectfully suggest that w should move on.

However, Mr. President, the debate in the past few days has take on a very ominous and undesirable tone to my way of thinking. I a afraid that many of the arguments that have been presented befor this Chamber have been an attempt to revise the past in all its sad ness and wastefulness of human resources.

Mr. President, those days are gone. That era is passed. The questio of whether or not employment discrimination is unconstitutional an should be proscribed by statute has long since been passed. It has bee put to rest. It should stay at rest. For the good of the country, it shoul not be resurrected.

We are no longer debating whether or not employment discrimina tion is evil. We are no longer debating whether employment discrimi nation should be outlawed. The simple truth is that this debate for years has been limited to the scope and kind of enforcement power that the Government of the United States should have to enable mi norities and women to secure their rights to equal job opportunities.

Mr. President, the Committee on Labor and Public Welfare wa unanimous in its views that an enforcement mechanism was needed The President of the United States, in his state of the Union message delivered only a little over a week ago, agreed that an enforcement mechanism is needed.

Mr. President, I think it is time to get on and pass this bill and provide that enforcement mechanism.

I recognize and appreciate that my distinguished colleague from North Carolina agreed to a time limitation on one of his major issues the coverage of State and local governments. Time limitations have also been agreed upon on several other votes.

However, I find it ominous to note that 47 amendments have now been offered most of which are duplicative in nature. We have even had an amendment offered which is almost identical, and I repeat that, almost identical, to one which the Senate voted to table by a rollcall vote of 45 to 32.

Even more important, this debate has really lasted almost 9 years now. The original Kennedy administration bill provided this method of enforcement. It was compromised out of the bill, because of extended debate or a filibuster. And here we are today still debating the issue.

Mr. President, the time has long since passed for debate. We have had ample debate. It is time for the Senate to act.

I certainly urge the Senate to bring to a close the debate and vote for the cloture motion now pending before the Senate on S. 2515.

Mr. ALLEN. Mr. President, I yield 6 minutes to the distinguished Senator from California (Mr. Cranston).

The Presiding Officer (Mr. Chiles). The Senator from California recognized for 6 minutes.

Mr. Cranston. Mr. President, I rise to speak very briefly on the ture motion on S. 2515, the pending bill to strengthen the Equal ployment Opportunity Commission, a bill which I enthusiastically ponsor.

This cloture motion has been filed by the distinguished chairman of Committee on Labor and Public Welfare, the Senator from New sey (Mr. Williams), and the distinguished ranking minority mem- of the committee, the Senator from New York (Mr. Javits).

I have the greatest respect for both these gentlemen, and share their otion to the cause of equal employment opportunity and other civil hts.

Nonetheless, I intend to vote against this cloture motion.

n doing so, I remain fully committed to the purpose and provisions he bill reported by the committee along with the few excellent r amendments thus far adopted.

continue to disagree most strongly with the several amendments ch have been offered and have been defeated by the Senate. These ndments would, in my view, destroy the essential thrust of this

will vote against cloture at this time, because I do not believe sub- ntive disagreement with those attempting to prolong debate, in er to present fully and forcefully to the Senate and to the public at ge the basis for their opposition to a pending measure, provides an quate justification for shutting off debate at such a relatively early ge in the discussion.

he opponents of the bill are entitled to be heard in the Senate and in country setting forth their position for longer than the scant 2 ks which have elapsed in the debate thus far.

he points they have been making and the amendments they have n offering have been reasonable ones from their points of view. I eve it would be unfair of the majority to silence dialog on such a or piece of legislation at this point in the deliberations and in the rts of those who wish to make their case further.

point out also that one of the substitute and modifying amend- ts which has been offered has improved and strengthened the bill. s occurred in one case yesterday in the substitute amendment of- d by the distinguished Senator from Minnesota (Mr. Mondale) ch I cosponsored.

r. President, the last cloture vote before this body occurred ap- ximatley 6 weeks ago on another matter with strong civil rights lications. This was the pending nomination of now Mr. Justice lim H. Rehnquist to be Associate Justice of the Supreme Court. pposed cloture at that point, because I felt those of us in a mi- ty—were entitled to continue our attempt to explore as fully ossible and dramatize both to the Senate and the Nation our very ly felt concerns. I was grateful at the early point of debate that Senate chose not to invoke cloture against those of us so deeply erned about human rights and liberties.

closing, Mr. President, I wish to note what a very difficult this is for me today. I recognize how strongly the proponents of bill feel about the need to move ahead with it promptly in the

Senate. I share this concern. I wish to make clear that at such ti
as I am convinced that failure to invoke cloture on this bill v
threaten timely Senate action—that is, lead to a decision to lay
bill aside and proceed to other business—I will then vote for clotu
I just do not believe we are at that point today.

I urge my colleagues not to shut off debate today. In the name
those same rights and liberties, despite the great importance of
pending measure and the need for congressional action soon.

Mr. President, I yield back whatever time remains that was al
cated to me.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yi
me 5 minutes?

Mr. WILLIAMS. I am happy to yield to the Senator from New Yo
such time as he may need within our time limit.

The PRESIDING OFFICER. The Senator from New York is recogniz
for 5 minutes.

Mr. JAVITS. Mr. President, as the Senator from California has pro
erly stated, the cloture motion is essentially presented by those w
have managed the bill on the floor, the Senator from New Jersey a
myself.

As we approach the first vote on cloture, we very well know th
there will probably be another one and perhaps another one after th

We owe the Senate an accounting of why we did what we did, a
why we feel that we are entitled to the support of at least a majority
Senators for our efforts.

As debates go, this debate has gone on about its normal length
time—about 10 working days.

Mr. President, with unanimous-consent agreements, which gene
ally ensue about this time, we could have finished the bill in 10 or
working days which, considering the timing of the bill, in the ear
days of the session, is all right. The difficulty is that we have had
very clear statement by the opponents of the measure—they have
much right to oppose as we have to propose, and I make no mor
judgments whatever—that they will use the power they have und
the rule. Again, I do not say that invidiously. The Senator from Cal
fornia has just said that he feels that that is a beneficient rule a
is a good thing. However, they feel that they should make use of th
power in order to reverse a decision taken by five votes by a majorit
of the Senate. And they have told us, "Gentlemen, if we can hel
it, there will be no bill if you do not accept basically the propositio
which was defeated."

Mr. President, it seems to me that this poses the issue very sharpl
to us. Is the Senate of the United States to be run according to th
dictates of the Constitution, that a majority shall determine in th
final analysis what shall or shall not be done, or is the Senate of th
United States to be run by former Senator Calhoun's rule of a co
current majority, which means that we cannot do anything arou
here unless two thirds of the Members present and voting agree to i

Mr. President, that is because of rule XXII and not because of t
Constitution. It has always been argued, when we have argued wit
respect to the provisions of rule XXII, that if the Senate really wan
to work its will, it can do so. We will see about that.

Mr. President, that just is not so unless there are enough Senators o feel that should not be the rule, notwithstanding their votes on a rticular measure. Obviously unless some of the proponents of the minick amendment vote for cloture, there will be no EEOC bill cept on the terms of those who refuse to agree with the majority.

Mr. President, this is the issue, starkly and clearly stated. Can a nority successfully frustrate the majority, notwithstanding the t that the majority after a decent length of debate calls for the ocation of rule XXII? The answer is decidedly yes, unless Sena- s will rise above their opinions on a particular measure to the hest degree and see that the Senate is permitted to function accord- to its constitutional duty, not just its right.

We have already voted on a number of amendments. I, myself, sup- ted the decision to strike out the transfer of the Office of Federal ntract Compliance which was an issue that was debated very much. We have supported the reasonable disposition of the volunteers stion. We have supported the reasonable disposition of the affirma- action plan and the small business indemnification question.

Mr. President, there are a few other amendments which will come which we will do our utmost to deal with reasonably according to best sensibilities of the Senate. They can be disposed of within 48 rs, as can be seen from an inspection of the amendment.

Mr. President, as we come to the first vote on cloture, the issue is r. Does the Senate function by the concurrent majority? The ate cannot pass anything unless two-thirds are willing. Are there enough Senators who will rise above their personal feelings on easure and subserve the total national interest so that the Senate not be immobilized by the minority.

That is the issue, Mr. President. We will begin to decide it and the ntry will have a very important influence on that decision, be- se when at the beginning of every session, as I have noted now e 1957 when I first came here, a concurrent periodic effort is made mend rule XXII, that is not the time to argue. That is not the e to state the issues. That is not the time when the case is made or ade.

he case is made or unmade in every session as we approach an e on which opinions are deeply held or felt by an enormous ma- ty of the population. And if they see themselves frustrated by application of a Senate rule which can be undone by a majority he Senators in the beginning of the Congress, it is there that the ulative wrath of the country can manifest its will, and not until

he case is not made, Mr. President, in the beginning of these suc- ive Congresses. The case is made now, in each February, March, il, and May when the majority feels it is frustrated and not able erform its constitutional duty because of the presence of this rule our books, a rule which has nothing to do with complete and honest ate.

hat has not been denied in this Chamber. There is no gag rule . But it has a lot to do with the feelings of the minority that it can trate the majority. That is built into the rule. That is not the way ght to be.

I hope very much that the Senate, in the absence of a change the rule—which it cannot make now—will exercise its duty, patriotis and fidelity to its own responsibility so that the hands of the major may be unmanacled and there can be given a decent opportunity debate of amendments with complete reasonableness and freedom that the Senate may be in a position to act.

For these reasons, Mr. President, I hope that Senators who h any doubt in their minds, like those voiced by the Senator from Ca fornia, will vote for cloture this first time out. The case has got to built. And we cannot build it without the necessary support.

Mr. President, I thank my colleague for yielding.

Mr. ALLEN. Mr. President, how much time do I have remainin

The PRESIDING OFFICER. The Senator from Alabama has 9 minut remaining.

Mr. ALLEN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recogniz for 5 minutes.

Mr. ALLEN. Mr. President, I do not see the need for all of the important and basic changes in the law the EEOC has been operati under for some 7 years. It has not had the powers that the proponen seek to give to it. It has not had the power to deal with employe of as few as eight people.

The distinguished Senator from New Jersey ticked off a number amendments that have been adopted, making major changes. But t amendments that have been adopted do not affect in any way the pow grab of this bill that would make it applicable to employers of as fe as eight people.

They do not eliminate the expansion of power of the EEOC ov every State, county, and city employee or every agency of every Stat county, and city.

They have not amended out the grab for power by which EEOC seeking to assert its will over every single educational institution i this country.

They have not amended out of the bill the provision transferrin from the Justice Department over to this department the authority t bring pattern and practice suits against employers throughout th country.

Mr. President, this is just a case of the EEOC asking for too muc They ask for all of these changes and all of these expansions of the authority. Then, how do they want to enforce the substantive and basi rights of individuals? Are they satisfied to go into court?

What we are asking is that these complaints, these charges, be trie be adjudicated, be determined, and be enforced through a Federal dis trict court rather than to have them determined by the Commissio which will continue to serve as a prosecutor, as a judge, and as a jury

Mr. President, the EEOC seeks power over State, county, and cit employees. It seeks power over educational institutions. It seeks powe over employers of as few as three persons. But that does not satisf their reaching out for more power. If they do not get all those power what will they do? They will do as they have done for the last 7 years If the bill shall be defeated, no power will have been taken away fro the Commission.

We can vote in favor of the passage of the House bill. The House bill
s passed and is on the Senate calendar. It calls for court enforce-
nt of complaints of unfair labor practices. I dare say that if the
l allowed court enforcement, court adjudication of these complaints,
re would be no difficulty in passing the bill. But the Senate propo-
nts of the bill are insisting on setting up a tremendous bureaucracy
ving almost unlimited power.

t occurs to the junior Senator from Alabama that, truly, as the
tinguished Senator from New York (Mr. Javits) has said, this is,
effect, a vote up or down on the effort to provide court adjudication
her than determination by the Commission. Senators who want
rt enforcement of the basic substantive rights should vote against
ure.

The Presiding Officer. The Senator's 5 minutes have expired.

Mr. Allen. I yield myself 1 additional minute.

Mr. President, the best way to dispose of the bill is to vote against
ure today and to vote against cloture tomorrow. That will have the
ate, in all likelihood, many days of debate upon this issue.

am hopeful that the proponents of the bill will come to the thought
idea of providing for court enforcement of these basic rights. But
e invoke cloture, that wish and that hope will have gone forever,
use a majority will then be able to write the bill in any terms it so
res.

Mr. President, I reserve the remainder of my time.

The Presiding Officer. Who yields time?

Mr. Williams. Mr. President, as time runs out and we approach the
, the rhetoric of the Senator from Alabama suggests some heavy-
ded and unconscionable grabbing for power by the Equal Employ-
t Opportunity Commission. Nothing could be clearer than the his-
with respect to the Equal Employment Opportunity Commission
whether it should have effective enforcement powers.

his is no 12th-hour grab by a hungry agency. Sixty-three Senators
are Members of the Senate today were here on the day in 1964 when
ivil rights bill was passed, when Title VII was included, and when
Commission was created. Sixty-three of us went through that long
od after the day when the messages came from President Kennedy
ng for equal employment and for an effective commission having
e-and-desist powers. We went through the debate in 1964. We went
ugh what was known to be a filibuster—584 hours of debate.

tting in the chair across the aisle to my right, the minority leader,
rett Dirksen, finally said, "If you will take from the bill the cease-
desist enforcement powers of the EEOC, we will be able to support
After that decision was reached, cloture was voted, and we went
e compromise bill of 1964.

e know what has happened since then. We know that discrimina-
in employment is still tragically rampant throughout the country.
ple are discriminated against because of their national background,
use of where their parents came from, because of where they them-
s have come from. Women are discriminated against. Black people
iscriminated against.

will say that cases that have finally worked through the long and
minable process of getting to court have been a day of hope to
who have been discriminated against. But it is a long, long, expen-

sive journey; and those 30,000 people who are now complaining EEOC have no chance of carrying their cases all the way through full procedures of the district courts. But if the EEOC is given power that all other agencies have, to hold hearings, with all the process on a complaint, and to reach a finding, a finding that can reviewed in a circuit court of appeals, I suggest that the hope of 19 when the plan was first suggested by President Kennedy for the N tion, will be alive again for the millions of people who now know th they live in a country where they are not fully protected against d crimination. That is all that the bill is about—that is, a constitutio right through statutory enactment.

The Presiding Officer. The time of the Senator from New Jers has expired.

The Senator from Alabama has 2 minutes remaining.

Mr. Allen. Mr. President, I was not one of the Senators present the time to which the distinguished Senator from New Jersey h alluded. He spoke of a compromise having been reached. Apparentl that compromise no longer exists, because what was compromised out not coming forward again.

No one disagrees with the need or the right of every individual the country to have a fair and equal opportunity to obtain employme where job opportunities exist. All advocate that substantive right. Th difficulty arises in the manner of enforcement of that right.

The proponents would have that right enforced by a commission th first accepts or receives charges and then investigates, prosecutes, an passes judgment on those charges. Whether that is fair, whether that due process, or whether, accepting all the rights that each citizen h enforced in a court of law—in a Federal district court. District cour throughout the country have not been lacking in compassion, or lac ing in the enforcement of civil rights. All that the Senator from Al bama is suggesting is that those substantive rights be enforced in th Federal courts, not by an agency that serves in all capacities.

I hope that the Senate will reject the cloture motion.

The Presiding Officer. All time has expired. The hour of 12:30 p.m having arrived, pursuant to rule XXII, and under the unanimous-co sent agreement, the Chair lays before the Senate the pending clotu motion, which the clerk will state.

The assistant legislative clerk read as follows:

Cloture Motion

We, the undersigned Senators, in accordance with the provisions of rule XX of the Standing Rules of the Senate, hereby move to bring to a close the deba upon the bill (S. 2515), a bill to further promote equal employment opportuniti for American workers.

1. Harrison Williams.
2. Walter Mondale.
3. Richard S. Schweiker.
4. George McGovern.
5. Thomas J. McIntyre.
6. Claiborne Pell.
7. J. Glenn Beall, Jr.
8. Mark O. Hatfield.
9. J. Javits.
10. Clifford P. Case.
11. Charles McC. Mathias, Jr.

2. Edward W. Brooke.
3. Charles Percy.
4. P. A. Hart.
5. Harold E. Hughes.
6. Gaylord Nelson.
7. Edward M. Kennedy.
8. Jennings Randolph.

Call of the Roll

The Presiding Officer. Under rule XXII, the Chair directs the rk to call the roll to ascertain the presence of a quorum.
The second assistant legislative clerk called the roll and the follow- Senators answered to their names:

[No. 24 Leg.]

Aiken	Ellender	Moss
Allen	Ervin	Nelson
Allott	Fannin	Packwood
Anderson	Fong	Pastore
Baker	Fulbright	Pearson
Beall	Gambrell	Pell
Bellmon	Goldwater	Percy
Bennett	Griffin	Proxmire
Bentsen	Gurney	Randolph
Bible	Hansen	Ribicoff
Boggs	Harris	Roth
Brock	Hart	Saxbe
Brooke	Hatfield	Schweiker
Buckley	Hollings	Scott
Burdick	Hruska	Smith
Byrd, Va.	Hughes	Spong
Byrd, W. Va.	Inouye	Stafford
Cannon	Javits	Stennis
Case	Jordan, N.C.	Stevens
Chiles	Jordan, Idaho	Stevenson
Church	Kennedy	Symington
Cook	Long	Taft
Cooper	Mansfield	Talmadge
Cotton	McClellan	Thurmond
Cranston	McIntyre	Tower
Curtis	Metcalf	Williams
Dole	Miller	Young
Dominick	Mondale	
Eastland	Montoya	

Mr. Byrd of West Virginia. I announce that the Senator from In- na (Mr. Bayh), the Senator from Missouri (Mr. Eagleton), the ator from Alaska (Mr. Gravel), the Senator from Indiana (Mr. tke), the Senator from Minnesota (Mr. Humphrey), the Senator Washington (Mr. Jackson), the Senator from Washington (Mr. nuson), the Senator from Wyoming (Mr. McGee), the Senator n Maine (Mr. Muskie), the Senator from Alabama (Mr. Spark-), the Senator from California (Mr. Tunney), and the Senator n South Dakota (Mr. McGovern) are necessarily absent.
r. Griffin. I announce that the Senator from Maryland (Mr. hias) is absent on official business.
he Senator from Connecticut (Mr. Weicker) is necessarily absent.
e Senator from South Dakota (Mr. Mundt) is absent because of ss.
he Presiding Officer (Mr. Chiles). A quorum is present.

VOTE

The PRESIDING OFFICER. The question is, "Is it the sense of the Sena
that debate on S. 2515, a bill to further promote equal employment o
portunities for American workers, shall be brought to a close?"

On this question, the yeas and nays are mandatory under the ru
The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from In
ana (Mr. Bayh), the Senator from Missouri (Mr. Eagleton), the Se
ator from Alaska (Mr. Gravel), the Senator from Indiana (M
Hartke), the Senator from Minnesota (Mr. Humphrey), the Senato
from Washington (Mr. Jackson), the Senator from Washington (M
Magnuson), the Senator from Wyoming (Mr. McGee), the Senato
from South Dakota (Mr. McGovern), the Senator from Maine (M
Muskie), the Senator from Alabama (Mr. Sparkman), and the Sena
tor from California (Mr. Tunney) are necessarily absent.

I further announce that, if present and voting, the Senator fro
Minnesota (Mr. Humphrey), the Senator from Washington (M
Jackson), the Senator from Washington (Mr. Magnuson), the Sena
tor from South Dakota (Mr. McGovern) and the Senator from Cali
fornia (Mr. Tunney) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Maryland (M
Mathias) is absent on official business, and, if present and voting
would vote "yea."

The Senator from Connecticut (Mr. Weicker) is necessarily absent

The Senator from South Dakota (Mr. Mundt) is absent because o
illness.

The yeas and nays resulted—yeas 48, nays 37, as follows:

[No. 25 Leg.]

YEAS—48

Aiken	Hart	Pearson
Allott	Hatfield	Pell
Anderson	Hughes	Percy
Beall	Inouye	Proxmire
Bellmon	Javits	Randolph
Bentsen	Jordan, Idaho	Ribicoff
Boggs	Kennedy	Saxbe
Brooke	Mansfield	Schweiker
Burdick	McIntyre	Scott
Case	Metcalf	Smith
Church	Mondale	Stafford
Cook	Montoya	Stevens
Cooper	Moss	Stevenson
Dole	Nelson	Symington
Fong	Packwood	Taft
Harris	Pastore	Williams

NAYS—37

Allen	Dominick	Jordan, N.C.
Baker	Eastland	Long
Bennett	Ellender	McClellan
Bible	Ervin	Miller
Brock	Fannin	Roth
Buckley	Fulbright	Spong
Byrd, Va.	Gambrell	Stennis
Byrd, W. Va.	Goldwater	Talmadge
Cannon	Griffin	Thurmond
Chiles	Gurney	Tower
Cotton	Hansen	Young
Cranston	Hollings	
Curtis	Hruska	

NOT VOTING

Bayh	Jackson	Mundt
Eagleton	Magnuson	Muskie
Gravel	Mathias	Sparkman
Hartke	McGee	Tunney
Humphrey	McGovern	Weicker

The PRESIDING OFFICER. Two-thirds of the Senators present and ing not having voted in the affirmative, the motion is not agreed to.

AMENDMENT NO. 815

The pending amendment is amendment No. 815, by the Senator from rth Carolina (Mr. Ervin) for himself and the Senator from Alana (Mr. Allen).

Mr. MANSFIELD. Mr. President, will the Senators yield?

Mr. ERVIN. I yield.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) to ther promote equal employment opportunities for American kers.

Mr. ERVIN. Mr. President, in lines 18 to 24, both inclusive, on the tom of page 33 of the bill present a drastic proposal. These lines vide:

ec. 702. This title shall not apply to an employer with respect to the employt of aliens outside any State, or to a religious corporation, association, edu-nal institution, or society with respect to the employment of individuals of rticular religion to perform work connected with the carrying on by such oration, association, educational institution, or society of its religious rities.

Mr. President, as I construe those words, they attempt to do an imsible thing, that is, to separate the religious activities of a religious oration, association, educational institution, or society, from those ts activities which can be said to be not religious, nonreligious, or eligious.

As Supreme Court Justice Douglas so well declared in one of th school prayer cases, it is impossible to separate the religious and non religious activities of a religious corporation or religious association o religious educational institution or religious society from its other ac tivities. This is so because the whole religious organization is one body and yet the bill would attempt to divorce the two kinds of activitie each from the other and give a Federal agency the power to dictate, o at least ultimately to control, the employment practices of religiou corporations, religious associations, religious educational institutions and religious societies from each other.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515 to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER. The question is on agreeing to the amend ment of the Senator from North Carolina (Mr. ERVIN).

Mr. ERVIN. Mr. President, I have much concern about any bill which takes away, from any segment of the American people, freedom. I happen to think that freedom is the greatest blessing which people can enjoy on this earth. I also happen to think that it is unwise to take away freedom from some people on the theory that robbing them of their freedom will promote the interests of other people.

I respectfully submit that any law which gives any agency of Government the right to compel employers to employ persons selected by the Government rather than by themselves should be restricted to those who employ persons in great numbers.

This bill proposes that the EEOC shall have the power to ultimately control the hiring, the promotion, and the firing of every employer within the borders of the 50 States who employs as few as 8 persons. I happen to believe that an employer of such a small number of persons who invests his resources or his talents in a business has the right in any free society, or should have the right in any free society, to employ the persons who he himself thinks are best qualified to make his business a success rather than a failure.

I also think that when you get down to a small number of employees like 8, 9, or 10, whether a business is going to be a success is largely going to depend on whether the personal relationships among that small group of employees are amicable, and that it is a great hazard to the success of the business for a governmental agency to say to that employer of so few persons that he has to employ persons selected by the Government, even though their employment will destroy the congeniality of the employees of that establishment and in that way imperil the success of the employer.

As one who loves his country, I am distressed as I go abroad in this land to find that the Federal Government has undertaken to dictate to the people of this country in respect to so many of their affairs, and that many of the Government agents who exercise this power of the Government are so arbitrary that a very substantial part of the people of this country have grown to fear the Federal Government.

I also find, as I go to and fro, a growing contempt among people in general for many of the activities of government. For example, a short time ago a Federal judge sitting in the city of Richmond usurped—and I use that word advisedly—and exercised the power to

quire the Old Dominian to consolidate two independent counties and
a independent city into one school district, and to deny 78,000 little
ildren, black and white, what I consider to be their right to attend
eir neighborhood schools, and required the authorities of the State
f Virginia in that independent city and those two independent coun-
es to bus those 78,000 little children, black and white, away from their
omes, not for the purpose of enlightening their minds but merely for
e purpose of integrating their bodies.

It has been stated in the public press that this judge made it im-
ossible for any Federal judge to visit such political tyranny upon his
vn children, but avoided it by sending his own children to private
hools, which are not subject to such tyrannical power on the part of
ederal judges. I am somewhat at a loss to comprehend how anyone
ho believes in justice and fairplay could fail to entertain a contempt
r governmental action of that nature.

Under this bill, employers of small groups of employees, numbering
pproximately the same as the number of staff members that U.S.
enators and Representatives have, would be subjected to a law which
ives an agency of the Federal Government, namely, the EEOC, the
ower to determine whom they shall hire, whom they shall promote,
hom they may fire, and whom they must retain in their employment.

It is worthy of notice that the Members of the Senate are not asked
impose upon themselves the same tyranny that they would impose
pon private employers of similar numbers of employees. In fact, the
ll, by a provision which appears on page 32, exempts the entire U.S.
overnment from the provisions of this bill.

How are we going to enhance the respect which the people of the
nited States, so we think, ought to have for the Senate of the
nited States, when the Senate emulates the example of the old doctor
ho prescribed medicine for his patients which he would not take
imself?

Several days ago, I called attention to the assertion made by the
ounding Fathers to the Preamble to the Constitution. They asserted
that portion of that great document that they ordained and estab-
shed the Constitution to secure the blessings of liberty for themselves
nd their posterity.

I dislike to say this, but truth compels me to do so. Since I came to
he Senate of the United States 17 years ago, one of the principal occu-
ations of Congress has been to rob the posterity of the Founding
athers of the blessings of liberty which the Constitution was ordained
nd established to secure to them.

We are told by laws such as this that men must think like the
overnment thinks and that they are going to be penalized in their
mployment practices if they fail so to think.

For example, I entertain an honest conviction that a small business-
an ought to have the liberty to employ a person of his own race
nstead of a person of another race. I do not think there is any evil
r any wickedness or any iniquity in a small businessman enjoying
hat right.

Furthermore, I happen to think that a person who is of American
rigin has an inherent right to employ a person of American origin
nstead of a person of some other national origin. I think that when a
erson of American national origin does that, he commits an entirely
atural act, an act which is in no respect evil or iniquitous or sinful.

I also happen to believe that a person of a particular religion ough to have—and that he will have, in a free society—the right to emplo a person whose religious beliefs are similar to his. I do not believ that when a person prefers to employ a person of his own religio rather than a person of another religion, he does anything evil or an thing iniquitous.

Yet, under this bill, a person commits an illegal act if he does an of these things and in so doing is actuated to any degree whatsoev by a preference for a person of his own race or his own religion or h own national origin.

This bill undertakes to deprive small businessmen of basic righ which they have enjoyed in this land ever since George Washingto took his first oath of office as President of the United States. We a told that this bill is to promote equality. I deny it. If the law compel A to work for B against A's will, that is slavery, within the purview o the 13th amendment. If the law says to B, "You must employ A, eve though you prefer to employ some person of your own race or religio or national origin," that does not make A and B equal. It subordinate the rights of B to the artificially created privilege of A, and no amoun of sophistry can erase this plain truth.

Mr. President, in my judgment, it would be bad enough to rob th small businessman, who invests his resources and his talents in a law ful business, of his right to select his own employees; but the depriva tion of freedom which this bill envisages is made worse because th Government agency which is to exercise this autocratic power has ordi narily been staffed in the past—and will almost certainly be staffed i the future—by crusaders for a cause. That, too, is pretty bad. But thi bill establishes procedures which are designed to prevent the courts when they review the decisions of these agencies, from basing their de cisions upon the truth. The law is specifically designed to handicap th courts; and place them in a straitjacket in their search for truth, by say ing that they are bound by the findings of the Commission if those find ings are supported by substantial evidence—that is, merely more than a scintilla—even though the greater weight of the evidence, the more convincing evidence, the evidence which shows the probability that th findings are false, is to the contrary and that, to my mind, is a prostitu tion of the judicial process. I know that no greater evil can be done in the name of justice than to prostitute the judicial process.

Mr. GAMBRELL. Mr. President, will the distinguished Senator from North Carolina yield for a question.

Mr. ERVIN. I am delighted to yield to the Senator from Georgia.

Mr. GAMBRELL. I was interested in the Senator's comments with reference to the imposition on small businesses. That was a concern I undertook to express yesterday in an amendment I offered which, with a modification, was eventually adopted. The Senator will recall that the thrust of the amendment which I offered was to provide financial assistance to small businesses to defend themselves when under investigation or prosecution by the EEOC under the bill. The proposal was according to my amendment, to provide that assistance to a small busi ness defending itself as long as that small business did not conduct it self in a manner inconsistent with the purposes of the act, regardless of whether it eventually won or lost the case. The Senator recalls that amendment?

Mr. ERVIN. Yes. I was pleased to support that amendment, because think it is necessary to achieve a balance in the financial structure. he applicant for employment or the person selected by the Commis- on for employment has all the wealth of the United States arrayed ainst the small businessman.

Mr. GAMBRELL. The Senator will recall that the committee offered a bstitute or an amendment to my amendment which limited its ap- ication only to those small businesses or unions which became the evailing parties in litigation; that is to say, if the small business or union succeeded in establishing that it was not guilty of the charge en it was in a position to be reimbursed for its expenses. The Senator alls that?

Mr. ERVIN. That is true. After the amendment of the Senator from orgia was modified by the amendment of the Senator from Minne- a (Mr. Mondale), I supported the modified amendment not because nought it was a better solution to the problem, but because I thought ould serve justice better.

Mr. GAMBRELL. The Senator will recall that the opposition to the endment as originally offered and the basis for the modification ich tied this benefit to small business or a union which might be uccessful, even though they offered to settle, recognized and agreed t they had been in violation of the act, that denial of the benefit to h small business or union was based on the thought or the observa- that this would be financed to obstruct enforcement of the act that the Government should not finance anyone who might, even ood faith, because they believed in their defense, be in error, or find uselves to be in error and so could not receive such assistance.

ask the Senator, as the Senator from North Carolina is a dis- guished constitutional authority and recognizing, I am sure, that he supported the provisions of adequate assistance for the defense of ccused criminal in Federal court —

Mr. ERVIN. I am proud to say that I am one of the authors of the minal Justice Act and amendments to the Criminal Justice Act gned entirely to accomplish that purpose.

Mr. GAMBRELL. I would ask the Senator—I was not here at the time en all of that was passed—whether there was a hue and cry raised he time the Criminal Justice Act was passed, along the lines that vision of money to an accused criminal might promote the obstruc- or the administration of criminal justice? Was there any such ction made on the part of the Senator from Minnesota or others, took that position here yesterday?

Mr. ERVIN. No. At that time, the Senators who now disagree with Senator from North Carolina were wise enough to accept the ad notion of the Senator from North Carolina to support his en- or.

Mr. GAMBRELL. This is a matter of deep concern to me, that we should a small businessman or a small union who happens to be going ut its business in good faith and who may by accident, through lack nowledge, lack of information, lack of good advice, or something , accidentally violate this act, be considered to have obstructed jus- by defending itself; whereas the most disreputable criminal in our ety, from murderer right on up and down the scale of justice, ac- d of serious crimes, infamous crimes, can get Federal financial

assistance to defend himself, whereas a small business or a union is n
permitted to defend itself with Federal assistance. Is that not t
utmost hypocrisy, in the Senator's opinion?

Mr. ERVIN. It certainly is. If the Senator from North Carolina w
not such a trusting individual and was not so charitable in his opinio
of his colleagues, I would suspect that perhaps the reluctance to ha
a law that gives a small businessman reasonable opportunity to defe
himself is that it is desirous the small businessman, no matter ho
righteous he may believe his cause to be, will throw out the white fl
and make complete obeisance to the Federal bureau in Washingto
because the little man in Georgia or in North Carolina is in no financi
condition to contest his Government with all its wealth arrayed again
him on the side of his adversary.

Mr. President, I have pointed out that this bill takes from sma
businessmen the liberty that they have always enjoyed and whic
they should continue to enjoy if the United States is to remain a fr
society.

I have pointed out that if the law is to be enforced against them b
an agency which is notorious for the biased attitude of its member
they will be greatly injured.

I have pointed out that the procedures which those who operate th
agency pursue are incompatible with any fair system of justice. I woul
like to make the further observation at this point that the men wh
constitute the members of the Commission and who select the peopl
that they will compel the small businessman to employ are usuall
without experience, without knowledge, and without understanding o
the business in which the small businessman is engaged or what i
takes to make that business a success instead of a failure.

So much for the small businessman and private industry. This bil
goes a long way beyond the businessmen. It even gives this Commissio
jurisdiction over all the private institutions of learning in this coun
try. It gives them the final say-so as to who will be the members o
the faculty of those private institutions of learning. But it is not con
tent with arrogating all of this power to the EEOC. It even gives th
EEOC the power to lay the political hands of Caesar upon the insti
tutions of God.

I pointed out previously that the amendment offered by the dis
tinguished Senator from Alabama (Mr. Allen) and myself, whic
is now under consideration is to lines 18 through 24, both inclusive
at the bottom of page 33 of the bill. These lines comprehend section 70
and read as follows:

> This title shall not apply to an employer with respect to the employment o
> aliens outside any State, or to a religious corporation, association, educationa
> institution, or society with respect to the employment of individuals of a pa
> ticular religion to perform work connected with the carrying on by such corp
> ration, association, educational institution, or society of its religious activities

This section would split the activities of a religious organizatio
into two segments, although they are irretrievably held mainly by th
organization itself. It would be so generous to the good Lord as t
permit the good Lord to retain jurisdiction over those employees o
the religious organizations who did work strictly in the religious field
but it would arrogate to the Commission jurisdiction of those em
ployees of the religious organizations whose work was more of a mun
dane nature.

For example, under the bill in its present form, the EEOC would ave the power to compel a Christian church to employ a Mohammen- n or an atheist or an agnostic as secretary. When the Federal Gov- nment begins to grasp the power of things of the Lord, it is reaching state of governmental intemperance which is alien to the first amend- ent. The first amendment was designed to build a wall of separation tween church and state; the bill proposes to tear down, in part, that all of separation and to give to Caesar some of the jurisdiction over e affairs of the Lord. The first amendment reads:

Congress shall make no law respecting an establishment of religion, or pro- biting the free exercise thereof.

In order that the Senate might understand what that provision eans, and why it was designed to build an impregnable wall of sep- ation between church and state, I invite the attention of the Senate the case of Everson against Board of Education of the township of ing, which is reported in 30 U.S. Reports at page 1. I read from it opinion, first from the brief statement of facts contained in it:

n a suit by a taxpayer, the New Jersey Supreme Court held that the state slature was without power under the state constitution to authorize reim- sement to parents of bus fares paid for transporting their children to ools other than public schools. 132 N.J.L. 98, 39 A. 2d 75. The New Jersey rt of Errors and Appeals reversed, holding that neither the statute nor a olution passed pursuant to it violated the state constitution or the provisions he Federal Constitution in issue. 133 N.J.L. 350, 44 A. 2d 333. On appeal he federal questions to this Court, *affirmed*, p. 18.

do not read this case for the purpose of judging the soundness of plying the first amendment to the facts in the case, but for the pur- e of disclosing to the Senate how the first amendment was attempted build an impregnable wall of separation between the state—that n being applied here to the Federal Government—and religion. Justice Black delivered the opinion of the Court. His opinion rts on page 3 and reads as follows:

New Jersey statute authorizes its local school districts to make rules and racts for the transportation of children to and from schools. The appellee, a nship board of education, acting pursuant to this statute, authorized reim- sement to parents of money expended by them for the bus transportation heir children on regular busses operated by the public transportation system. t of this money was for the payment of transportation of some children in community to Catholic parochial schools. These church schools give their ents, in addition to secular education, regular religious instruction con- ning to the religious tenets and modes of worship of the Catholic Faith. superintendent of these schools is a Catholic priest.

he appellant, in his capacity as a district taxpayer, filed suit in a state t challenging the right of the Board to reimburse parents of parochial ol students. He contended that the statute and the resolution passed pur- nt to it violated both the State and the Federal Constitution. That court held the legislature was without power to authorize such payment under the constitution. 132 N.J.L. 98, 39 A. 2d 75. The New Jersey Court of Errors Appeals reversed holding that neither the statute nor the resolution passed rsuant to it was in conflict with the State constitution or the provisions of Federal Constitution in issue. 133 N.J.L. 350, 44 A. 2d 333. The case is here ppeal under 28 U.S.C. § 344 (a).

nce there has been no attack on the statute on the ground that a part of its nage excludes children attending private schools operated for profit from ving State payment for their transportation, we need not consider this exclu- ary language; it has no relevancy to any constitutional question here ented. Furthermore, if the exclusion clause had been properly challenged, o not know whether New Jersey's highest court would construe its statutes cluding payment of the school transportation of any group of pupils, even

those of a private school run for profit. Consequently, we put to one side t
question as to the validity of the statute against the claim that it does n
authorize payment for the transportation generally of school children in Ne
Jersey.

The only contention here is that the state statute and the resolution, insof
as they authorized reimbursement to parents of children attending parochi
schools, violate the Federal Constitution in these two respects, which to sor
extent overlap. *First*. They authorize the State to take by taxation the priva
property of some and bestow it upon others, to be used for their own priva
purposes. This, it is alleged, violates the due process clause of the Fourteen
Amendment. *Second*. The statute and the resolution forced inhabitants to p
taxes to help support and maintain schools which are dedicated to, and whi
regularly teach, the Catholic Faith. This is alleged to be a use of state pow
to support church schools contrary to the prohibition of the First Amendme
which the Fourteenth Amendment made applicable to the states.

First. The due process argument that the state law taxes some people to he
others carry out their private purposes is framed in two phases. The first pha
is that a state cannot tax A to reimburse B for the cost of transporting his chi
dren to church schools. This is said to violate the due process clause because th
children are sent to these church schools to satisfy the personal desires of thei
parents, rather than the public's interest in the general education of all childre
This argument, if valid, would apply equally to prohibit state payment for th
transportation of children to any non-public school, whether operated by
church or any other non-government individual or group. But, the New Jers
legislature has decided that a public purpose will be served by using tax-raise
funds to pay the bus fares of all school children, including those who atte
parochial schools. The New Jersey Court of Errors and Appeals has reached th
same conclusion. The fact that a state law, passed to satisfy a public need, coi
cides with the personal desires of the individuals most directly affected is cer
tainly an inadequate reason for us to say that a legislature has erroneously ap
praised the public need.

It is true that this Court has, in rare instances, struck down state statutes o
the ground that the purpose for which tax-raised funds were to be expended wa
not a public one. *Loan Association* v. *Topeka*, 20 Wall. 655; *Parkersburg* v. *Brow*
106 U.S. 487; *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55. But th
Court has also pointed out that this far-reaching authority must be exercise
with the most extreme caution. *Green* v. *Frazier*, 253 U.S. 233, 240. Otherwise,
state's power to legislate for the public welfare might be seriously curtailed,
power which is a primary reason for the existence of states. Changing loca
conditions create new local problems which may lead a state's people and it
local authorities to believe that laws authorizing new types of public services ar
necessary to promote the general well-being of the people. The Fourteenth
amendment did not strip the states of their power to meet problems previously
left for individual solution. *Davidson* v. *New Orleans*, 96 U.S. 97, 103–104; *Ba*
bier v. *Connolly*, 113 U.S. 27, 31–32; *Fallbrook Irrigation District* v. *Bradley*, 16
U.S. 112, 157–158.

It is much too late to argue that legislation intended to facilitate the oppo
tunity of children to get a secular education serves no public purpose. *Cochra*
v. *Louisiana State Board of Education*, 281 U.S. 370; Holmes, J., in *Interstate Ra*
v. *Massachusetts*, 207 U.S. 79, 87. See opinion of Cooley, J. in *Stuart* v. *Scho*
District No. 1 of Kalamazoo, 30 Mich. 69 (1874). The same thing is no less tru
of legislation to reimburse needy parents, or all parents, for payment of the fare
of their children so that they can ride in public busses to and from schools rathe
than run the risk of traffic and other hazards incident to walking or "hitch
hiking." See *Barbier* v. *Connolly*, *supra*, at 31. See also cases collected 63 A.L.R
413, 118 A.L.R. 806. Nor does it follow that a law has a private rather than a
public purpose because it provides that tax raised funds will be paid to reimburse
individuals on account of money spent by them in a way which furthers a publi
purpose. See *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 518. Sub
sidies and loans to individuals such as farmers and home owners, and to pri
vately owned transportation systems, as well as many other kinds of businesses
have long been commonplace practices in our state and national history.

Insofar as the second phase of the due process argument may differ from the
first, it is by suggesting that taxation for transportation of children to church
schools constitutes support of a religion by the State. But if the law is invalid
for this reason, it is because it violates the First Amendment's prohibition

inst the establishment of religion by law. This is the exact question raised by
llant's second contention, to consideration of which we now turn.
cond. The New Jersey statute is challenged as a "law respecting an estab-
ment of religion." The First Amendment, as made applicable to the states by
Fourteenth, *Murdock v. Pennsylvania*, 319 U.S. 105, commands that a state
ll make no law respecting an establishment of religion, or prohibiting the
exercise thereof . . ." These words of the First Amendment reflected in the
ds of early Americans a vivid mental picture of conditions and practices
h they fervently wished to stamp out in order to preserve liberty for them-
es and for their posterity. Doubtless their goal has not been entirely reached;
so far has the Nation moved toward it that the expression "law respecting
stablishment of religion," probably does not so vividly remind present-day
ricans of the evils, fears, and political problems that caused that expression
written into our Bill of Rights. Whether this New Jersey law is one re-
ing an "establishment of religion" requires an understanding of the mean-
of that language, particularly with respect to the imposition of taxes. Once
, therefore, it is not inappropriate briefly to review the background and
ronment of the period in which that constitutional language was fashioned
adopted.

arge proportion of the early settlers of this country came here from Europe
cape the bondage of laws which compelled them to support and attend gov-
ent-favored churches. The centuries immediately before and contemporane-
with the colonization of America had been filled with turmoil, civil strife,
persecutions, generated in large part by established sects determined to
tain their absolute political and religious supremacy. With the power of
nment supporting them, at various times and places, Catholics had per-
ed Protestants, Protestants had persecuted Catholics, Protestant sects had
cuted other Protectant sects, Catholics of one shade of belief had persecuted
olics of another shade of belief, and all of these had from time to time per-
ed Jews. In efforts to force loyalty to whatever religious group happened
on top and in league with the government of a particular time and place,
nd women had been fined, cast in jail, cruelly tortured, and killed. Among
ffenses for which these punishments had been inflicted were such things as
ing disrespectfully of the views of ministers of government-established
hes, non-attendance at those churches, expressions of non-belief in their
nes, and failure to pay taxes and tithes to support them.
se practices of the old world were transplanted to and began to thrive in
il of the new America. The very charters granted by the English Crown to
dividuals and companies designated to make the laws which would control
stinies of the colonials authorized these individuals and companies to erect
us establishments which all, whether believers or non-believers, would be
ed to support and attend. An exercise of this authority was accompanied
repetition of many of the old-world practices and persecutions. Catholics
themselves hounded and proscribed because of their faith; Quakers who
ed their conscience went to jail; Baptists were peculiarly obnoxious to
n dominant Protestant sects; men and women of varied faiths who hap-
to be in a minority in a particular locality were persecuted because they
astly persisted in worshipping God only as their own consciences dictated.
ll of these dissenters were compelled to pay tithes and taxes to support
ment-sponsored churches whose ministers preached inflammatory ser-
designed to strengthen and consolidate the established faith by generating
ing hatred against dissenters.
se practices became so commonplace as to shock the freedom-loving colo-
into a feeling of abhorrence. The imposition of taxes to pay ministers'
s and to build and maintain churches and church property aroused their
ation. It was these feelings which found expression in the First Amend-
No one locality and no one group throughout the Colonies can rightly be
entire credit for having aroused the sentiment that culminated in adoption
Bill of Rights' provisions embracing religious liberty. But Virginia, where
tablished church had achieved a dominant influence in political affairs and
many excesses attracted wide public attention, provided a great stimulus
ble leadership for the movement. The people there, as elsewhere, reached
nviction that individual religious liberty could be achieved best under a
ment which was stripped of all power to tax, to support, or otherwise to
any or all religions, or to interfere with the beliefs of any religious
dual or group.

The movement toward this end reached its dramatic climax in Virginia 1785-86 when the Virginia legislative body was about to renew Virginia's levy for the support of the established church. Thomas Jefferson and Jam Madison led the fight against this tax. Madison wrote his great Memorial a Remonstrance against the law. In it, he eloquently argued that a true religi did not need the support of law; that no person, either believer or non-believ should be taxed to support a religious institution of any kind; that the b interest of a society required that the minds of men always be wholly free; a that cruel persecutions were the inevitable result of government-establis religions. Madison's Remonstrance received strong support throughout Virgin and the Assembly postponed consideration of the proposed tax measure un its next session. When the proposal came up for consideration at that sessi it not only died in committee, but the Assembly enacted the famous "Virgi Bill for Religious Liberty" originally written by Thomas Jefferson. The preamb to that Bill stated among other things that—

"Almighty God hath created the mind free; that all attempts to influence by temporal punishments of burthens, of by civil incapacitations, tend only beget habits of hypocrisy and meanness, and are a departure from the plan the Holy author of our religion, who being Lord both of body and mind, yet cho not to propagate it by coercions on either . . .; that to compel a man to furni contributions of money for the propagation of opinions which he disbelieves, sinful and tyrannical; that even the forcing him to support this or that teach of his own religions persuasion, is depriving him of the comfortable liberty giving his contributions to the particular pastor, whose morals he would ma his pattern. . . ."

And the statute itself enacted:

"That no man shall be compelled to frequent or support any religious wo ship, place, or ministry whatsoever, nor shall be enforced, restrained, molest or burthened in his body or goods, nor shall otherwise suffer on account of h religious opinions or belief. . . ."

This Court has previously recognized that the provisions of the First Amen ment, in the drafting and adoption of which Madison and Jefferson played su leading roles, had the same objective and were intended to provide the sa protection against governmental intrusion on religious liberty as the Virgin statute. *Reynolds* v. *United States*, *supra* at 164; *Watson* v. *Jones*, 13 Wall. 67 *Davis* v. *Beason*, 133 U.S. 333, 342. Prior to the adoption of the Fourteen Amendment, the First Amendment did not apply as a restraint against the stat Most of them did soon provide similar constitutional protection for religio liberty. But some states persisted for about half a century in imposing restrain upon the free exercise of religion and in discriminating against particular re gious groups. In recent years, so far as the provision against the establishm of a religion is concerned, the question has most frequently arisen in connecti with proposed state aid to church schools and efforts to carry on religious teac ings in the public schools in accordance with the tenets of a particular se Some churches have either sought or accepted state financial support for th schools. Here again the efforts to obtain state aid or acceptance of it have n been limited to any one particular faith. The state courts, in the main, ha remained faithful to the language of their own constitutional provisions design to protect religious freedom and to separate religions and governments.

Mr. President, I would like to emphasize the portion of Justi Black's opinion which I have just read that these State constitution provisions similar to the first amendment are designed to prote religious freedom and to separate religion from government, whi this bill undertakes to wed in some respects.

I resume the reading:

These decisions, however, show the difficulty in drawing the line between t legislation which provides funds for the welfare of the general public and th which is designed to support institutions which teach religion.

The interpretation and scope of the First Amendment, preventing establishment religion or prohibiting the free exercise thereof, in the light of its history a the evils it was designed forever to suppress, have been several times elab by the decisions of the court prior to the application of the First Amendme to the states by the Fourteenth. The broad meaning given the Amendment these earlier cases has been accepted by this Court in its decisions concern

ndividual's religious freedom rendered since the Fourteenth Amendment interpreted to make the prohibitions of the First applicable to state action lging religious freedom. There is every reason to give the same application broad interpretation to the "establishment of religion" clause. The interrela- of these complementary clauses was well summarized in a statement of the t of Appeals of South Carolina, quoted with approval by this Court in *son* v. *Jones*, 13 Wall. 679, 730: "The structure of our government has, for preservation of civil liberty, rescued the temporal institutions from religious ference. On the other hand, it has secured religious liberty from the inva- of the civil authority."

digress from reading the opinion to emphasize that statement, the gist and effect of the first amendment and similar constitu- al provisions in the constitutions of the States is to secure religious rty from the invasion of the civil authorities. I respectfully submit we are not securing religious liberty from the invasion of the civil orities when we give the civil authorities power to regulate whom ious institutions, such as religious corporations, religious educa- l institutions, and religious societies, can employ, whom they must ote, whom they must retain in employment, and whom they may

esume the reading of the decision:

"establishment of religion" clause of the First Amendment means at least Neither a state nor the Federal Government can set up a church. Neither pass laws which aid one religion, aid all religions, or prefer one religion another. Neither can force nor influence a person to go to or to remain away church against his will or force him to profess a belief or disbelief in eligion. No person can be punished for entertaining or professing religious s or disbeliefs, for church attendance or nonattendance. No tax in any nt, large or small, can be levied to support any religious activities or tions, whatever they may be called, or whatever form they may adopt ch or practice religion. Neither a state nor the Federal Government can, or secretly, participate in the affairs of any religious organizations or s and *vice versa*. In the words of Jefferson, the clause against establish- of religion by law was intended to erect "a wall of separation between h and State." *Reynolds* v. *United States*, *supra* at 164.

. President, I should like to emphasize that statement, that, in words of Jefferson, the clause against the establishment of reli- by law was intended to erect a wall of separation between church tate. I respectfully submit that we do not erect a wall of separa- between church and state when we permit the agents of the state l a religious corporation, a religious association, a religious edu- al institution, or a religious society, whom it is to employ for any se, whom it is to promote for any purpose, or whom it may dis- e for any reason.

this bill is an assault on the wall of separation which the first lment was intended to build between civil government and on.

esume the reading of the opinion:

must consider the New Jersey statute in accordance with the foregoing tions imposed by the First Amendment. But we must not strike that state down if it is within the State's constitutional power even though it ches the verge of that power. See *Interstate Ry.* v. *Massachusetts*, Holmes, *ra* at 85, 88. New Jersey cannot consistently with the "establishment gion" clause of the first Amendment contribute tax-raised funds to the t of an institution which teaches the tenets and faith of any church. On the hand, other language of the amendment commands that New Jersey cannot r its citizens in the free exercise of their own religion. Consequently, it exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews,

Methodists, Non-believers, Presbyterians, or the members of any other fa
because of their faith, or lack of it, from receiving the benefits of public wel
legislation.

Under the provisions of this bill, the EEOC, which is given ju
diction over certain aspects of the employment practices of religi
organizations, can deny to members of those organizations empl
ment by those religious organizations for purposes not connected w
the actual dissemination of religious doctrines.

I resume the reading of the opinion:

While we do not mean to intimate that a state could not provide transpo
tion only to children attending public schools, we must be careful, in
tecting the citizens of New Jersey against state-established churches, to be s
that we do not inadvertently prohibit New Jersey from extending its gen
state law benefits to all its citizens without regard to their religious belief.

Measured by these standards, we cannot say that the First Amendment
hibits New Jersey from spending tax-raised funds to pay the bus fares
parochial school pupils as a part of a general program under which it pays
fares of pupils attending public and other schools. It is undoubtedly true
children are helped to get to church schools. There is even a possibility
some of the children might not be sent to the church schools if the parents w
compelled to pay their children's bus fares out of their own pockets when tra
portation to a public school would have been paid for by the State. The s
possibility exists where the state requires a local transit company to provide
duced fares to school children including those attending parochial schools,
where a municipally owned transportation system undertakes to carry all sch
children free of charge. Moreover, state-paid policemen, detailed to pro
children going to and from church schools from the very real hazards of tra
would serve much the same purpose and accomplish much the same result
state provision intended to guarantee free transportation of a kind which
state deems to be best for the school children's welfare. And parents might ref
to risk their children to the serious danger of traffic accidents going to and fr
parochial schools, the approaches to which were not protected by policem
Similarly, parents might be reluctant to permit their children to attend sch
which the state had cut off from such general government services as ordin
police and fire protection, connections for sewage disposal, public highways a
sidewalks. Of course, cutting off church schools from these services, so separ
and so indisputably marked off from the religious function, would make it
more difficult for the schools to operate. But such is obviously not the purpos
the First Amendment. That Amendment requires the state to be a neutral in
relations with groups of religious believers and non-believers; it does not req
the state to be their adversary. State power is no more to be used so as
handicap religions than it is to favor them.

This Court has said that parents may, in the discharge of their duty un
state compulsory education laws, send their children to a religious rather th
a public school if the school meets the secular educational requirements wh
the state has power to impose. See *Pierce* v. *Society of Sisters*, 268 U.S. 510
appears that these parochial schools meet New Jersey's requirements. The St
contributes no money to the schools. It does not support them. Its legislation,
applied, does no more than provide a general program to help parents get th
children, regardless of their religion, safely and expeditiously to and from
credited schools.

The First Amendment has erected a wall between church and state. That w
must be kept high and impregnable. We could not approve the slightest brea
New Jersey has not breached it here.

Affirm

I digress from reading further opinions in this case to emphas
these words:

The First Amendment has erected a wall between church and state. That w
must be kept high and impregnable.

I respectfully submit that this bill would destroy in part the w
between church and state. I submit that it would not keep that w
high and impregnable.

cannot understand why the EEOC or those who support it are so ious to extend its powers so that it will have jurisdiction over who nployed by a church to be a janitor, or who is employed to be a etary for a church, or who is employed—as is done in many in- ces where religious organizations have fundraising drives—to raise ey for them. Yet, this bill would extend the power of the EEOC these employees of churches; and, as I have said, it would lay olitical hands of Caesar upon the things of God.

ther opinions in this case illustrate the truth that the first amend- t was a design to raise a wall of separation between church and and was designed to keep the state's hands off the church and hurch's hands off the state. Certainly, a bill which is designed to he hand of the state on the employment practices of religious de- inations is not keeping the hands of the state off the church.

. Justice Jackson wrote a dissenting opinion in the *Everson* case h has some very strong statements on the aspect of the first dment. I read from the dissenting opinion:

nd myself, contrary to first impressions, unable to join in this decision. I a sympathy, though it is not ideological, with Catholic citizens who are lled by law to pay taxes for public schools, and also feel constrained by ence and discipline to support other schools for their own children. Such to them as this case involves is not in itself a serious burden to taxpayers had assumed it to be as little serious in principle. Study of this case con- me otherwise. The Court's opinion marshals every argument in favor te aid and puts the case in its most favorable light, but much of its reason- nfirms my conclusions that there are no good grounds upon which to sup- he present legislation. In fact, the undertones of the opinion, advocating ete and uncompromising separation of Church from State, seem utterly dant with its conclusion yielding support to their commingling in educa- matters. The case which irresistibly comes to mind as the most fitting lent is that of Julia who, according to Byron's reports, "whispering 'I e'er consent.'—consented."

I

Court sustains this legislation by assuming two deviations from the facts s particular case; first, it assumes a state of facts the record does not sup- nd secondly, it refuses to consider facts which are inescapable on the .

Court concludes that this "legislation, as applied, does no more than pro- general program to help parents get their children, regardless of their n, safely and expeditiously to and from accredited schools," and it draws parison between "state provisions intended to guarantee free transporta- for school children with services such as police and fire protection, and s that we are here dealing with "laws authorizing new types of public es. . . ." This hypothesis permeates the opinion. The facts will not bear nstruction.

Township of Ewing is not furnishing transportation to the children in rm; it is not operating school busses itself or contracting for their oper- and it is not performing any public service of any kind with this tax- s money. All school children are left to ride as ordinary paying passengers regular busses operated by the public transportation system. What the hip does, and what the taxpayer complains of, is at stated intervals to rse parents for the fares paid, provided the children attend either public s or Catholic Church schools. This expenditure of tax funds has no possi- ct on the child's safety or expedition in transit. As passengers on the busses they travel as fast and no faster, and are as safe and no safer. eir parents are reimbursed as before.

ddition to thus assuming a type of service that does not exist, the Court sists that we must close our eyes to a discrimination which does exist. solution which authorizes disbursement of this taxpayer's money limits rsement to those who attend public schools and Catholic schools. That ay the Act is applied to this taxpayer.

The New Jersey Act in question makes the character of the school, not needs of the children, determine the eligibility of parents to reimburse The Act permits payment for transportation to parochial schools or pu schools but prohibits it to private schools operated in whole or in part for fit. Children often are sent to private schools because their parents feel they require more individual instruction than public schools can provide because they are backward or defective and need special attention. If all dren of the state were objects of impartial solicitude, no reason is obvious denying transportation reimbursement to students of this class, for these are as needy and as worthy as those who go to public or parochial schools fusal to reimburse those who attend such schools is understandable only in light of a purpose to aid the schools, because the state might well abstain f aiding a profit making private enterprise. Thus, under the Act and resolu brought to us by this case, children are classified according to the schools attend and are to be aided if they attend the public schools or private Cath schools, and they are not allowed to be aided if they attend private sect **schools or private religious schools of other faiths.**

Of course, this case is not one of a Baptist or a Jew or an Episcopalian o pupil of a private school complaining of discrimination. It is one of a taxp urging that he is being taxed for an unconstitutional purpose. I think he entitled to have us consider the Act just as it is written. The statement by New Jersey court that it holds the Legislature may authorize use of local fu "for the transportation of pupils to any school," 133 N. J. L. 350, 354, 44 A. 2d 337, in view of the other constitutional views expressed, is not a holding t this Act authorizes transportation of *all* pupils to *all* schools. As applied t taxpayer by the action he complains of, certainly the Act does not authorize imbursement to those who choose any alternative to the public school exc **Catholic Church schools.**

If we are to decide this case on the facts before us, our question is simply th Is it constitutional to tax this complainant to pay the cost of carrying pupils **Church schools of one specified denomination?**

II

Whether the taxpayer constitutionally can be made to contribute aid to pare of students because of their attendance at parochial school depends upon nature of those schools and their relation to the Church. The Constitution s nothing of education. It lays no obligation on the states to provide schools a does not undertake to regulate state systems of education if they see fit to ma tain them.

I digress here, Mr. President, to say that that statement seems to ha been drawn out of the Constitution and lost in a legal garbage somewhere.

But they cannot, through school policy any more than through other mea invade rights secured to citizens by the Constitution of the United States. *Virginia State Board of Education* v. *Barnette*, 319 U.S. 624. One of our ba rights is to be free of taxation to support a transgression of the constitutio command that the authorities "shall make no law respecting an establishm of religion, or prohibiting the free exercise thereof . . ." U.S. Const., Amend. *Cantwell* v. *Connecticut*, 319 U.S. 296.

The function of the Church school is a subject on which this record is mea It shows only that the schools are under superintendence of a priest and "religion is taught as part of the curriculum." But we know that such sch are parochial only in name—they, in fact, represent a world wide and age policy of the Roman Catholic Church. Under the rubric "Catholic Schools," Canon Law of the Church, by which all Catholics are bound, provides:

"1215. Catholic children are to be educated in schools where not only noth contrary to Catholic faith and morals is taught, but rather in schools wh religious and moral training occupy the first place. . . (Canon 1372.)"

"1330. In every elementary school the children must, according to their ag instructed in Christian doctrine.

"The young people who attend the higher schools are to receive a deeper r gious knowledge, and the bishops shall appoint priests qualified for such w by their learning and piety. (Canon 1373.)"

1217. Catholic children shall not attend non-Catholic, indifferent, schools that mixed, that is to say, schools open to Catholics and non-Catholics alike. The op of the diocese only has the right, in harmony with the instructions of the y See, to decide under what circumstances, and with what safeguards to ent loss of faith, it may be tolerated that Catholic children go to such schools. non 1374.)"

224. The religious teaching of youth in any schools is subject to the au- ity and inspection of the Church.

The local Ordinaries have the right and duty to watch that nothing is taught rary to faith or good morals, in any of the schools of their territory.

They, moreover, have the right to approve the books of Christian doctrine and teachers of religion, and to demand, for the sake of safeguarding religion morals, the removal of teachers and books. (Canon 1381.) (Woywod, Rev. islaus, The New Canon Law, under imprimatur of Most Rev. Francis J. lman, Archbishop of New York and others, 1940.)"

is no exaggeration to say that the whole historic conflict in temporal policy een the Catholic Church and non-Catholic comes to a focus in their respec- school policies. The Roman Catholic Church, counseled by experience in ages and many lands and with all sorts and conditions of men, takes what, the viewpoint of its own progress and the success of its mission, is a wise ate of the importance of education to religion. It does not leave the individ- pick up religion by chance. It relies on early and indelible indoctrination e faith and order of the Church by the word and example of persons con- ted to the task.

r public school, if not a product of Protestantism, at least is more consistent it than with the Catholic culture and scheme of values. It is a relatively t development dating from about 1840. It is organized on the premise that ar education can be isolated from all religious teaching so that the school nculcate all needed temporal knowledge and also maintain a strict and lofty ality as to religion. The assumption is that after the individual has been in- ted in worldly wisdom he will be better fitted to choose his religion. Whether a disjunction is possible, and if possible whether it is wise, are questions I not try to answer.

ould be surprised if any Catholic would deny that the parochial school is l, if not the most vital, part of the Roman Catholic Church. If put to the , that venerable institution, I should expect, would forego its whole service ture persons before it would give up education of the young, and it would vise choice. Its growth and cohesion, discipline and loyalty, spring from its ls. Catholic education is the rock on which the whole structure rests, and der tax aid to its Church school is indistinguishable to me from rendering me aid to the Church itself.

III

s of no importance in this situation whether the beneficiary of this expendi- f tax-raised funds is primarily the parochial school and incidentally the or whether the aid is directly bestowed on the pupil with indirect benefits school. The state cannot maintain a Church and it can no more tax its s to furnish free carriage to those who attend a Church. The prohibition st establishment of religion cannot be circumvented by a subsidy, bonus or ursement of expense to individuals for receiving religious instruction and rination.

Court, however, compares this to other subsidies and loans to individuals ays. "Nor does it follow that a law has a private rather than a public pur- because it provides that tax-raised funds will be paid to reimburse individ- n account of money spent by them in a way which furthers a public pro- See *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 518." Of course, ate may pay out tax-raised funds to relieve pauperism, but it may not under nstitution do so to induce or reward piety. It may spend funds to secure old ainst want, but it may not spend funds to secure religion against skepticism. compensate individuals for lots of employment, but it cannot compensate or adherence to a creed.

ems to me that the basic fallacy in the Court's reasoning, which accounts failure to apply the principles it avows, is in ignoring the essentially reli- test by which beneficiaries of this expenditure are selected. A policeman s a Catholic, of course—but not because he is a Catholic; it is because he n and a member of our society. The fireman protects the Church school—

but not because it is a Church school; it is because it is property, part of the a
of our society. Neither the fireman nor the policeman has to ask before he rer
aid "Is this man or building identified with a Catholic Church?" But before
school authorities draw a check to reimburse for a student's fare they muss
just that question, and if the school is a Catholic one they may render aid
cause it is such, while if it is of any other faith or is run for profit, the help
be withheld. To consider the converse of the Court's reasoning will best dis
its fallacy. That there is no parallel between police and fire protection and
plan of reimbursement is apparent from the incongruity of the limitation of
Act if applied to police and fire service. Could we sustain an Act that said
police shall protect pupils on the way to or from public schools and Cat
schools but not while going to and coming from other schools, and firemen
extinguish a blaze in public or Catholic school buildings but shall not put
blaze in Protestant Church schools or private schools operated for profit?
is the true analogy to the case we have before us and I should think it pl
plain that such a scheme would not be valid.

The Court's holding is that this taxpayer has no grievance because the s
has decided to make the reimbursement a public purpose and therefore we
bound to regard it as such. I agree that this Court has left, and always sh
leave to each state, great latitude in deciding for itself, in the light of its
conditions, what shall be public purposes in its schemes of things. It may soci
utilities and economic enterprises and make taxpayers' business out of w
conventionally had been private business. It may make public business of indi
ual welfare, health, education, entertainment or security. But it cannot m
public business of religious worship or instruction, or of attendance at relig
institutions of any character. There is no answer to the proposition, more fully
pounded by Mr. Justice Rutledge, that the effect of the religious freedom Ame
ment to our Constitution was to take every form of propagation of religion
of the realm of things which could directly or indirectly be made public busin
and thereby be supported in whole or in part at taxpayers' expense. That is a
ference which the Constitution sets up between religious and almost every ot
subject matter of legislation, a difference which goes to the very root of relig
freedom and which the Court is overlooking today. This freedom was first in
Bill of Rights because it was first in the forefathers' minds; it was set forth
absolute terms, and its strength is its rigidity. It was intended not only to k
the states' hands out of religion, but to keep religions' hands off the state, a
above all, to keep bitter religious controversy out of public life by denying
every denomination any advantage from getting control of public policy or
public purse. Those great ends I cannot but think are immeasurably compromi
by today's decision.

This policy of our Federal Constitution has never been wholly pleasing
most religous groups. They all are quick to invoke its protections; they all
irked when they feel its restraints. This Court has gone a long way, if not
unreasonable way, to hold that public business of such paramount importa
as maintenance of public order, protection of the privacy of the home, and t
tion may not be pursued by a state in a way that even indirectly will inter
with religious proselyting. See dissent in *Douglas* v. *Jeannette*, 319 U.S.
166; *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Martin* v. *Struthers*, 319 U.S.
Jones v. *Opelika*, 316 U.S. 584, reversed on rehearing, 319 U.S. 103.

But we cannot have it both ways. Religious teaching cannot be a private af
when the state seeks to impose regulations which infringe on it indirectly,
a public affair when it comes to taxing citizens of one faith to aid another
those of no faith to aid all. If these principles seem harsh in prohibiting aid
Catholic education, it must not be forgotten that it is the same Constitu
that alone assures Catholics the right to maintain these schools at all when
dominant local sentiment would forbid them. *Pierce* v. *Society of Sisters*,
U.S. 510. Nor should I think that those who have done so well without this
would want to see this separation between Church and State broken do
If the state may aid these religious schools, it may therefore regulate th
Many groups have sought aid from tax funds only to find that it carried p
tical control with it. Indeed this Court has declared that "It's hardly lack
due process for the Government to regulate that which it subsidizes." Wick
v. *Filburn*, 317 U.S. 111, 131.

But in any event, the great purposes of the Constitution do not depend
the approval or convenience of those they restrain. I cannot read the hist
of the struggle to separate political from ecclesiastical affairs, well summari
in the opinion of Mr. Justice Rutledge in which I generally concur, without

nviction that the Court today is unconsciously giving the clock's hands a back-
rd turn.

Mr. Justice Frankfurter joins in this opinion.

Mr. President, I would like to emphasize what Justice Jackson said
his opinion in these words, speaking of the first amendment:

It was intended not only to keep the states' hands out of religion, but to keep
igion's hands off the state.

Congress does not keep the state's—that is, the Government's—
nds out of religion by enacting a bill which says that the Govern-
nt can regulate and control the employment practices of all of the
igious groups in this country and all of the religious schools in this
ntry; that is, all of the religious institutions in this country, in re-
ct to all of their employees who are not strictly engaged in carrying
the religious affairs of those institutions.

I submit, without fear of successful contradiction, that if Congress
e to enact the bill and thereby say that the Commission can con-
the employment practices of all religious groups in the United
tes in respect to what persons may be employed by them, other than
se who are engaged stricty in preaching and activities of that
d, that is not keeping the hands of the state off religion. For the life
me, I cannot comprehend why the EEOC and why those who are
mpioning this cause are so greedy for power that they want to lay
political hands of Caesar on the employment practices of churches
God.

t the risk of rereading this case, I want to point out exactly what
amendment does. The amendment would change the wording of
ion 702, as set forth in lines 8 to 24, both inclusive, at the bottom
age 33, so that it would read as follows:

c. 702. This title shall not apply to an employer with respect to the employ-
of agents outside any State or for the employment of any individual's by
educational institution or by any religious corporation, association, or society.

he amendment, if adopted, would take away the jurisdiction of
Commission over the employment practices of all religious cor-
itions, of religious associations, of religious educational institu-
s, and of religious societies. In addition, it would take away the
mission's jurisdiction over educational institutions in general,
state and private.

r. Williams. Mr. President, will the Senator from North Carolina
l for an observation?

r. Ervin. I yield.

r. Williams. If the Senator should yield the floor at this point or
, representatives of the National Council of Churches and other
nizations are in the reception room and would be glad to see the
tor and express their reasons for being opposed to his amendment.

r. Ervin. I happen to be familiar with some of the activities of the
onal Council of Churches. The National Council of Churches rep-
its certain Protestant religious organizations, including my own,
h happens to be the Southern Presbyterian Church.

the National Council of Churches were to speak to me on a reli-
s subject, I would probably listen to them. But when the National
ncil of Churches starts talking, as it so often does, about the affairs
esar, I do not give very much mind to what it has to say on that
ct.

I remember that on one occasion a man who wore the cloth ca
before a committee and stated that he represented the National Co
cil of Churches, and that the National Council of Churches re
resented 40 million Protestants; hence, he said he spoke for
million Protestants.

I said to him, "You may say that you represent 40 million Prote
ants, but you do not speak for hundreds of thousands of them; you
not speak for me."

So he said, "Maybe I have taken in a little too much territory."

That was the only time I ever heard a representative of the Natio
Council of Churches concede that they took in too much territory.

But I have followed their work. Years ago, the predecessor organiz
tion, the Federal Council of Churches, changed its name to the N
tional Council of Churches, and I expressed the opinion that the N
tional Council of Churches was a political organization with ve
slight religious leanings.

My minister, who was a great advocate of the Federal Council
Churches, the predecessor of the National Council of Churches, sug
gested to me that I get their publications and read their committ
reports, and that that might change my mind and cause me to be
strong advocate of the National Council of Churches.

I did so, and I found, in committee report after committee repor
that, in substance, there was no evidence that the free enterprise syste
of America was better than the collective systems of Communis
Russia.

I also found among the reports statements that committees ha
passed resolutions telling the Governor of Tennessee and the cour
of Tennessee exactly how they ought to deal with a certain riot tha
had taken place in Columbia, Tenn., before the trial was begun an
before the evidence was disclosed.

The National Council of Churches, time after time, undertook t
speak for Protestants whom they did not represent, so far as politica
beliefs were concerned, on political questions.

So I am not interested in the slightest degree to hear what the Na
tional Council of Churches has to say on this subject, because I woul
say that I am more interested in what Justice Jackson said: That th
first amendment was designed to keep the hands of the state out o
religion. I have enough understanding of the English language an
the terms of the bill to know that when the Federal Government, act
ing through the EEOC, undertakes to prescribe or control the employ
ment practices, in general, of religious organizations, the Federal Gov
ernment is not keeping the state's hands out of religion.

Mr. Williams. Mr. President, will the Senator yield for one mor
observation?

Mr. Ervin. I yield.

Mr. Williams. It is clearly in the law that, where the question
relig on, this legislation does not apply. I would make one further ob
servation before we deal with that: That the representatives of th
National Council of Churches would be happy to greet the Senato
from North Carolina in the reception room. Representatives of the U.S
Catholic Council and also, I understand, representatives of the Jewis
faith are in the reception room, and they also oppose the amendment

Mr. Ervin. I will restrict my remarks to the political activities o
the National Council of Churches. I do not condemn such religious

tions as they practice; but I believe in the separation of church and ate. I do not believe that the church ought to dictate to Caesar or at Caesar ought to control the church.

Will the Senator from New Jersey tell the Senator from North arolina what this language means:

This title shall not apply to . . . a religious corporation, association, educational titution, or society with respect to the employment of individuals of a particu- religion to perform work connected with the carrying on by such corporation, ociation, educational institution, or society of its religious activities.

Why is the language restricted to religious activities? Churches int bulletins. They employ people to print bulletins. They employ retaries. They sometimes employ professional fund raising groups.

Mr. WILLIAMS. I must say that it seems to me that, for good reason, are perhaps building on the spirit of the first amendment, that the vernment should not be involved in religious activities.

Therefore, where we are saying that nobody should be discriminated inst in employment, we will not carry that into an area where we e a first amendment situation, where we have religious activities.

Mr. ERVIN. Under this very provision, if the clause I have just read omes law, it would provide that the EEOC could compel a Christian omination to employ a Mohammedan secretary or to employ an ist as a secretary or to employ an agnostic as a secretary. If the ator from New Jersey interprets that to the contrary, all I am ing him to do is to accept an amendment that says the EEOC shall e no jurisdiction at all over religious institutions.

Mr. WILLIAMS. Is the Senator inquiring of the situation in an edu- onal institution that is operated by a religious organization?

Mr. ERVIN. I am inquiring about religious corporations. I take the d "religious" in line 20. It says religious corporation, association, cation, or society. I think the word "religious" applies to corpora- . It applies to association. It applies to educational institutions. It lies to society.

Mr. WILLIAMS. First of all, let us deal with the situation where we e an educational institution which is owned, operated, and spon- d by a religious order, faith, or whatever the proper word would Let us take Catholic University, where the name tells us the spon- of that great university. The law is crystal clear, and we do not urb that law in any way. If the president, or the governing body, atholic University desired to hire only people of the Catholic faith, they can do. That they will be able to do if the bill passes and mes law.

r. ERVIN. The section to which my good friend from New Jersey les applies only to educational institutions. This applies to rches, convents, monasteries; it applies to religious corporations, ther they are running a school or not. It applies to religious asso- ons. It applies to religious societies. Under this provision, it could eld to be illegal for a Catholic convent to employ a Catholic to be janitor there because the janitor happened to be a Catholic in gion. That is exactly what it could do.

r. WILLIAMS. Does the Senator's amendment limit itself to the ortunity of a religious organization to have the right to hire people s own faith? Is that the limitation of the amendment?

Mr. ERVIN. I would allow the religious corporation to do what pleased. That is what my amendment would allow it to do. It would allow it liberty. It would take it out from under the control of the EEOC entirely.

This is not the amendment to which I referred, because this is an amendment to section 702, and the provision to which the Senator from New Jersey referred is section 703, an entirely different section, subsection (2), which applies only to educational institutions. It applies only to schools, colleges, universities, or other educational institutions.

I am trying to take the political hands of Caesar off all religious corporations, off all religious associations, and off all religious societies. I am trying to take them even off the National Council of Churches.

Mr. WILLIAMS. Does the Senator deal with any activity that a religious organization might be engaged in—any activity?

Mr. ERVIN. Any activity.

Mr. WILLIAMS. I am going to tread onto an area now where I know little, but I will tread on it perhaps knowing of my limited knowledge in that area. Let us hypothesize a situation in which a religious order has a distillery and produces an alcoholic beverage. Would the Senator say that business activity of the religious order should be wholly exempt from the provisions or would he say it cannot discriminate because of a person's race, religion, color, or sex?

Mr. ERVIN. I think section 702 in the bill would exempt it if it used the alcoholic beverage for the purpose of communion.

Mr. WILLIAMS. I am certain that is true. Again, I am talking in an area where, perhaps, I do not know as much as I should to risk the opportunity to debate it, but I believe I am right that there is a religious order that goes well beyond producing such a beverage for communion.

Mr. ERVIN. Well, I would take the hands of Caesar off it entirely, and if they wanted to carry out the injunction of St. Paul to take a little wine for the stomach's sake and to make a little wine for the stomach's sake, I would have no objection. I am trying to take those activities out from under the EEOC and put them under the religious organizations themselves.

Mr. WILLIAMS. Apparently in this area the Senator from North Carolina knows more about the subject matter than the Senator from New Jersey, so I will withdraw myself from that arena.

Mr. ERVIN. The reason why I mentioned the National Council of Churches is that I give my contribution to my church, and that church gives a contribution to the National Council of Churches, and, in a way, I might claim that they ought to act as my religious agent, but I do not think a religious agent should tell me how to vote on political matters in Congress. I make no statement about any of the other religious organizations, because I am not a member of them. I express no opinion about them. I am sure their activities are concentrated entirely in the affairs of the Lord and they do not mess too much in the affairs of Caesar.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Would the Senator from North Carolina indicate whether he might be willing to reach an agreement as to a time for voting on the amendment today?

Mr. ERVIN. Yes. If it is satisfactory to my good friend the cosponsor the amendment, the Senator from Alabama, I should be glad to e on the amendment at 4:30.

Mr. BYRD of West Virginia. Would the able manager agree to that e for a vote on it?

Mr. WILLIAMS. I certainly would. If there were a possibility of ving it up by 15 minutes, there are Members of the Senate who uld appreciate it because they have other activities scheduled.

Mr. ERVIN. Just to show I am not aggravated with my good friend m New Jersey because he does not share the sound views I have o what should be done with section 702, I would agree to move the e for voting to 4 o'clock.

Mr. WILLIAMS. Four o'clock. That would be agreeable to many mbers of this body. I dislike to shut this debate down by a half r, because I appreciate the opportunity to listen to the Senator n North Carolina, to learn from him, and to learn his reasons for porting an amendment that I find very objectionable.

r. ERVIN. Of course, I would find the original provision entirely in er if I thought Caesar ought to lay his political hands on the gs that belong to God, but not believing that, I cannot accept the inal wording of section 702.

r. BYRD of West Virginia. Mr. President, would the Senator allow o make a unanimous-consent request to effectuate the understand- we have reached?

Mr. ERVIN. On the understanding that I do not lose the floor.

r. BYRD of West Virginia. May I ask the Senator whether or not time between now and 4 o'clock should be equally divided, or ld the Senator want more time?

r. ERVIN. I am going to yield in a moment to the Senator from ama, and I will leave the answer to that question to him.

ou know, the Scriptures speak about the man who sowed seed on y ground, and I would have to speak of the Senate, which is note- hy at this moment for the absence of Senators, as being stony nd. I do not care to talk too much longer on this subject for that on.

r. BYRD of West Virginia. Mr. President, I ask unanimous con- that the vote on the pending amendment occur at 4:10 p.m. today, that the time—to wit, 30 minutes—between now and 4:10 p.m. be lly divided between the manager of the bill and the distinguished tor from North Carolina.

e PRESIDING OFFICER. Without objection, it is so ordered.

r. ERVIN. Mr. President, I have been reading the opinion of Jus- Rutledge in the *Everson* case. It is a very illuminating opinion e question of the necessity, under the first amendment, of keeping ch and state separate. I ask unanimous consent that Justice Rut- e's opinion, which begins on page 29 and ends on page 74, be ed in the Record as this point.

ere being no objection, the opinion was ordered to be printed in ecord as follows:

MR. JUSTICE RUTLEDGE, with whom MR. JUSTICE FRANKFURTER, MR. JUSTICE JACKSON and MR. JUSTICE BURTON agree, dissenting.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const., Amend. I.

"Well aware that Almighty God hath created the mind free; . . . that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; . . . .

"*We, the General Assembly, do enact*, That no man shall be compelled to frequent or support any religious worship place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief . . . ."[1]

I cannot believe that the great author of those words, or the men who made them law, could have joined in this decision. Neither so high nor so impregnable today as yesterday is the wall raised between church and state by Virginia's great statute of religious freedom and the First Amendment, now made applicable to all the states by the Fourteenth.[2] New Jersey's statute sustained is the first, if indeed it is not the second breach to be made by this Court's action. That's a third, and a fourth, and still others will be attempted, we may be sure. For just as *Cochran v. Board of Education*, 281 U.S. 370, has opened the way by obliquity ruling[3] for this decision, so will the two make wider the breach for a third. Thus with time the most solid freedom steadily gives way before continuing corrosive decision.

This case forces us to determine squarely for the first time[4] what was "an establishment of religion" in the First Amendment's conception: and by that measure to decide whether New Jersey's action violates its command. The facts may be stated shortly, to give setting and color to the constitutional problem.

By statute New Jersey has authorized local boards of education to provide for the transportation of children "to and from school other than a public school" except one operated for profit wholly or in part, over established public school routes, or by other means when the child lives "remote from any school."[5] The school board of Ewing Township has provided by resolution for "the transportation of pupils of Ewing to the Trenton and Pennington High Schools and Catholic schools by way of public carrier. . . ."[6]

Named parents have paid the cost of public conveyance of their children from their homes in Ewing to three public high schools and four parochial schools outside the district.[7] Semiannually the Board has reimbursed the parents from public school funds raised by general taxation. Religion is taught as part of the curriculum in each of the four private schools, as appears affirmatively by the testimony of the superintendent of parochial schools in the Diocese of Trenton.

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[1] "A Bill for Establishing Religious Freedom," enacted by the General Assembly of Virginia, January 19, 1786. See 1 Randall, The Life of Thomas Jefferson (1858) 219, 220; XII Hening's Statutes of Virginia (1823) 84.

[2] *Schneider v. State*, 308 U.S. 147; *Cantwell v. Connecticut*, 310 U.S. 296; *Murdock v. Pennsylvania*, 319 U.S. 105; *Prince v. Massachusetts*, 321 U.S. 158; *Thomas v. Collins*, 323 U.S. 516, 530.

[3] The briefs did not raise the First amendment issue. The only one presented was whether the state's action involved a public or an exclusively private function under the due process clause of the Fourteenth Amendment. See Part IV *infra*. On the facts, the cost of transportation here is inseparable from both religious and secular teaching in the religious school. In the *Cochran* case the state furnished secular textbooks only. But see text *infra* at note 40 *et seq.*, and Part IV.

[4] Cf. note 3 and text Part IV, see also note 35.

[5] The statute reads: "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school . . . other than a public school except such school as is operated for profit in whole or in part.

"When any school district provides any transportation for public school children to and from school other than a public school except such school as is operated for profit in whole or in part." Laws of New Jersey (1941) c. 191.

[6] The full text of the resolution is given in note 59 *infra*.

[7] The pupils attended were the Trenton Senior High School, the Trenton Junior High School and the Pennington High School. Ewing Township itself provides no public schools, affording only elementary public schools which stop with the eighth grade. The Ewing school board pays for both transportation and tuitions of pupils attending these schools. The four private schools, all Catholic, covered in application of the resolution, were the Trenton Catholic Boys High School and Trenton Catholic Girls High School, both secondary schools, St. Hedwig's Parochial School and St. Frances School. The Ewing board pays only for transportation to these schools, not for tuitions. So far as the record discloses, the board does not pay for or provide transportation to any other elementary school, public or private. See notes 58, 59 and text *infra*.

The Court of Errors and Appeals of New Jersey, reversing the Supreme
urt's decision, 132 N. J. L. 98, 39 A. 2d 75, has held the Ewing board's action
in contravention of the state constitution or statutes or of the Federal
nstitution, 133 N. J. L. 350, 44 A. 2d 333. We have to consider only whether
s ruling accords with the prohibition of the First Amendment implied in the
process clause of the Fourteenth.

I.

ot simply an established church, but any law respecting an establishment of
gion is forbidden. The Amendment was broadly but not loosely phrased. It is
compact and exact summation of its author's views formed during his long
ggle for religious freedom. In Madison's own words characterizing Jefferson's
for Establishing Religious Freedom, the guaranty he put in our national
ter, like the bill he piloted through the Virginia Assembly, was "a Model of
nical precision, and perspicuous brevity." Madison could not have confused
urch" and "religion," or "an established church" and "an establishment of
gion."

he Amendment's purpose was not to strike merely at the official establishment
single sect, creed or religion, outlawing only a formal relation such as had
ailed in England and some of the colonies. Necessarily it was to uproot all
relationships. But the object was broader than separating church and state
his narrow sense. It was to create a complete and permanent separation of
pheres of religious activity and civil authority by comprehensively forbidding
y form of public aid or support for religion. In proof the Amendment's word-
nd history unite with this Court's consistent utterances whenever attention
been fixed directly upon the question.

eligion" appears only once in the Amendment. But the word governs two pro-
ions and governs them alike. It does not have two meanings, one narrow to
d "an establishment" and another, much broader, for securing "the free exer
thereof." "Thereof" brings down "religion" with its entire and exact content,
ore and no less, from the first into the second guaranty, so that Congress and
the states are as broadly restricted concerning the one as they are regarding
other.

one would claim today that the Amendment is constricted, in "prohibiting
ree exercise" of religion, to securing the free exercise of some formal or
al observance, of one sect or of many. It secures all forms of religious expres-
creedal, sectarian or nonsectarian, wherever and however taking place.
of conduct which trenches upon the like freedoms of others or clearly and
ntly endangers the community's good order and security." For the protec-
purposes of this phase of the basic freedom, street preaching, oral or by
ibution of literature, has been given "the same high estate under the First
dment as . . . worship in the churches and preaching from the pulpits." And
is basis parents have been held entitled to send their children to private,
ous schools. *Pierce* v. *Society of Sisters*, 268 U.S. 510. Accordingly, daily
ous education commingled with secular is "religion" within the guaranty's
rehensive scope. So are religious 'training and teaching in whatever form
vord connotes the broadest content, determined not by the form or formality
teaching or where it occurs, but by its essential nature regardless of those
ls.

eligion" has the same broad significance in the twin prohibition concerning
stablishment." The Amendment was not duplicitous. "Religion" and "estab-
ent" were not used in any formal or technical sense. The prohibition broadly
ds state support, financial or other, of religion in any guise, form or degree.
laws all use of public funds for religious purposes.

Writings of James Madison, ed. by Hunt, 1910) 288; Padover, Jefferson, (1942) 74.
n's characterization related to Jefferson's entire revision of the Virginia Code, of
the Bill for Establishing Religious Freedom was part. See note 15.
Reynolds v. *United States*, 98 U.S. 145; *Davis* v. *Beason*, 133 U.S. 333; *Mormon*
h v. *United States*, 136 U.S. 1; *Jacobson* v. *Massachusetts*, 197 U.S. 11; *Prince* v.
chusetts, 321 U.S. 158; also *Cleveland* v. *United States*, 329 U.S. 14.
ably the best official declaration of the law and history of the Amendment's purpose was
Memorial and Remonstrance of the Virginia Assembly for Establishing Religious Freedom. "That
no man shall be compelled to frequent or support any religious worship, place or ministry
whatsoever, nor shall be enforced, restrained, molested or burthened in his body or goods, nor
shall otherwise suffer on account of his religious opinions or belief; but that all men shall be
free to profess, and by argument to maintain, their opinions in matters of religion, and that
the same shall in no wise diminish, enlarge or affect their civil capacities." 2 Hening's Stat.
at Large of Virginia (1823) 546. The Memorial and Remonstrance was written by Madison.
Jefferson, (1858) 229. Padover, Jefferson, (1942) 81. For Madison's views to the
same effect, see note 28 *infra*.
York v. *Pennsylvania*, 230 U.S. 165, 169; *Martin* v. *Struthers*, 319 U.S. 141; *Jamison*
ns, 318 U.S. 413; *Marsh* v. *Alabama*, 326 U.S. 501; *Tucker* v. *Texas*, 326 U.S. 517.

II.

No provision of the Constitution is more closely tied to or given content by
generating history than the religious clause of the First Amendment. It is
once the refined product and the terse summation of that history. The histo
includes not only Madison's authorship and the proceedings before the Fi
Congress, but also the long and intensive struggle for religious freedom
America, more especially in Virginia,[11] of which the Amendment was the dire
culmination.[12] In the documents of the times, particularly of Madison, who w
leader in the Virginia struggle before he became the Amendment's sponsor, t
also in the writings of Jefferson and others and in the issues which engender
them is to be found irrefutable confirmation of the Amendment's sweeping co
tent.

For Madison, as also for Jefferson, religious freedom was the crux of t
struggle for freedom in general. Remonstrance, Par. 15, Appendix hereto. Madis
was coauthor with George Mason of the religious clause in Virginia's gre
Declaration of Rights of 1776. He is credited with changing it from a me
statement of the principle of tolerance to the first official legislative pronounc
ment that freedom of conscience and religion are inherent rights of the i
dividual.[13] He sought also to have the Declaration expressly condemn the exis
ing Virginia establishment.[14] But the forces supporting it were then too stron

Accordingly Madison yielded on this phase but not for long. At once he resume
the fight, continuing it before succeeding legislative sessions. As a member of th
General Assembly in 1779 he threw his full weight behind Jefferson's histor
Bill for Establishing Religious Freedom. That bill was a prime phase of Jeffe
son's broad program of democratic reform undertaken on his return from th
Continental Congress in 1776 and submitted for the General Assembly's co
sideration in 1779 as his proposed revised Virginia code.[15] With Jefferson's d
parture for Europe in 1784, Madison became the Bill's prime sponsor.[16] Enac
ment failed in successive legislatures from its introduction in June, 1779, unti
its adoption in January, 1786. But during all this time the fight for religiou
freedom moved forward in Virginia on various fronts with growing intensity
Madison led throughout, against Patrick Henry's powerful opposing leadershi
until Henry was elected governor in November, 1784.

The climax came in the legislative struggle of 1784–1785 over the Assessmen
Bill. See Supplemental Appendix hereto. This was nothing more nor less than a

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[11] Conflicts in other states, and earlier in the colonies, contributed much to generate
of the Amendment, but none so directly as that in Virginia or with such formative influen
on the Amendment's content and wording. See Cobb, Rise of Religious Liberty in Ame
(1902); Sweet, The Story of Religion in America (1939). The Charter of Rhode Island a
1663, II Poore, Constitutions (1878) 1595, was the first colonial charter to provide fo
religious freedom.

The climactic period of the Virginia struggle covers the decade 1776–1786, fro
adoption of the Declaration of Rights to enactment of the Statute for Religious Freedom
For short accounts see Padover, Jefferson (1942) c. V; Brant, James Madison The
Virginia Revolutionist (1941) cc. XII, XV; James, The Struggle for Religious Liberty i
Virginia (1900) cc. X, XI; Eckenrode, Separation of Church and State in Virginia (1910
These works and Randall, see note 1, will be cited in this opinion by the names of the
authors. Citations to "Jefferson" refer to The Works of Thomas Jefferson (ed. by Fe
1904–1905); to "Madison," to The Writings of James Madison (ed. by Hunt, 1901–1910

[12] Brant, cc. XII, XV; James cc. X, XI; Eckenrode.

[13] See Brant, c. XII, particularly at 243. Cf. Madison's Remonstrance, Appendix to thi
opinion. Jefferson of course held the same view. See note 15.

"Madison looked upon . . . religious freedom, to judge from the concentrated attention
he gave it, as the fundamental freedom." Brant, 243; and see Remonstrance, Par. 1, 4, 15
Appendix.

[14] See Brant, 245–246. Madison quoted liberally from the Declaration in his Remon
strance and the use made of the quotations indicates that he considered the Declaration
to [illegible] the prevailing establishment in principle if not technically.

[15] Jefferson was chairman of the revising committee and chief draftsman. Cooperat
with him were Pendleton, Mason and Lee. The first enacted portion of the revision, whi
was Jefferson's Code as the statute barring entailments. Primogeniture
followed. Much longer the author was to wait for enactment of the Bill for Reli
Freedom; and not until after his death was the corollary bill to be accepted in pri
which he considered most important of all, namely, to provide for common education
V Jefferson 153. However, he linked this with disestablishment
to a system of basic freedoms. I Jefferson 58.
Madison by his own account sought to give the Bill for Establishing Re
additional status as they could at the time. Acknowled
in the acts of succeeding Assemblies
would be of no effect in law," the Bill
declared: "Yet we are free to declare, and
[illegible] of the natural rights of mankind, and that
[illegible] to expel the power or to narrow its operation, such
[illegible] natural right." I Randall, 220.

[16] See I Jefferson, 70–71; XII Jefferson, 447, Padover, 80.

ing measure for the support of religion, designed to revive the payment of es suspended since 1777. So long as it singled out a particular sect for pref- nce it incurred the active and general hostility of dissentient groups. It broadened to include them, with the result that some subsided temporarily in r opposition.[17] As altered, the bill gave to each taxpayer the privilege of desig- ing which church should receive his share of the tax. In default of designation legislature applied it to pious uses.[18] But what is of the utmost significance ", "in its final form the bill left the taxpayer the option of giving his tax to cation."[19]

adison was unyielding at all times, opposing with all h' vigor the general non-discriminatory as he had the earlier particular and discriminatory as- ments proposed. The modified Assessment Bill passed second reading in Decem- 1784 and was all but enacted. Madison and his followers, however, manen- d deferment of final consideration until November, 1785. And before the As- bly reconvened in the fall he issued his historic Memorial and Remon- nce.[20]

his is Madison's complete, though not his only, interpretation of religious ty.[21] It is a broadside attack upon all forms of "establishment" of religion, general and particular, nondiscriminatory or selective. Reflecting not only many legislative conflicts over the Assessment Bill and the Bill for Estab- ng Religious Freedom but also, for example, the struggles for religious porations and the continued maintenance of the glebes, the Remonstrance once the most concise and the most accurate statement of the views of First Amendment's author concerning what is "an establishment of religion." use it behooves us in the dimming distance of time not to lose sight of he and his coworkers had in mind when, by a single sweeping stroke of en, they forbade an establishment of religion and secured its free exercise. ext of the Remonstrance is appended at the end of this opinion for its wider nt reference, together with a copy of the bill against which it was directed. e Remonstrance, stirring up a storm of popular protest, killed the Assess- Bill.[22] It collapsed in committee shortly before Christmas, 1785. With this way was cleared at last for enactment of Jefferson's Bill for Establishing ious Freedom. Madison promptly drove it through in January of 1786, years from the time it was first introduced. This dual victory substantially l the fight over establishments, setting the issue against them. See note 33. e next year Madison became a member of the Constitutional Convention. Its done, he fought valiantly to secure the ratification of its great product in nia as elsewhere, and nowhere else more effectively.[23] Madison was certain s own mind that under the Constitution "there is not a shadow of right in general government to intermeddle with religion"[24] and that "this subject r the honor of America, perfectly free and unshackled. The government o jurisdiction over it . . ."[25] Nevertheless he pledged that he would work for

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adison regarded this action as desertion. See his letter to Monroe of April 12, 1785: dison, 129, 131-132; James, cc. X, XI. But see Eckenrode, 91, suggesting it was der to the inevitable

bill provided: "That for every sum so paid, the Sheriff or Collector shall give a t, expressing therein to what society of Christians the person from whom he may e the same shall direct the money to be paid. . . ." See also notes 19, 43 *infra*.

opy of the Assessment Bill is to be found among the Washington manuscripts in the y of Congress. Papers of George Washington, Vol. 231. Because of its crucial role Virginia struggle and bearing upon the First Amendment's meaning, the text of ll is set forth in the Supplemental Appendix to this opinion.

ckenrode, 99, 100.

., 100; II Madison, 113. The bill directed the sheriff to pay "all sums which . . . may appropriated by the person paying the same . . . into the public Treasury, to be ed of under the direction of the General Assembly, for the encouragement of semi- of learning within the Counties whence such sum shall arise, and to no other use or se whatsoever." Supplemental Appendix.

e generally Eckenrode, c. V; Brant, James, and other authorities cited in note 11

Madison, 183; and the Appendix to this opinion. Eckenrode, 100 ff. See also Fleet on's "Detached Memoranda" (1946) III William & Mary Q. (3d Series) 534, 554-562. e major causes assigned for its defeat include the elevation of Patrick Henry to the orship in November of 1784; the blunder of the proponents in allowing the Bill for orations to come to the floor and incur defeat before the Assessment Bill was acted adison's astute leadership, taking advantage of every "break" to convert his initial ty into a majority, including the deferment of action on the third reading to the he Remonstrance, bringing a flood of protesting petitions; and the general poverty time. See Eckenrode, c. V, for an excellent short, detailed account.

e James, Brant, *op. cit. supra* note 11.

Madison, 176. Cf. notes 33, 37.

Madison, 132.

a Bill of Rights, including a specific guaranty of religious freedom, and Virgi
with other states, ratified the Constitution on this assurance.[26]

Ratification thus accomplished, Madison was sent to the first Congress. Th
he went at once about performing his pledge to establish freedom for the nat
as he had done in Virginia. Within a little more than three years from
legislative victory at home he had proposed and secured the submission
ratification of the First Amendment as the first article of our Bill of Righ

All the great instruments of the Virginia struggle for religious liberty
became warp and woof of our constitutional tradition, not simply by the cou
of history, but by the common unifying force of Madison's life, thought
sponsorship. He epitomized the whole of that tradition in the Amendment s
pact, but nonetheless comprehensive, phrasing.

As the Remonstrance discloses throughout, Madison opposed every fo
and degree of official relation between religion and civil authority. For
religion was a wholly private matter beyond the scope of civil power either
restrain or to support.[27] Denial or abridgement of religious freedom was
violation of rights both of conscience and of natural equality. State aid was
less obnoxious or destructive to freedom and to religion itself than other for
of state interference. "Establishment" and "free exercise" were correlative a
coextensive ideas, representing only different facets of the single great and fund
mental freedom. The Remonstrance, following the Virginia statute's exam
referred to the history of religious conflicts and the effects of all sorts of esta
lishments, current and historical, to suppress religion's free exercise. W
Jefferson, Madison believed that to tolerate any fragment of establishment wo
be by so much to perpetuate restraint upon that freedom. Hence he sought
tear out the institution not partially but root and branch, and to bar its retu
forever.

In no phase was he more unrelentingly absolute than in opposing state suppo
or aid by taxation. Not even "three pence" contribution was thus to be exact
from any citizen for such a purpose. Remonstrance, Par. 3.[28] Tithes had be
the lifeblood of establishment before and after other compulsions disappeare
Madison and his coworkers made no exceptions or abridgments to the comple
separation they created. Their objection was not to small tithes. It was to a
tithes whatsoever. "If it were lawful to impose a small tax for religion, t
admission would pave the way for oppressive levies." [29] Not the amount but "t
principle of assessment was wrong." And the principle was as much to preve
"the interference of law in religion" as to restrain religious intervention
political matters.[30] In this field the authors of our freedom would not tolera
"the first experiment on our liberties" or "wait till usurped power had streng
ened itself by exercise, and entangled the question in precedents." Remonstran
Par 3. Nor should we.

In view of this history no further proof is needed that the Amendment forbi
any appropriation, large or small, from public funds to aid or support any a

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[26] Brant, 250. The assurance made first to his constituents was responsible for Madison
becoming a member of the Virginia Convention which ratified the Constitution. See Jam
154-158.

[27] The amendment with respect to religious liberties read, as Madison introduced it, "T
civil rights of none shall be abridged on account of religious belief or worship, nor sh
any national religion be established, nor shall the full and equal rights of conscience
any manner, or any pretext, infringed." 1 Annals of Congress 434. In the process of debe
this was modified to its present form. See especially 1 Annals of Congress 729-731, 1
also note 34.

[28] See text of the Remonstrance, Appendix; also notes 13, 15, 24, 25 *supra* and text.
Madison's one exception concerning restraint was for "preserving public order." Th
he declared in a private letter, IX Madison, 484, 487, written after the First Amend
was adopted: "The tendency to a usurpation on one side or the other, or to a corrupt
coalition or alliance between them, will be best guarded agst. by an entire abstinence of
Govt. from interference in any way whatever, beyond the necessity of preserving
& protecting each sect agst. trespasses on its legal rights by others." Cf. note 9.

[29] The third ground of remonstrance, see the Appendix, bears repetition for
[illegible] "Because it is proper to take alarm at the first experiment on our liberties
[illegible] of America did not wait till usurped power had strengthened itself by exerc
[illegible] the question in precedents. They saw all the consequences in the
[illegible] the consequences by denying the principle. We revere this lesson
[illegible] to resist it. Who does not see that [illegible] the same authority which can
[illegible] notice only of his property for the support of any one
[illegible] to conform to any other establishment in all cases whatsoever
(Emphasis added.) II Madison 183, 185, 186.

[30] Eckenrode, 105, in summary of the Remonstrance.

[31] Because the bill implies either that the Civil Magistrate is a competent Judge
[illegible] that he may employ Religion as an engine of Civil policy. The first
[illegible] pretensions falsified by the contradictory opinions of Rulers in all ages
throughout the world: The second an unhallowed perversion of the means of salvation
Remonstrance, Appendix, Par. 3, II Madison 183, 187.

religious exercises. But if more were called for, the debates in the First
gress and this Court's consistent expressions, whenever it has touched on the
ter directly,[32] supply it.

y contrast with the Virginia history, the congressional debates on considera-
n of the Amendment reveal only sparse discussion, reflecting the fact that the
ential issues had been settled.[33] Indeed the matter had become so well under-
od as to have been taken for granted in all but formal phrasing. Hence, the
y enlightening reference shows concern, not to preserve any power to use
lic funds in aid of religion, but to prevent the Amendment from outlawing
ate gifts inadvertently by virtue of the breadth of its wording.[34] In the
gin are noted also the principal decisions in which expressions of this Court
firm the Amendment's broad prohibition.[35]

III.

ompulsory attendance upon religious exercises went out early in the process
eparating church and state, together with forced observance of religious
ns and ceremonies.[36] Test oaths and religious qualification for office followed
r.[37] These things none devoted to our great tradition of religious liberty
ld think of bringing back. Hence today, apart from efforts to inject religious
ing or exercises and sectarian issues into the public schools, the only serious
iving threat to maintaining that complete and permanent separation of

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As is pointed out above, note 3, and in Part IV *infra, Cochran* v. *Board of Education*,
U.S. 370, was not such a case.

See text *supra* at notes 24, 25. Madison, of course, was but one of many holding such
s but nevertheless agreeing to the common understanding for adoption of a Bill of
s in order to remove all doubt engendered by the absence of explicit guaranatees in
riginal Constitution.

1791 the great fight over establishments had ended, although some vestiges remained
and later, even in Virginia. The glebes, for example, were not sold there until 1802.
ckenrode, 147. Fixing an exact date for "disestablishment" is almost impossible, since
rocess was piecemeal. Although Madison failed in having the Virginia Bill of Rights
re explicitly against establishment in 1776, cf. note 14 and text *supra*, in 1777 the
for support of the Anglican clergy was suspended. It was never resumed. Eckenrode
s: "This act, in effect, destroyed the establishment. Many dates have been given for
d, but it really came on January 1, 1777, when the act suspending the payment of
became effective. This was not seen at the time. . . . But in freeing almost half of
axpayers from the burden of the state religion, the state religion was at an end.
ly could be forced to support it, and an attempt to levy tithes upon Anglicans alone
be to recruit the ranks of dissent." P. 53. See also pp. 61, 64. The question of assess-
however was revived "with far more strength than ever, in the summer of 1784."
4. It would seem more factual therefore to fix the time of disestablishment as of
ber, 1785–January, 1786, when the issue in large was finally settled.

t one point the wording was proposed: "No religion shall be established by law, nor
the equal rights of conscience be infringed." 1 Annals of Congress 729. Cf. note 27.
sentative Huntington of Connecticut feared this might be construed to prevent
al enforcement of private pledges. He stated "that he feared . . . that the words
be taken in such latitude as to be extremely hurtful to the cause of religion. He
stood the amendment to mean what had been expressed by the gentleman from
ia; but others might find it convenient to put another construction upon it. The
lers of their congregations to the Eastward were maintained by the contributions
se who belonged to their society; the expense of building meeting houses was con-
ed in the same manner. These things were regulated by by-laws. If an action was
ht before a Federal Court on any of these cases, the person who had neglected to
m his engagements could not be compelled to do it; for a support of ministers or
ng of places of worship might be construed into a religious establishment." 1 Annals
gress 730.

avoid any such possibility, Madison suggested inserting the word "national" before
on," thereby not only again disclaiming intent to bring about the result Huntington
but also showing unmistakably that "establishment" meant public "support" of
n in the financial sense. 1 Annals of Congress 731. See also IX Madison, 484–487.

e decision most closely touching the question, where it was squarely raised, is *Quick*
Leupp, 210 U.S. 50. The Court distinguished sharply between appropriations from
funds for the support of religious education and appropriations from funds held in
by the Government essentially as trustee for private individuals, Indian wards, as
ial owners. The ruling was that the latter could be disbursed to private, religious
s at the designation of those patrons for paying the cost of their education. But it
ated also that such a use of public moneys would violate both the First Amendment
e specific statutory declaration involved, namely, that "it is hereby declared to be
tled policy of the Government to hereafter make no appropriation whatever for edu-
in any sectarian school." 210 U.S. at 79. Cf. *Ponce* v. *Roman Catholic Apostolic*
, 210 U.S. 296, 322. And see *Bradfield* v. *Roberts*, 175 U.S. 291, an instance of highly
al grounding to support a decision sustaining an appropriation for the care of indigent
s pursuant to a contract with a private hospital. Cf. also the authorities cited in

e text at note 1.

. . . but no religious Test shall ever be required as a Qualification to any Office or
Trust under the United States." Const., Art. VI, § 3. See also the two forms pre-
for the President's Oath or Affirmation. Const., Art. II, § 1. Cf. *Ex parte Garland*,
333; *Cummings* v. *Missouri*, 4 Wall 277; *United States* v. *Lovett*, 328 U.S. 303.

religion and civil power which the first Amendment commands is through
of the taxing power to support religion, religious establishments having a
ligious foundation whatever their form or special religious function.

Does New Jersey's action furnish support for religion by use of the taxi
power? Certainly it does, if the test remains undiluted as Jefferson and Madis
made it, that money taken by taxation from one is not to be used or given
support another's religious training or belief, or indeed one's own.[38] Today
then the furnishing of "contributions of money for the propagation of opini
which he disbelieves" is the forbidden exaction; and the prohibition is absol
for whatever measure brings that consequence and whatever amount may
sought or given to that end.

The funds used here were raised by taxation. The Court does not dispute,
could it, that their use does in fact give aid and encouragement to religi
instruction. It only concludes that this aid is not "support" in law. But Madis
and Jefferson were concerned with aid and support in fact, not as a legal c
clusion "entangled in precedents." Remonstrance, Par. 3. Here parents pay mon
to send their children to parochial schools and funds raised by taxation are us
to reimburse them. This not only helps the children to get to school and t
parents to send them. It aids them in a substantial way to get the very thi
which they are sent to the particular school to secure, namely, religious traini
and teaching.

Believers of all faiths, and others who do not express their feeling towa
ultimate issues of existence in any creedal form, pay the New Jersey tax. Wh
the money so raised is used to pay for transportation to religious schools, t
Catholic taxpayer to the extent of his proportionate share pays for the tra
portation of Lutheran, Jewish and otherwise religiously affiliated children
receive their non-Catholic religious instruction. Their parents likewise pay p
portionately for the transportation of Catholic children to receive Catholic i
struction. Each thus contributes to "the propagation of opinions which he dis
lieves" in so far as their religions differ, as do others who accept no creed wit
regard to those differences. Each thus pays taxes also to support the teaching
his own religion, an exaction equally forbidden since it denies "the comfortab
liberty" of giving one's contribution to the particular agency of instruction
approves.[39]

New Jersey's action therefore exactly fits the type of exaction and the ki
of evil at which Madison and Jefferson struck. Under the test they framed
cannot be said that the cost of transportation is no part of the cost of edu
tion or of the religious instruction given. That it is a substantial and a necessa
element is shown most plainly by the continuing and increasing demand f
the state to assume it. Nor is there pretense that it relates only to the secul
instruction given in religious schools or that any attempt is or could be ma
toward allocating proportional shares as between the secular and the religio
instruction. It is precisely because the instruction is religious and relates to
particular faith, whether one or another, that parents send their children
religious schools under the *Pierce* doctrine. And the very purpose of the stat
contribution is to defray the cost of conveying the pupil to the place where
will receive not simply secular, but also and primarily religious, teaching a
guidance.

Indeed the view is sincerely avowed by many of various faiths,[4] that the bas
purpose of all education is or should be religious, that the secular cannot be a
should not be separated from the religious phase and emphasis. Hence the
adequacy of public or secular education and the necessity for sending the chi
to a school where religion is taught. But whatever may be the philosophy or
justification, there is undeniably an admixture of religious with secular tea

[38] In the words of the Virginia statute, following the portion of the preamble quoted
the beginning of this opinion: ". . . even the forcing him to support this or that te
his own religious persuasion, is depriving him of the comfortable liberty of giving his
. . . to the particular pastor, whose morals he would make his pattern, and wh
persuasive to righteousness, and is withdrawing from the ministry those
rewards, which proceeding from an approbation of their personal conduc
an additional incitement to earnest and unremitting labours for the instruction
mankind. . . ." Cf. notes 29, 30, 31 and next *supra*.

[39] See note 38.

[40] See Bower, Church and State in Education (1944) 58: ". . . the fundamental divisi
of the . . . of the whole self into the secular and the religious could not be justified
the grounds of . . . a sound educational philosophy or a modern functional concept of
role . . . of religion to personal and social experience." See also Vere, The Elementary Sch
in Essays on Catholic Education in the United States (1942) 110-111; Gabel, Public Fu
for Church and Private Schools (1937) 737-739.

n all such institutions. That is the very reason for their being. Certainly for oses of constitutionality we cannot contradict the whole basis of the ethical educational convictions of people who believe in religious schooling.

t this very admixture is what was disestablished when the First Amend- forbade "an establishment of religion." Commingling the religious with the ar teaching does not divest the whole of its religious permeation and em- is or make them of minor part, if proportion were material. Indeed, on any view, the constitutional prohibition always could be brought to naught by ng a modicum of the secular.

appropriation from the public treasury to pay the cost of transportation to ay school, to weekday special classes at the church or parish house, or to neetings of various young people's religious societies, such as the Y.M.C.A., .W.C.A., the Y.M.H.A., the Epworth League, could not withstand the con- ional attack. This would be true, whether or not secular activities were d with the religious. If such an appropriation could not stand, then it is to see how one becomes valid for the same thing upon the more extended of daily instruction. Surely constitutionality does not turn on where or how the mixed teaching occurs.

ally, transportation, where it is needed, is as essential to education as any element. Its cost is as much a part of the total expense, except at times in nt, as the cost of textbooks, of school lunches, of athletic equipment, of ng and other materials; indeed of all other items composing the total bur- Now as always the core of the educational process is the teacher-pupil rela- ip. Without this the richest equipment and facilities would go for naught. *udd v. Board of Education*, 278 N.Y. 200, 212, 15 N.E. 2d 576, 582. But the rbial Mark Hopkins conception no longer suffices for the country's require- . Without buildings, without equipment, without library, textbooks and materials, and without transportation to bring teacher and pupil together h an effective teaching environment, there can be not even the skeleton of our times require. Hardly can it be maintained that transportation is the ssential of these items, or that it does not in fact aid, encourage, sustain pport, just as they do, the very process which is its purpose to accomplish. s essential is it, or the payment of its cost, than the very teaching in the om or payment of the teacher's sustenance. Many types of equipment, now ered essential, better could be done without.

me, therefore, the feat is impossible to select so indispensable an item from mposite of total costs, and characterize it as not aiding, contributing to, ting or sustaining the propagation of beliefs which it is the very end of all ng about. Unless this can be maintained, and the Court does not maintain aid thus given is outlawed. Payment of transportation is no more, nor is the less essential to education, whether religious or secular than payment itions, for teachers' salaries, for buildings, equipment and necessary mate- Nor is it any the less directly related, in a school giving religious instruc- o the primary religious objective all those essential items of cost are in- to achieve. No rational line can be drawn between payment for such but not more necessary, items and payment for transportation. The only at can be so drawn is one between more dollars and less. Certainly in this such a line can be no valid constitutional measure. *Murdock v. Pennsyl-* 319 U.S. 105; *Thomas v. Collins*, 323 U.S. 516.[41] Now, as in Madison's time, amount but the principle of assessment is wrong. Remonstrance, Par. c.

IV.

we are told that the New Jersey statute is valid in its present application e the appropriation is for a public, not a private purpose, namely, the pro- of education, and the majority accept this idea in the conclusion that all e here is "public welfare legislation." If that is true and the Amendment's an be thus destroyed, what has been said becomes all the more pertinent.

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would seem a strange ruling that a "reasonable," that is, presumably a small, license ot be placed upon the exercise of the right of religious instruction, yet that under relative constitutional guaranty against "an establishment" taxes may be levied d to aid and promote religious instruction, if only the amounts so used are small. See -31 *supra* and text.

son's objection to "three pence" contributions and his stress upon "denying the " without waiting until "usurped power had . . . entangled the question in prece- note 29, were reinforced by his further characterization of the Assessment Bill: t as it may be, in its present form, from the Inquisition it differs from it only in The one is the first step, the other the last in the career of intolerance." Remon- Par. 9; II Madison 183, 188.

For then there could be no possible objection to more extensive support of r
gious education by New Jersey.

If the fact alone be determinative that religious schools are engaged in edu
tion, thus promoting the general and individual welfare, together with the le
lature's decision that the payment of public moneys for their aid makes th
work a public function, then I can see no possible basis, except one of dubi
legislative policy, for the state's refusal to make full appropriation for supp
of private, religious schools, just as is done for public instruction. There co
not be, on that basis, valid constitutional objection.[42]

Of course paying the cost of transportation promotes the general cause
education and the welfare of the individual. So does paying all other items
educational expense. And obviously, as the majority say, it is much too lar
urge that legislation designed to facilitate the opportunities of children to see
a secular education serves no public purpose. Our nation-wide system of pu
education rests on the contrary view, as do all grants in aid of education, pub
or private, which is not religious in character.

These things are beside the real question. They have no possible material
except to obscure the all-pervading, inescapable issue. *Cf. Cochran* v. *Board*
Education, *supra*. Stripped of its religious phase, the case presents no substan
federal question. *Ibid.* The public function argument, by casting the issue in ter
of promoting the general cause of education and the welfare of the individu
ignores the religious factor and its essential connection with the transportati
thereby leaving out the only vital element in the case. So of course do the "pub
welfare" and "social legislation" ideas, for they come to the same thing.

We have here then one substantial issue, not two. To say that New Jerse
appropriation and her use of the power of taxation for raising the funds app
priated are not for public purposes but are for private ends, is to say that th
are for the support of religion and religious teaching. Conversely, to say that th
are for public purposes is to say that they are not for religious ones.

This is precisely for the reason that education which includes religious tra
ing and teaching, and its support, have been made matters of private right a
function, not public, by the very terms of the First Amendment. That is the eff
not only in its guaranty of religion's free exercise, but also in the prohibi
of establishments. It was on this basis of the private character of the fun
of religious education that this Court held parents entitled to send their childr
to private, religious schools. *Pierce* v. *Society of Sisters*, supra. Now it do
in effect that the appropriation of public funds to defray part of the cost of atte
ing those schools is for a public purpose. If so, I do not understand why the sta
cannot go farther or why this case approaches the verge of its power.

In truth this view contradicts the whole purpose and effect of the Fir
Amendment as heretofore conceived. The "public functions"—"public welfare"
"social legislation" argument seeks, in Madisons words, to "employ Religi
[that is, here religious education] as an engine of Civil policy." Remonstran
Par. 5. It is of one piece with the Assessment Bill's preamble, although with t
vital difference that it wholly ignores what that preamble expheitly state

Our constitutional policy is exactly the opposite. It does not deny the val
or the necessity for religious training, teaching or observance. Rather it secur
their free exercise. But to that end it does deny that the state can undertak
or sustain them in any form or degree. For this reason the sphere of religio

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[42] If it is part of the state's function to supply to religious schools or their patro
the smaller items of educational expense, because the legislature may say they perfor
public function, it is hard to see why the larger ones also may not be paid. Indeed, it
seem even more proper and necessary for the state to do this. For if one class of ex
tures is justified on the ground that it supports the general cause of education or h
the individual, as can be made to do so by legislative declaration, so even more [illegible]
seek to the other to [illegible] payment for transportation to school, [illegible]
[illegible] materials or perhaps for school lunches, and but for what is [illegible]
[illegible] for their intended end, would be to make possible, [illegible]
[illegible] cumulative effect but to make wholly private in character the [illegible]
tures without which the smaller could have no meaning or use.

[43] Whereas the general diffusion of Christian knowledge hath a natural tendency
[illegible] it is competent to provision for learned [illegible] who may be [illegible]
[illegible] due attention to the duty of instructing such citizens as [illegible]
[illegible] cannot otherwise attain such knowledge [illegible]
[illegible] the Lord [illegible] support [illegible]
[illegible] and intended to be preserved by a due [illegible]
[illegible] the public worship of God in [illegible] Christians.
[illegible] Statutes at Large, 1 Hening 98.

ity, as distinguished from the secular intellectual liberties, has been given wofold protection and, as the state cannot forbid, neither can it perform d in performing the religious function. The dual prohibition makes that ion altogether private. It cannot be made a public one by legislative act was the very heart of Madison's Remonstrance, as it is of the Amendment

is not because religious teaching does not promote the public or the indi- l's welfare but because neither is furthered when the state promotes ous education, that the Constitution forbids it to do so. Both legislatures ourts are bound by that distinction. In failure to observe it lies the fallacy "public function"—"social legislation" argument, a fallancy facilitated sy transference of the argument's basing from due process unrelated to eligious aspect to the First Amendment.

no declaration that a gift of public money to religious uses will promote eneral or individual welfare, or the cause of education generally, can tive bodies overcome the Amendment's bar. Nor may the courts sustain attempts to do so by finding such consequences for appropriations which t give aid to or promote religious uses. Cf. *Norris* v. *Alabama*, 294 U.S. 587, *Tooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 569; *Akins* v. *Texas*, 325 U.S. 02. Legislatures are free to make, and courts to sustain, appropriations only it can be found that in fact they do not aid, promote, encourage or sustain us teaching or observances, be the amount large or small. No such finding en or could be made in this case. The Amendment has removed this form moting the public welfare from legislative and judicial competence to a public function. It is exclusively a private affair.

reasons underlying the Amendment's policy have not vanished with time inished in force. Now when it was adopted the price of religious freedom ble. It is that the church and religion shall live both within and upon that m. There cannot be freedom of religion, safeguarded by the state, and inter- n by the church or its agencies in the state's domain or dependency on its e. Madison's Remonstrance, Par. 6, 8.[44] The great condition of religious is that it be maintained free from sustenance, as also from other inter- es, by the state. For when it comes to rest upon that secular foundation it es with the resting. *Id.*, Par. 7, 8.[45] Public money devoted to payment of s costs, educational or other, brings the quest for more. It brings too ggle of sect against sect for the larger share or for any. Here one by rs alone will benefit most, there another. That is precisely the history of es which have had an established religion and dissident groups. *Id.*, Par. t is the very thing Jefferson and Madison experienced and sought to guard against, whether in its blunt or in its more screened forms. *Ibid.* The end of ite cannot be other than to destroy the cherished liberty. The dominating will achieve the dominant benefit; or all will embroil the state in their ions. *Id.*, Par. 11.[46]

rly such conflicts have centered of late around providing transportation gious schools from public funds.[47] The issue and the dissension work typ-

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ause the establishment proposed by the Bill is not requisite for the support of stian Religion. To say that it is, is a contradiction to the Christian Religion r every page of it disavows a dependence on the powers of this world . . . Because blishment in question is not necessary for the support of Civil Government . . . fluence in fact have ecclesiastical establishments had on Civil Society? . . . in ase have they been seen the guardians of the liberties of the people." II Madison 188.

ause experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation." II Madison

least let warning be taken at the first fruits of the threatened innovation. The arance of the Bill has transformed that "Christian forbearance, love and charity" f late mutually prevailed, into animosities and jealousies, which may not soon be ." II Madison 183, 189.

his case briefs *amici curiae* have been filed on behalf of various organizations rep three religious sects, one labor union, the American Civil Liberties Union, and s of Illinois, Indiana, Louisiana, Massachusetts, Michigan and New York. All these ve laws similar to New Jersey's and all of them, with one religious sect, support tutionality of New Jersey's action. The others oppose it. Maryland and Mississippi ined similar legislation. Note 49 *infra*. No state without legislation of this sort opposing brief. But at least six states have held such action invalid, namely, Oklahoma, New York, South Dakota, Washington and Wisconsin. Note 49 *infra* York ruling was overturned by amendment of the state constitution in 1938.

tion of New York, Art. XI, 4

rmore, in this case the New Jersey courts divided. The Supreme Court holding ... [illegible] ... 133 N. J. L. 68, 70, 43 A. 2d 77; the Court of Errors and overruling that decision, 133 N. J. L. 350, 44 A. 2d 333. In both courts as here, one of the six dissenting in the Supreme Court, three of nine in the Court s and Appeals. The division is typical. See the cases cited in note 49.

ically, in Madison's phrase, to "destroy that moderation and harmony which forbearance of our laws to intermeddle with Religion, has produced among its several sects." *Id.*, Par. 11. This occurs, as he well knew, over measures at very threshold of departure from the principle. *Id.*, Par. 3, 9, 11.

In these conflicts whatever success has been obtained it has been upon contention that by providing the transportation the general cause of educati the general welfare, and the welfare of the individual will be forwarded: he that the matter lies within the realm of public function, for legislative de mination.[48] State courts have divided upon the issue, some taking the vi that only the individual, others that the institution receives the benefit.[49] A f have recognized that this dichtomoy is false, that both in fact are aided.[50]

The majority here does not accept in terms any of those views. But neit does it deny that the individual or the school, or indeed both, are benefi directly and substantially.[51] To do so would cut the ground from under public function—social legislation thesis. On the contrary, the opinion concec that the children are aided by being helped to the religious schooling. By c verse necessary implication as well as by the absence of express denial, it ma be taken to concede also that the school is helped to reach the child with religious teaching. The religious enterprise is common to both, as in the intere of having transportation for its religious purposes provided.

Notwithstanding the recognition that this two-way aid is given and the a sence of any denial that religious teaching is thus furthered, the Court c cludes that the aid so given is not "support" of religion. It is rather only s port of education as such, without reference to its religious content, and th becomes public welfare legislation. To this elision of the religious elements fr the case is added gloss in two respects, one that the aid extended partakes the nature of a safety measure, the other that failure to provide it would ma the state unneutral in religious matters, discriminating against or hamperi such children concerning public benefits all others receive.

As will be noted, the one gloss is contradicted by the facts of record and t other is of whole cloth with the "public function" argument's excision of religious factor.[52] But most important is that this approach, if valid, suppli a ready method for nullifying the Amendment's guaranty, not only for this c and others involving small grants in aid for religious education, but equa for larger ones. The only thing needed will be for the Court again to transpla the "public welfare—public function" view from its proper nonreligious d process bearing to First Amendment application, holding that religious edu tion is not "supported" though it may be aided by the appropriation, and th the cause of education generally is furthered by helping the pupil to secu that type of training.

This is not therefore just a little case over bus fares. In paraphrase of Mad son, distant as it may be in its present form from a complete establishment religion, it differs from it only in degree; and is the first step in that direction Par. 9.[53] Today as in his time "the same authority which can force a citizen

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[48] See the authorities cited in note 49; and see note 54.

[49] Some state courts have sustained statutes granting free transportation or free sch books to children attending denominational schools on the theory that the aid was benefit to the child rather than to the school. *See Nichols* v. *Henry*, 301 Ky. 434, 191 S. W 2d 939, with which compare *Sherrard* v. *Jefferson County Board of Education*, 294 K 469, 171 S. W. 2d 963; *Cochran* v. *Board of Education*, 169 La. 1030, 123 So. 664, 281 U. S. 370; *Borden* v. *Board of Education*, 168 La. 1005, 123 So. 655; *Board of Edu tion* v. *Wheat*, 174 Md. 314, 199 A. 628; *Adams* v. *St. Mary's County*, 180 Md. 550, 2 2d 377; *Chance* v. *State Textbook R. & P. Board*, 190 Miss. 453, 200 So. 706. *See Bowker* v. *Baker*, 78 Cal. App. 2d 653, 167P. 2d 256. Other courts have held such statu [illegible] unconstitutional under state constitutions as aid to the schools. *Judd* v. *Board of Educ.*, 278 N. Y. 200, 15 N. E. 2d 576, but see note 47 *supra*; *Smith* v. *Donahue*, 202 Misc. Rep. 656, 115 N. Y. S. 715; *State ex rel. Traub* v. *Brown*, 36 Del. 181, 172 A. 835; *Gurney* v. *Ferguson*, 190 Okla. 254, 122 P. 2d 1002; *Mitchell* v. *Consolidated School District*, 17 Wash. 2d 61, 135 P. 2d 79; *Van Straten* v. *Milquet*, 180 Wis. 109, 192 N. W. 892. And *Dickman* v. *School District*, 35 S. D. 251, 236 N. W. 256. And since many state constitutions [illegible] forbidding the appropriation of public funds for private purposes, in these other cases the issue whether the statute was for a "public" or "private" purpose has been [illegible]. *See* Note (1941) 50 Yale L.J. 917, 925.

[illegible] *Gurney* v. *Ferguson*, 190 Okla. 254, 255, 122 P. 2d 1002, 1003; *Mitchell* v. *Consolidated School District* 17 Wash. 2d 61, 68, 135 P. 2d 79, 82; *Smith* v. *Donahue*, 202 Misc. Rep. 656, 115 N. Y. S. 715, 72; *Board of Education* v. *Wheat*, 174 Md. 314, [illegible] 199 A. 628 at 639. This is true whether the appropriation and payment [illegible] to the individual or to the institution. *Ibid.* Questions of this gravity [illegible] [illegible] of the state's expenditure to accomplish the forbidden object, [illegible] the amount and applies it to that end or the form and manner of [illegible]

[51] The payments here averaged roughly $40.00 a year per child.

[52] See Part V.

[53] See also note 46 *supra* and Remonstrance, Par. 3.

ontribute three pence only . . . for the support of any one [religious] establishment, may force him" to pay more; or "to conform to any other establishment in all cases whatsoever." And now, as then, "either . . . we must say, that he will of the Legislature is the only measure of their authority; and that in he plenitude of this authority, they may sweep away all our fundamental ights; or, that they are bound to leave this particular right untouched and acred." Remonstrance, Par. 15.

The realm of religious training and belief remains, as the Amendment made it, he kingdom of the individual man and his God. It should be kept inviolately rivate, not "entangled . . . in precedents" [54] or confounded with what legislatures legitimately may take over into the public domain.

v.

No one conscious of religious values can be unsympathetic toward the burden hich our constitutional separation puts on parents who desire religious instruction mixed with secular for their children. They pay taxes for others' ildren's education, at the same time the added cost of instruction for their vn. Nor can one happily see benefits denied to children which others receive, cause in conscience they or their parents for them desire a different kind of aining others do not demand.

But if those feelings should prevail, there would be an end to our historic constitutional policy and command. No more unjust or discriminatory in fact is it deny attendants at religious schools the cost of their transportation than is to deny them tuitions, sustenance for their teachers, or any other educational pense which others receive at public cost. Hardship in fact there is which ne can blink. But, for assuring to those who undergo it the greater, the most mprehensive freedom, it is one written by design and firm intent into our sic law.

Of course discrimination in the legal sense does not exist. The child attending e religious school has the same right as any other to attend the public school. it he foregoes exercising it because the same guaranty which assures this eedom forbids the public school or any agency of the state to give or aid him in curing the religious instruction he seeks.

Were he to accept the common school, he would be the first to protest the aching there of any creed or faith not his own. And it is precisely for the reason at their atmosphere is wholly secular that children are not sent to public hools under the *Pierce* doctrine. But that is a constitutional necessity, because have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion. monstrance, Par. 8, 12.

That policy necessarily entails hardship upon persons who forego the right educational advantages the state can supply in order to secure others it is cluded from giving. Indeed this may hamper the parent and the child forced by science to that choice. But it does not make the state unneutral to withhold at the Constitution forbids it to give. On the contrary it is only by observing prohibition rigidly that the state can maintain its neutrality and avoid partisanship in the dissensions inevitable when sect opposes sect over demands public moneys to further religious education, teaching or training in any m or degree, directly or indirectly. Like St. Paul's freedom, religious liberty th a great price must be bought. And for those who exercise it most fully, by isting upon religious education for their children mixed with secular, by the ms of our Constitution the price is greater than for others.

The problem then cannot be cast in terms of legal discrimination or its absence. This would be true, even though the state in giving aid should treat all igious instruction alike. Thus, if the present statute and its application were wn to apply equally to all religious schools of whatever faith,[55] yet in the t of our tradition it could not stand. For then the adherent of one creed still uld pay for the support of another, the childless taxpayer with others more tunate. Then too there would seem to be no bar to making appropriations for

[54] Thus each brief filed here by the supporters of New Jersey's action, see note 47, not only es strongly on *Cochran* v. *Board of Education*, 281 U.S. 370, but either explicitly or effect maintains that it is controlling in the present case.

[55] See text at notes 17–19 *supra* and authorities cited; also Foote, Sketches of Virginia 50) c. XV. Madison's entire thesis, as reflected throughout the Remonstrance and in other writings, as well as in his opposition to the final form of the Assessment Bill, see 43, was altogether incompatible with acceptance of general and "nondiscriminatory" port. See Brant, C. XII.

transportation and other expenses of children attending public or other secular schools, after hours in separate places and classes for their exclusively religious instruction. The person who embraces no creed also would be forced to pay for teaching what he does not believe. Again, it was the furnishing of "contributions of money for the propagation of opinions which he disbelieves" that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation.

VI.

Short treatment will dispose of what remains. Whatever might be said of some other application of New Jersey's statute, the one made here has no semblance of bearing as a safety measure or, indeed, for securing expeditious conveyance. The transportation supplied is by public conveyance, subject to all the hazards and delays of the highway and the streets incurred by the public generally in going about its multifarious business.

Nor is the case comparable to one of furnishing fire or police protection or access to public highways. These things are matters of common right, part of the general need for safety.[56] Certainly the fire department must not stand idly by while the church burns. Nor is this reason why the State should pay the expense of transportation or other items of the cost of religious education.[57]

Needless to add, we have no such case as *Green* v. *Frazier*, 253 U.S. 233, or *Carmichael* v. *Southern Coal Co.*, 301 U.S. 495, which dealt with matters wholly unrelated to the First Amendment, involving only situations where the "public function" issue was determinative.

I have chosen to place my dissent upon the broad ground I think decisive, though strictly speaking the case might be decided on narrower issues. The New Jersey statute might be held invalid on its face for the exclusion of children who attend private, profitmaking schools.[58] I cannot assume, as does the majority, that the New Jersey courts would write off this explicit limitation from the statute. Moreover, the resolution by which the statute was applied expressly limits its benefits to students of public and Catholic schools.[59] There is no showing that there are no other private or religious schools in this populous district.[60] I do not think it can be assumed there were none.[61] But in the review I have taken, it is unnecessary to limit grounding to these matters.

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[56] The protections are of a nature which does not require appropriations specially made from the public treasury and earmarked, as is New Jersey's here, particularly for religious institutions or uses. The First Amendment does not exclude religious property or activities from protection against disorder or the ordinary accidental incidents of community life. It forbids support, not protection from interference or destruction.

It is a matter not frequently recalled that President Grant opposed tax exemption of religious property as leading to a violation of the principle of separation of church and state. See President Grant's Seventh Annual Message to Congress, December 7, 1875, in IX Messages and Papers of the Presidents (1897) 4288, 4289. Garfield, in a letter accepting the nomination for the presidency, said: ". . . it would be unjust to our people, and dangerous to our institutions, to apply any portion of the revenues of the nation, or of the States, to the support of sectarian schools. The separation of the Church and the State in everything relating to taxation should be absolute." II The Works of James Abram Garfield (ed. by Hinsdale, 1883) 783.

[57] Neither do we have here a case of ratemaking by which a public utility extends reduced fares to all school children, including patrons of religious schools. Whether or not [illegible] a compulsion upon a private utility to extend such an advantage would be valid, or its extension by a municipally owned system, we are not required to consider. In the former instance, at any rate, and generally if not always the latter, the vice of using the taxing power to raise funds for the support of religion would not be present.

[illegible] children should be excluded simply because the only school [illegible] for them to attend in view of geographic or other situation might be one conducted in whole or *part* for profit. Cf. note 5.

[illegible] at least a doubtfully sufficient basis for [illegible]

[illegible] See note 7 *supra*. The resolution was as follows, according to the school board's [illegible]

[illegible] The transportation committee recommends that the [illegible] Trenton and Pennington High Schools [illegible] On Motion of Mr. Ralph Berg and Mr. [illegible] [illegible] added.) The New Jersey courts [illegible] that the [illegible] concerned by the state [illegible] *Board of Education* v. *Allen*, 392 U.S. 236, 244.

[illegible] population of Ewing Township, located near the City of Trenton, was 10,[illegible] according to the census of 1940. Sixteenth Census of the United States: Population, Vol. [illegible]

[61] In *Thomas* v. *Collins*, 323 U.S. 516, 530, it was said that the preferred place given [illegible] to the great democratic freedoms secured by the First Amendment gives them [illegible] cases it has been held that the usual presumption of constitutionality will [illegible] work to save such legislative excursions in this field. *United States* v. *Carolene Prod[illegible]*

Two great drives are constantly in motion to abridge, in the name of education, ie complete division or religion and civil authority which our forefathers made. ne is to introduce religious education and observances into the public schools. he other, to obtain public funds for the aid and support of various private ligious schools. See Johnson, The Legal Status of Church-State Relationships the United States (1934); Thayer, Religion in Public Education (1947), Note 941) 50 Yale L.J. 917. In my opinion both avenues were closed by the Constitu- on. Neither should be opened by this Court. The matter is not one of quantity, be measured by the amount of money expended. Now as in Madison's day it is ie of principle, to keep separate the separate spheres as the First Amendment ew them; to prevent the first experiment upon our liberties; and to keep the estion from becoming entangled in corrosive precedents. We should not be less rict to keep strong and untarnished the one side of the shield of religious free- m than we have been of the other.

The judgment should be reversed.

APPENDIX

Memorial and remonstrance against religious assessments

To the Honorable the General Assembly of the Commonwealth of Virginia. A morial and Remonstrance.

We, the subscribers, citizens of the said Commonwealth, having taken into ious consideration, a Bill printed by order of the last session of General Assem- , entitled "A Bill establishing a provision for Teachers of the Christian ligion," and conceiving that the same, if finally armed with the sanctions of a , will be a dangerous abuse of power, are bound as faithful members of a free te, to remonstrate against it, and to declare the reasons by which we are deter- ned. We remonstrate against the said Bill.

. Because we hold it for a fundamental and undeniable truth, "that Religion the duty which we owe to our Creator and the Manner of discharging it, can be ected only by reason and conviction, not by force or violence." [62] The Religion n of every man must be left to the conviction and conscience of every man; l it is the right of every man to exercise it as these may dictate. This right in its nature an unalienable right. It is unalienable; because the opinions of n, depending only on the evidence contemplated by their own minds, cannot ow the dictates of other men: It is unalienable also; because what is here a ht towards men, is a duty towards the Creator. It is the duty of every man to der to the Creator such homage, and such only, as he believes to be acceptable him. This duty is precedent both in order of time and degree of obligation, to claims of Civil Society. Before any man can be considered as a member of il Society, he must be considered as a subject of the Governor of the Universe: d if a member of Civil Society, who enters into any subordinate Association, st always do it with a reservation of his duty to the general authority; much re must every man who becomes a member of any particular Civil Society, do vith a saving of his allegiance to the Universal Sovereign. We maintain there- e that in matters of Religion, no man's right is abridged by the institution of il Society, and that Religion is wholly exempt from its cognizance. True it is, t no other rule exists, by which any question may divide a Society, can be mately determined, but the will of the majority; but it is also true, that the jority; may trespass on the rights of the minority.

. Because if religion be exempt from the authority of the Society at large, l less can it be subject to that of the Legislative Body. The latter are but the atures and vicegerents of the former. Their jurisdiction is both derivative limited: it is limited with regard to the coordinate departments, more nec- rily is limited with regard to the constituents. The preservation of a free gov- ment requires not merely, that the metes and bounds which separate each de- tment of power may be invariably maintained; but more especially, that ther of them be suffered to overleap the great Barrier which defends the rights

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304 U.S. 144, 152, note 4; see Wechsler, Stone and the Constitution (1946) 46 Col. ev. 764, 795 *et seq.*

part from the Court's admission that New Jersey's present action approaches the verge er power, it would seem that a statute, ordinance or resolution which on its face sin- out one sect only by name for enjoyment of the same advantages as public schools or students should be held discriminatory on its face by virtue of that fact alone, unless re positively shown that no other sects sought or were available to receive the same ntages.

Decl. Rights, Art : 16 [Note in the original.]

of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensible, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent." [63] all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "*equal* title to the free exercise of Religion according to the dictates of conscience" [64] Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be intrusted with the care of public worship? Ought their Religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet preeminencies over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second and unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its inmate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy: ignorance and servility in the laity: in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre: those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of

[63] Decl. Rights, Art 1. [Note in the original.]
[64] Art: 16. [Note in the original.]

eir flocks; many of them predict its downfall. On which side ought their
stimony to have greatest weight, when for or when against their interest?
s. Because the establishment in question is not necessary for the support of
vil Government. If it be urged as necessary for the support of Civil Govern-
nt only as it is a means of supporting Religion, and it be not necessary for
e latter purpose, it cannot be necessary for the former. If Religion be not
thin [the] cognizance of Civil Government, how can its legal establishment
said to be necessary to civil Government? What influence in fact have
clesiastical establishments had on Civil Society? In some instances they have
en seen to erect a spiritual tyranny on the ruins of Civil authority; in many
stances they have been seen upholding the thrones of political tyranny; in
instance have they been seen the guardians of the liberties of the people.
lers who wished to subvert the public liberty may have found an established
rgy convenient auxiliaries. A just government, instituted to secure & per-
tuate it, needs them not. Such a government will be best supported by pro-
ting every citizen in the enjoyment of his Religion with the same equal
d which protects his person and his property; by neither invading the equal
hts of any Sect, nor suffering any Sect to invade those of another.
. Because the proposed establishment is a departure from that generous policy,
ich, offering an asylum to the persecuted and oppressed of every Nation and
ligion, promised a lustre to our country, and an accession to the number of
citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead
holding forth an asylum to the persecuted, it is itself a signal of persecution.
legrades from the equal rank of Citizens all those whose opinions in Religion
not bend to those of the Legislative authority. Distant as it may be, in its
sent form, from the Inquisition it differs from it only in degree. The one is
first step, the other the last in the career of intolerance. The magnanimous
ferer under this cruel scourge in foreign Regions, must view the Bill as a
con on our Coast, warning him to seek some other haven, where liberty and
lanthrophy in their due extent may offer a more certain repose from his
ibles.
). Because, it will have a like tendency to banish our Citizens. The allure-
nts presented by other situations are every day thinning their number. To
eradd a fresh motive to emigration, by revoking the liberty which they now
oy, would be the same species of folly which has dishonoured and depopu-
d flourishing kingdoms.
1. Because, it will destroy that moderation and harmony which the forbear
e of our laws to intermeddle with Religion, has produced amongst its several
s. Torrents of blood have been spilt in the old world, by vain attempts of the
ular arm to extinguish Religious discord, by proscribing all difference in
igious opinions. Time has at length revealed the true remedy. Every relax-
n of narrow and rigorous policy, wherever it has been tried, has been found
ssuage the disease. The American Theatre has exhibited proofs, that equal
complete liberty, if it does not wholly eradicate it, sufficiently destroys its
ignant influence on the health and prosperity of the State. If with the salu-
effects of this system under our own eyes, we begin to contract the bonds
Religious freedom, we know no name that will too severely reproach our folly.
least let warning be taken at the first fruits of the threatened innovation.
very appearance of the Bill has transformed that "Christian forbearance,"
and charity," which of late mutually prevailed, into animosities and jealous-
which may not soon be appeased. What mischiefs may not be dreaded should
enemy to the public quiet be armed with the force of a law?
2. Because, the policy of the bill is adverse to the diffusion of the light of
istianity. The first wish of those who enjoy this precious gift, ought to be
it may be imparted to the whole race of mankind. Compare the number of
e who have as yet received it with the number still remaining under the
inion of false Religions; and how small is the former! Does the policy of the
tend to lessen the disproportion? No; it at once discourages those who are
ngers to the light of [revelation] from coming into the Region of it; and
ntenances, by example the nations who continue in darkness, in shutting out
e who might convey it to them. Instead of levelling as far as possible, every
cle to the victorious progress of truth, the Bill with an ignoble and unchris-
timidity would circumscribe it, with a wall of defense against the encroach-
t of error.

Art. 16. [Note in the original.]

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example if impotency in the Government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens: and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal, before the voice either of the Representatives or of the Counties, will be that of the people. Our hope is that neither of the former will after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the "basis and foundation of Government." [a] It is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may control the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly: or we must say, that they have no authority to enact into law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his [blessing, may re]dound to their own praise, and may establish more firmly the liberties, the prosperity, and the Happiness of the Commonwealth.

II Madison, 183–191.

SUPPLEMENTAL APPENDIX

A bill establishing a provision for teachers of the Christian religion

Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the Legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of pre-eminence amongst the different societies or communities of Christians;

Be it therefore enacted by the General Assembly, That for the support of Christian teachers, — per centum on the amount, or — in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the Revenues of this State.

[a] Decl. Rights-title. [Note in the original.]

And be it enacted, That for every sum so paid, the Sheriff or Collector shall give
receipt, expressing therein to what society of Christians the person from whom
may receive the same shall direct the money to be paid, keeping a distinct
count thereof in his books. The Sheriff of every County, shall, on or before the
y of—in every year, return to the Court, upon oath, two alphabetical lists of the
yments to him made, distinguishing in columns opposite to the names of the
rsons who shall have paid the same, the society to which the money so paid
s by them appropriated; and one column for the names where no appropriation
all be made. One of which lists, after being recorded in a book to be kept for
at purpose, shall be filed by the Clerk in his office; the other shall by the Sheriff
fixed up in the Court-house, there to remain for the inspection of all concerned.
d the Sheriff, after deducting five per centum for the collection, shall forth-
th pay to such person or persons as shall be appointed to receive the same
the Vestry, Elders, or Directors, however denominated of each such society,
e sum so stated to be due to that society; or in default thereof, upon the mo-
n of such person or persons to the next or any succeeding Court, execution shall
awarded for the same against the Sheriff and his security, his and their exe-
ors or administrator: provided that ten days previous notice be given of such
tion. And upon every such execution, the Officer serving the same shall proceed
mmediate sale of the estate taken, and shall not accept of security for payment
the end of three months, nor to have the goods forthcoming at the day of sale:
his better direction wherein, the Clerk shall endorse upon every such execution
t no security of any kind shall be taken.

And be it further enacted, That the money to be raised by virtue of this Act,
ll be by the Vestries, Elders, or Directors of each religious society, appro-
ated to a provision for a Minister or Teacher of the Gospel of their denomina-
n, or the providing places of divine worship, and to none other use whatsoever:
ept in the denominations of Quakers and Menonists, who may receive what is
ected from their members, and place it in their general fund, to be disposed
n a manner which they shall think best calculated to promote their particular
le of worship.

And be it enacted, That all sums which at the time of payment to the
riff or Collector may not be appropriated by the person paying the
e, shall be accounted for with the Court in manner as by this Act is directed:
l after deducting for his collection, the Sheriff shall pay the amount thereof
on account certified by the Court to the Auditors of Public Accounts, and by
n to the Treasurer) into the public Treasury, to be disposed of under the direc-
n of the General Assembly, for the encouragement of seminaries of learning
hin the Counties whence such sums shall arise, and to no other use or purpose
atsoever.

This Act shall commence, and be in force, from and after the -day of——
he year

Copy from the Engrossed Bill.

JOHN BECKLEY, C.H.D.

Washington Mss. (Papers of George Washington, Vol. 231); Library of Con-
ss.[6]

Mr. ERVIN. Mr. President, I yield the floor.

Mr. WILLIAMS. Mr. President, I am opposed to the amendment of-
ed by the distinguished Senators from North Carolina and Ala-
na. This amendment broadens the present exemption of section 702
Title VII in two respects. Section 702 now exempts religious orga-
ations employing individuals of a particular religion for religious
vities and provides an exemption for the educational activities of
cational institutions.

This amendment would allow religious organizations and educa-
al institutions a complete exemption from Title VII coverage. A
gious organization would be exempt whether or not it is engaged
religious activities; and the present authority to hire employees of

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[6] This copy of the Assessment Bill is from one of the handbills which on December 24,
, when the third reading of the bill was postponed, were ordered distributed to the
nia counties by the House of Delegates. See Journal of the Virginia House of Delegates,
mber 24, 1784 Eckenrode, 102-103. The bill is therefore in its final form, for it never
reached the floor of the House. Eckenrode, 113.

a particular religion for religious activities would be expanded to include race, color, sex, or national origin for any activity. An educational institution would be made exempt from Title VII whether or not it is engaged in educational activities.

As to religious organizations, it is not clear to me that the religious integrity of these institutions would be compromised by equal employment opportunities for employees in positions unrelated to religious activities of such institutions.

It should be emphasized that religious corporations and associations often provide purely secular services to the general public without regard to religious affiliation, and that most of the many thousands of persons employed by these institutions perform totally secular functions. In this regard, employees in these "religious" institutions perform jobs that are identical to jobs in comparable secular institutions. It seems appropriate, therefore, that these persons employed by religious corporations and associations should be given the same equal employment opportunities as those persons employed in comparable positions by secular employers.

For example, religious organizations in this country own and operate a substantial number of hospitals open to the public. These hospitals employ a broad range of persons to staff them. Without expounding on all of the job classifications at a hospital, I will just note that the categories of employment range from nurses and hospital administrators to dieticians and housekeeping personnel. There is no justification, in my judgment, for such hospitals to be permitted to discriminate against a janitor, for example, on any grounds.

Further, in my judgment, it might be very well unconstitutional for Congress to permit such discrimination. I recognize that the first amendment protects the free exercise of religion. I believe it is reasonable for Congress to permit an institution such as Catholic University to require its employees to be Catholic. The major function of that university is the propagation of its faith and we should not interfere with that program. However, the major purpose of hospitals and other service agencies is to provide public service. In providing this service they should not be allowed to become instruments of invidious and unreasonable discrimination in employment.

I would note for the record that at this point a similar issue has been resolved in an almost identical manner by the administration. The Occupational Safety and Health Act, passed by this Congress in 1970, provided no exemptions for employers. In defining the term "employer engaged in the business affecting commerce," for purposes of this act, the Department of Labor of necessity faced the question of coverage of churches as employers. Let me read for the Record a portion of the interpretation made by that agency just 2 weeks ago. It appears in the Federal Register of Friday, January 21, 1972, at page 930:

> * * * Churches or religious organizations, like charitable and nonprofit organizations, are considered employers under the Act where they employ one or more persons in secular activities. As a matter of enforcement policy, the performance of, or participation in, religious services (as distinguished from secular or pecuniary activities whether for charitable or religion-related purposes) will be regarded as not constituting employment under the Act. Any person, while performing religious services or participating in them in any degree, is not regarded as an employer or employee under the Act, notwithstanding the fact that such person may be regarded as an employer or employee for other purposes— for example, giving or receiving remuneration in connection with the performance of religious services.

* * Some examples of coverage of religious organizations as employers
ld be: A private hospital owned or operated by a religious organization; a
ate school or orphanage owned or operated by a religious organization; com-
cial establishments of religious organizations engaged in producing or selling
lucts such as alcoholic beverages, bakery goods, religious goods, etc.; and
inistrative, executive, and other office personnel employed by religious or-
izations. Some examples of noncoverage in the case of religious organizations
ld be: clergymen while performing or participating in religious services;
other participants in religious services; namely choir masters, organists,
r musicians, choir members, ushers and the like.

have read that citation from another bit of legislation that is now
to point out the analogous situation that we are dealing with here
nother point of law in another department of government activity.
Ir. President, just a few days ago in a colloquy with the Senator
n North Carolina, the following exchange occurred:

r. ERVIN. It also enables the political hands of Caesar to be laid upon the
d things of God. And each one of these cases where any of these things
r is subject to be reviewed in the Federal courts, is it not?
. WILLIAMS. I would say that the equality of rights has nothing to do with
ar, and maybe had more to do with God.
. ERVIN. I would say you do not get equality of rights by robbing the ma-
y of their rights, and that is what this bill will do to the majority of the
le of this country. But apart from that—

* * * * * * *

ERVIN. I do not think Congress has a right to authorize Caesar to lay his
al hands upon the affairs of God, and that is exactly what the bill does.
. WILLIAMS. I interpret God's mandate to man differently than the Senator
North Carolina.

reiterate my judgment expressed that day—of all the institutions
is country who should be setting the example of equal employment
rtunity, of equal opportunity for that matter in all aspects of life,
America's religious institutions. I am confident that the Houses
od in this country do not shirk that responsibility nor should we.
he impact of this amendment on educational institutions is also not
eeping with our purpose to strengthen the EEOC. Broadening the
ption instead of eliminating it will serve only to continue existing
iminatory practices against the teachers and other staffs of this
n's educational institutions.

is our aim, Mr. President, in considering the present legislation,
engthen the provisions of Title VII and to eliminate the inconsist-
s and insufficiencies which we allowed into that law in 1964. It is
ur purpose to reaffirm existing loopholes.

present, there are approximately 2,865,000 teachers and full-time
ty in 120,000 educational institutions in our Nation. There are
approximately 1.5 million nonprofessional staff employed by these
utions.

st of the teachers and staff are public employees, the remainder
mployed by private institutions. And, yet, under the present law,
of these employees are without an adequate and effective Federal
dy. But I submit, Mr. President, that these 1 million are no differ-
rom other employees in the Nation and deserve to be accorded the
protections. To continue the existing exemption for these em-
es would not only continue to work an injustice against this vital
nt of our Nation's work force, but would also establish a class
ployers who could pursue employment policies which are other-
prohibited by the law.

The existence of discrimination in the employment practices of our Nation's educational institutions is well known, and has been adequately demonstrated by overwhelming statistical evidence as well as numerous complaints from groups and individuals. Minorities and women continue to be subject to blatant discrimination in these institutions.

As regards minorities, statistical studies show that minorities are generally underrepresented in teaching positions in educational institutions and those that are employed are relegated to the lower paying and less prestigious positions. For example, elementary and secondary schools, Negroes hold only about 10 percent of all available positions, Spanish-speaking Americans about 0.8 percent and all other minorities about 0.6 percent. This under representation becomes more pronounced when we look at the institutions of higher learning where Negroes account for only 2.2 percent of all faculty, Orientals 1.3 percent, and all other minorities only 0.3 percent.

Perhaps the most extensive discrimination in educational institutions, however, is found in the treatment of women. While women are generally well represented statistically in terms of numbers employed, they are generally relegated to the lowest paying and least prestigious jobs. Women account for the majority of teachers in elementary and secondary schools but they are virtually totally excluded from positions as principals and other administrative or decisionmaking positions.

In institutions of higher education women are almost totally absent in the position of academic dean, and are grossly underrepresented in all other major faculty positions. Also, I would add, that this discrimination does not only exist as regards to the acquiring of jobs, but that it is similarly prevalent in the area of salaries and promotions where studies have shown a well-established pattern of unlawful wage differentials and discriminatory promotion policies.

And yet, Mr. President, despite the existence of this obvious discrimination, this entire segment of our working population has not been provided with adequate Federal relief.

Not only have educational institutions been excluded from the protections of Title VII, but teachers and other professionals have similarly been excluded from the protection of the Equal Pay Act, which has been used successfully by other employees to halt discriminatory wage differentials. What this means is that for most employees of educational institutions, the only available remedy has been an individual suit under the anti-discrimination provisions of the Constitution. However, as has been noted by the committee in reporting out S. 2515, this method of relief is very time consuming and costly, and does not guarantee complete relief in every case.

Mr. President, I cannot help but feel that we have been very remiss in allowing the employees of this Nation's educational institutions to continue without adequate Federal remedy against job discrimination for as long as we have.

The exclusion of educational institutions from the protections of Title VII is a major factor in the discrimination which exists in our educational institutions today. There does not appear to me to be any reason, therefore, why this legislative oversight should be continued. We must correct this unfortunate defect of Title VII immediately, and provide employees of educational institutions the same protections that we accord the rest of the Nation's work force.

Ir. President, I ask unanimous consent to have printed in the ord at this point a list of organizations which support the bill ore the Senate without the amendment offered by the Senators from rth Carolina and Alabama. From A to Z, the list indicates the gious organizations that, by supporting the bill as it was reported he Senate, oppose the pending amendment.

rom the African Methodist Episcopal Church through the United agogue of America—as I rapidly refresh my recollection and scan list—all the organizations listed here are religious organizations. they cover the gambit of faith in this country.

here being no objection, the list was ordered to be printed in the ord, as follows:

LIST OF ORGANIZATIONS

rican Methodist Episcopal Church.
rican Methodist Episcopal Zion Church.
erican Baptist Convention—Division of Social Concern.
erican Jewish Committee.
erican Jewish Congress.
ti-defamation League of B'nai B'rith.
ai B'rith Women.
ristian Methodist Episcopal Church.
urch of the Brethren—Brethren Service Commission.
urch Women United.
iscopal Church—Division of Christian Citizenship.
nciscan Social Action Team.
ends Committee on National Legislation.
dassah.
theran Church in America—Board of Social Ministry.
tional Baptist Convention, U.S.A.
tional Catholic Conference for Interracial Justice.
tional Council of Catholic Men.
tional Council of Catholic Women.
tional Council of Churches—Department of Social Justice.
tional Council of Jewish Women.
sbyterian Interracial Council.
itarian Universalist Association.
tarian Universalist Women's Federation.
ted Christian Missionary Society.
ted Church of Christ—Committee for Racial Justice Now.
ted Church of Christ—Council for Christian Social Action.
ted Methodist Church—Board of Social Concern.
ted Presbyterian Church—Commission on Religion & Race.
ted Presbyterian Church—Office of Church & Society.
Catholic Conference—Department of Social Development.
ted Synagogue of America.

. JAVITS. Mr. President, will the Senator yield?

. WILLIAMS. I yield.

. JAVITS. Mr. President, the real question here is the size of the ption which is being sought. Senator Williams has very splendidgued the merits, and I believe that the remaining factor which is rtant to Senators, as they vote, is the size of this exemption. It is ated that some 4,300,000 employees are concerned in educational utions. That is an enormous exemption to drop from this act. That ppears at page 11 of the committee's report:

re are at present over 120,000 educational institutions, with approximately llion teachers and professional staff members and another 1.5 million ofessional staff members. Yet all of these employees are, in effect, without ctive Federal remedy in the area of employment discrimination.

Mr. President, that represents 4,300,000 workers. It points out, too, that this is not a fanciful matter on our part but that there are critically important evidences of discrimination in these institutions.

Senators are invited to read on, on the next page of the report, which indicates the tremendous disproportion—the courts have held that that is a perfectly proper item of evidence—between the percentages of positions held by blacks and other minorities and the percentage which they represent in population.

In addition to the discrimination on the ground of color, there are tremendous evidences of discrimination based upon the same criteria against women, bearing in mind that sex is also covered as an important item of discrimination in this bill.

For all those reasons, because we are dealing with enormous numbers of people—a worker for an educational institution or a religious institution is still a worker—while we understand the responsibility of dealing with respect for the establishment of religion as such—and we very amply safeguard them in the exemption to 702 contained in the bill at page 33—there is no reason for allowing those cover words to take out of the operation of common justice and equal opportunity for a job, which is the essence of this bill, some 4,300,000 workers. Yet, that would be the effect of this amendment.

So, for the reasons I have stated, plus those eloquently stated by the manager of the bill, Senator Williams, I hope very much that the Senate will reject this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I yield the remainder of the time of the proponents of this amendment to the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, one of the most horrendous provisions of S. 2515 is section 3, which removes the existing exemption for employees of educational institutions, as presently contained in section 702 of the Civil Rights Act of 1964. This overzealous proposal attempts, first, to subvert academic freedom and, second, violate the prohibition contained in the first amendment which guarantees the free exercise of religion.

In addition, if this section of the bill is passed, it invites a further expansion and continuation of the practices of harassing local school officials and interfering with local school systems that have been running rampant since the adoption of Title VI of the 1964 Civil Rights Act. Enactment of section 3 of S. 2515 could destroy academic freedom. Objective criticism, independent judgment, the search for truth unhampered by transient political interests—all of which are vital to academic freedom—could be altered and reshaped by the EEOC. Academic tenure—the very cornerstone of academic freedom—would be placed in serious jeopardy if Federal hiring and promotion practices are substituted for those of local school administrators.

t would be hard to imagine any Federal law more at odds with the rantee of religious freedom than EEOC supervision of employment rtices of church-supported educational institutions.

History tells us that it was largely because of religious persecution t many of our forefathers left England and Europe to settle in erican colonies.

eligious freedom in the New World lighted man's way to political dom. The revelation of spiritual freedom created a passionate re in the hearts of the colonists for freedom from political bondage, esiastical privilege, and royal favor. It was because they recog- d that secular and religious authority must be rigorously separated the founders of our Nation did not consider the Constitution of United States to be complete until there was adopted a Bill of hts in which they made a flat prohibition in the very first article :

ngress shall make no law respecting the establishment of religion, or pro- ng the free exercise thereof . . .

was not a new idea for it was written long ago:

nder therefore unto Caesar the things which are Caesar's; and unto God ings that are God's.

nder our our system of religious freedom, which would be violated his EEOC bill, religious organizations have seen fit to use their resources to establish church schools at every level of education— entary, secondary, and institutions of higher education. They did cause they wanted youth taught in a religious atmosphere and by stian instructors. Indeed, the establishment of church-related edu- nal institutions in the embodiment of the free exercise of religion. form of religious activity has always been recognized to occupy ame high estate under the first amendment as worshipping in the ches and preaching from the pulpits.

ie argument has been made and pressed with vigor that section 3 e bill continues the exemption for church-supported schools, col- , and universities with respect to the employment of individuals particular religion to perform work or teach subjects connected religious activities.

e argument is lacking in both intellectual and constitutional gth. It rests solely upon the fallacy that the only "free exercise" ligion at a church-related school is restricted to schools of theology he teaching of religious subjects at lower levels. It concludes, fore, that all other activities and teachings at church-supported ls are secular rather than religious activities.

this argument, Mr. President, I submit that the reasoning of the nents of section 3 is not the constitutional standard, nor are preferences for that matter. The constitutional standard is sepa- n of church and state. And so far as interference with the "free ise" of religion, the separation must be full and complete. The amendment prohibition is absolute. The power and authority t in section 3 is just the type of Government invasion that the mendment was designed to prevent.

us, the question in connection with section 3 of S. 2515 with the dment offered by the Senator from North Carolina and myself to reach is not whether its language has entered too far into the l area of religious freedom, but whether it has entered it at all.

It is enough here to quote Mr. Justice Jackson in his famous opini
in *West Virginia State Board of Education* v. *Barnett* (319 U.S. 62
when he said:

> If there is any fixed star in our constitutional constellation, it is that
> official, high or petty, can prescribe what shall be orthodox in politics, nation
> ism, religion, or other matters of opinion or force citizens to confess by word
> act their faith therein. If there are any circumstances which permit an exc
> tion, they do not now occur to us.

It should be called to the attention of the Senate that none of t
Presidents or heads of public, private, and church-supported schoo
appeared before the committe in hearings on S. 2515. This is even mo
strange when it is remembered that this is the Senate committee whi
also handles the great bulk of legislation here in the Senate relating
programs for our schools and, therefore, it already had available to
a wealth of names of distinguished educators at every level of educ
tion who could have been requested to appear at the hearings wit
respect to section 3 and, undoubtedly, a number of them would hav
been happy to do so.

Why were not spokesmen for the educational arms of our great rel
gious denominations requested to verbally appraise the committee ho
they felt about section 3 and how they viewed it as a possible encroach
ment upon religious freedom, and what effect, if any, the proposa
would have upon the charters of their respective institutions?

In connection with this latter point, many will recall that when leg
islation similar to S. 2515 was before the Senate during the 91st Co
gress, the distinguished senior Senator from North Carolina (Mr
Ervin) pointed out that he once served on the board of trustees o
Davidson College, a liberal arts school founded and supported by th
Presbyterian Church. The Senator from North Carolina furthe
pointed out that Davidson had, and presumably still does have a reg
lation which stipulates that no professor would teach any course a
that institution unless he is a member of an Evangelical Church. Th
Senator from North Carolina went on to say:

> Mr. President, I think in any free society, if the members of the Presbyteria
> Church, or the members of the Catholic Church, or the members of the Luther
> Church, or the members of any other religious body see fit to establish, throug
> their own resources, an institution of learning for the instruction of youth, a
> they want the youth of that institution to be taught by persons they regard a
> Christian professors, even in nonreligious subjects such as mathematics o
> trigonometry or philosophy, they should have the unqualified right to do tha
>
> Yet the bill before the Senate will take away from institutions like Davidso
> College the right to select professors who are members of evangelical church
> because that would be discriminating against other professors on account of the
> religion. The Equal Employment Opportunity Commission, under this bill, co
> actually require the Board of Trustees of Davidson College to hire a Mohamme
> dan, for example, to instruct the youth attending the college.
>
> That is the extent of the tyranny which this bill would inflict upon the peo
> of America. We might as well recognize it. This is the most tyrannical propos
> ever submitted to the Congress of the United States. It destroys the right of peo
> to exercise their religion, because that is exactly what these denominational c
> leges are doing when they make a requirement that professors shall be membe
> of a particular church, even though they are teaching nonreligious subjects.

We all know that the distinguished senior Senator from North Car
lina is acknowledged as one of the greatest living authorities on con
stitutional matters. The Senator from Alabama considers him to b
one of the greatest of all time. His brilliance on constitutional law ha

n witnessed many times in this Chamber. I deem it a great privilege serve with him here in the Senate and to stand shoulder to shoulder h him in defense of the freedoms and rights which the framers of Constitution deemed indispensable to liberty. Like Thomas Jeffer-, the senior Senator from North Carolina knows that eternal vigil-e is the price of liberty. I commend him on the excellent speech he le in the Senate 2 years ago against the EEOC expansion bill from ich I have just quoted, and I commend his wise and trenchant words ach member of this body.

wish to read into the record at this point a letter I received from Leslie S. Wright, president of Samford University; a Baptist-sup-ted university in Birmingham, Ala., which bears on section 3. It ls:

SAMFORD UNIVERSITY,
Birmingham, Ala., December 20, 1971.

JAMES B. ALLEN,
Senate,
hington, D.C.

AR JIM: My absence from the office and from the country for a part of the has delayed unduly this opportunity to acknowledge and thank you for letter of November 9 regarding an amendment which you proposed to intro-to S2515.

of us at Samford University deeply appreciate your thoughtfulness in ng this information with us. We want you to know we wholeheartedly sup-your amendment to remove schools, colleges and other educational institu-from coverage under a bill recently approved by the Senate Labor and Pub-elfare Committee. If enacted without the amendment, the legislation would oy our educational institutions by giving an agency of the federal govern-complete power over such matters as the employment of faculty, the aca-program, etc.

are in full accord with your belief that the power sought under the EEOC nsion bill is clearly a spiritual and constitutional violation of the first amend-to the Constitution.

will appreciate very much receiving such information as you can give us rning the present status of this legislation. We certainly want to support mendment in every possible way.

deeply appreciate your close attention to this matter and your support of hristian institutions.

th warmest personal regards and best wishes for the holiday season, I am Sincerely your friend,

LESLIE S. WRIGHT,
President.

. President, our oath of office enjoins us from enacting into law a which would license the EEOC, under cover of the soft euphemism qual employment opportunity" to steal into the forbidden area ligious freedom. I submit that the constitutional language that is a government which allows no statute that prohibits the free ise of religion extends to the activities and teachings of a church-d school as a whole. The concern for separation of church and which inspired and prompted submission of the first amendment 89 continues to be as meaningful today when overzealous legisla-hreatens to destroy the freedoms which the first amendment en-es. If this is not true, the first amendment is but an empty pledge ssed in idle words.

. President, the total unconcern of the Equal Employment Op-nity Commission for individual freedoms, property rights, and tutional principles that would be trampled in the dust under its for power, is indeed shocking.

President, I hope the Senate will agree to the pending dment.

Mr. STENNIS. Mr. President, I shall briefly discuss amendment N
815. The present law exempts educational institutions from the p
visions of the act. The bill as reported would cover those who sel
and employ teachers, professors, faculty administrators, deans, colle
presidents, and janitors. Some of the more liberal campuses of t
country, which have been preoccupied with the ramifications
academic freedom, might be a little surprised at what this bill could
to them.

A broader area of concern, however, that has an effect in eve
neighborhood, and every family is that of the faculties of elementa
and secondary schools. Let me say that we in the South are well awa
of what is involved here. The schools in Southern States are und
court orders or HEW instructions to establish racial balance in scho
faculties. These orders are being carried out. Sometimes the cons
quences are difficult to accept but it is being done.

As the Members of this body know, I have for some time been adv
cating that there be a single national policy to be applied uniform
in all regions of the United States in dealing with conditions of segr
gation by race, without regard to the origin or cause of such segreg
tion. Twice the Senate has passed this amendment. The Senate educ
tion bill contains it, and a modification of it that is in the educati
bill passed by the House will be a matter of discussion soon, togeth
with the busing amendments.

I believe that all parts of the country should be treated alike in a
matters, including the requirements as to school faculties. If rac
balance in faculties is required in one area, it should be in all area
The provisions of this bill could move in that direction, but I do n
think this bill is the right vehicle. However, should these provisio
become law, it will be interesting to see how they are received in t
school districts of the North, where the first few busing decrees ha
resulted in an aroused and incensed citizenry.

I repeat, however, this bill is not the proper vehicle for such action,
it is to be taken. This bill can only add to the turmoil and confusio
that already exists in the Nation's school systems, if the exemptio
from the EEO Act now afforded educational institutions is remove

The PRESIDING OFFICER. The question now occurs on the amendme
of the Senator from North Carolina.

Mr. ALLEN. Mr. President, I ask for the yeas and nays if they ha
not already been ordered.

The yeas and nays were not ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the absen
of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous co
sent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I ask for the yeas and nays on t
amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amend
ment of the Senator from North Carolina. On this question the ye
and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Byrd of West Virginia. I announce that the Senator from liana (Mr. Bayh), the Senator from Missouri (Mr. Eagleton), the ator from Alaska (Mr. Gravel), the Senator from Indiana (Mr. rtke), the Senator from Minnesota (Mr. Humphrey), the Senator m Washington (Mr. Jackson), the Senator from Washington (Mr. gnuson), the Senator from Wyoming (Mr. McGee), the Senator m Maine (Mr. Muskie), the Senator from Alabama (Mr. Spark- n), the Senator from California (Mr. Tunney), the Senator from ada (Mr. Cannon), the Senator from Oklahoma (Mr. Harris), the ator from South Dakota (Mr. McGovern), and the Senator from isiana (Mr. Long), are necessarily absent.

further announce that the Senator from Mississippi (Mr. East- l), is absent because of illness.

I further announce that, if present and voting, the Senator from nesota (Mr. Humphrey), the Senator from Washington (Mr. gnuson), the Senator from Washington (Mr. Jackson), and the ator from California (Mr. Tunney), would each vote "nay."

r. Griffin. I announce that the Senator from Maryland (Mr. lias), is absent on official business.

he Senator from Connecticut (Mr. Weicker) is necessarily absent.

he Senator from South Dakota (Mr. Mundt) is absent because of ss.

he Senator from Oregon (Mr. Packwood) is detained on official ness.

he result was announced—yeas 25, nays 55, as follows:

[No. 26 Leg.]

YEAS—25

Allen	Dole	Hruska
Baker	Ellender	Jordan, N.C.
Bennett	Ervin	McClellan
Brock	Fannin	Stennis
Buckley	Fulbright	Talmadge
Byrd, Va.	Goldwater	Thurmond
Byrd, W. Va.	Gurney	Tower
Cotton	Hansen	
Curtis	Hollings	

NAYS—55

Aiken	Griffin	Percy
Allott	Hart	Proxmire
Anderson	Hatfield	Randolph
Beall	Hughes	Ribicoff
Bellmon	Inouye	Roth
Bentsen	Javits	Saxbe
Bible	Jordan, Idaho	Schweiker
Boggs	Kennedy	Scott
Brooke	Mansfield	Smith
Burdick	McIntyre	Spong
Case	Metcalf	Stafford
Chiles	Miller	Stevens
Church	Mondale	Stevenson
Cook	Montoya	Symington
Cooper	Moss	Taft
Cranston	Nelson	Williams
Dominick	Pastore	Young
Fong	Pearson	
Gambrell	Pell	

NOT VOTING—20

Bayh	Humphrey	Mundt
Cannon	Jackson	Muskie
Eagleton	Long	Packwood
Eastland	Magnuson	Sparkman
Gravel	Mathias	Tunney
Harris	McGee	Weicker
Hartke	McGovern	

So Mr. Ervin's amendment was rejected.

The PRESIDING OFFICER. What is the pleasure of the Senate?

Mr. ERVIN. Mr. President——

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Legislative Clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. Fannin). Without objection, it is so ordered.

AMENDMENT NO. 813

Mr. ERVIN. Mr. President, on behalf of the distinguished Senator from Alabama (Mr. Allen) and myself, I call up amendment No. 813.

The PRESIDING OFFICER. The clerk will read the amendment.

The Assistant Legislative Clerk read the amendment.

(A copy of Amendment 813 to S. 2515 may be found on p. 879.)

Mr. BYRD of West Virginia. Mr. President, will the Senator yield without losing his right to the floor?

The PRESIDING OFFICER. Does the Senator from North Carolina ask unanimous consent that the amendments be considered en bloc?

Mr. ERVIN. Mr. President, it is really one amendment. I will ask unanimous consent to consider them en bloc, but they strike the figure "8" and restore the figure "25" as a measure of the number of employees a person must have to be subject to the jurisdiction of the Commission.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc——

Mr. JAVITS. Mr. President, just a minute. We have not heard the unanimous consent request, and we have had no opportunity to object or not object.

Mr. ERVIN. The Senator can object and have four votes instead of one.

Mr. JAVITS. The Senator from New York does not wish to object, but Senators ought to know about it before the Chair passes on the matter.

Mr. President, reserving the right to object—and I shall not object——

Mr. ERVIN. Mr. President, I will withdraw the request.

Mr. JAVITS. No. What we wish to do, if the Senator will allow us because we need unanimous consent for this, is move to reconsider previous vote.

Mr. ERVIN. I would have no objection to that.

Mr. JAVITS. Then I have no objection to this request.

The PRESIDING OFFICER. Without objection, the amendments will considered en bloc.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which last amendment was rejected.

The PRESIDING OFFICER. The Chair understands there is another endment before us. By unanimous consent, a motion to reconsider previous vote is in order.

Mr. JAVITS. Mr. President, I ask unanimous consent that it be in er to move to reconsider the vote on the previous amendment.

he PRESIDING OFFICER. Without objection, it is so ordered.

r. JAVITS. Mr. President, I move to reconsider the vote by which mendment was rejected.

r. WILLIAMS. Mr. President, I move to lay that motion on the e.

ne PRESIDING OFFICER. The question is on agreeing to the motion y on the table.

ne motion to lay on the table was agreed to.

r. BYRD of West Virginia. Mr. President, will the Senator from h Carolina yield, without losing his right to the floor?

r. ERVIN. I yield.

r. BYRD of West Virginia. May I inquire, for the benefit of Sena- who may be waiting on the floor, if the Senator intends to reach e on the pending amendment tonight?

r. ERVIN. No. I have been going since 6 o'clock this morning, I feel I have put in a full day's work.

r. BYRD of West Virginia. A further inquiry, if the Senator will y me: Does the Senator intend to ask for the yeas and nays on ending amendment?

r. ERVIN. Yes.

r. President, I ask for the yeas and nays.

ne yeas and nays were ordered.

r. BYRD of West Virginia. Then, for the information of the Sen- here will be no more rollcall votes today.

hank the able Senator from North Carolina.

* * * * * * *

e Senate continued with the consideration of the bill (S. 2515) to ier promote equal employment opportunities for American ers.

CLOTURE MOTION

r. WILLIAMS. Mr. President, I file a motion for cloture, and I ask t be read.

e PRESIDING OFFICER. The cloture motion having been filed under XXII, the Chair, without objection, directs the clerk to read the on.

e assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XX of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

Harold E. Hughes
Jennings Randolph
Gaylord Nelson
Claiborne Pell
Edward M. Kennedy
Philip A. Hart
Lee Metcalf
Joseph M. Montoya
Jacob K. Javits
Charles H. Percy
Gordon Allott
Mark O. Hatfield
Harrison A. Williams, Jr.
Robert T. Stafford
Richard S. Schweiker
J. Glenn Beall, Jr.
Ted Stevens
Marlow W. Cook

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 1972
Ordered to lie on the table and to be printed

AMENDMENT

ntended to be proposed by Mr. JAVITS to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: At the end of the bill add the following new section:

SEC. 14. The Chairman of the United States Civil Service Commission, or his delegate, shall be a member of the Equal Employment Opportunity Coordinating Council established by section 715 of the Civil Rights Act of 1964, as amended by this Act.

Amdt. No. 848

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. JAVITS to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 58, line 4, after the period insert the following new sentence: "One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each."

On page 58, line 9, strike out the word "members" and insert in lieu thereof the word "member".

Amdt. No. 849

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

ntended to be proposed by Mr. JAVITS to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 66, between lines 13 and 14, insert the following new section:

"SEC. 13. Section 5108(c) of title 5, United States Code, is amended by—

"(1) striking out the word 'and' at the end of paragraph (9);

"(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word 'and'; and

"(3) by adding immediately after paragraph (10)

Amdt. No. 850

the last time it appears therein the following new paragraph:

"'(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS–16, GS–17, and GS–18 for the purposes of carrying out title VII of the Civil Rights Act of 1964.'."

On page 66, line 14, strike out "SEC. 13" and insert in lieu thereof "SEC. 14".

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

intended to be proposed by Mr. JAVITS to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 60, between lines 6 and 7, insert the following new subsection:

"(h) Section 705 of such Act is amended by inserting at the end thereof the following new subsection:

"'(k) Except as otherwise provided in this title, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS–16 under section 5332 of title 5, United States Code.'"

Amdt. No. 851

On page 60, line 7, strike out "(h)" and insert in lieu thereof "(i)".

On page 61, line 10, strike out "(i)" and insert in lieu thereof "(j)".

[From the Congressional Record—Senate, Feb. 2, 1972]

QUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT ACT OF 1971

he Acting President pro tempore. Under the previous order the ir now lays before the Senate the unfinished business, S. 2515, ch the clerk will state.

he legislative clerk read as follows:

2515, a bill to further promote equal employment opportunities for American ers.

ne Senate resumed the consideration of the bill.

r. Byrd of West Virginia. Mr. President, I suggest the absence quorum.

ne Acting President pro tempore. The clerk will call the roll.

r. Allen. Mr. President, I ask unanimous consent that the order he quorum call be rescinded.

ne Presiding Officer (Mr. Chiles). Without objection, it is so or- d.

r. Allen. Mr. President, the bill before us seeks to enlarge greatly power of the Equal Employment Opportunity Commission in its of operations. It does not change the law in any particular what- er with regard to unfair employment practices, practices which itute discrimination. It does not change the law with respect to asic, fundamental, and substantive rights of all our people to a fair and equal opportunity to obtain employment, where em- ment opportunities are available.

ese basic laws and rights remain the same, and I am sure that is no quarrel whatsoever by a single Member of this body as e right of every person in this country to have an equal and pportunity, without discrimination against him or against her, tain employment if employment opportunities are available. But, President, this bill does not create one single job in business or stry. All it would create would be the need for hundreds more of ucrats harassing business, industry, and employers throughout ountry. It does not open up jobs. For every job that is obtained person against whom discrimination has been alleged, it would in somebody else losing a job. So no jobs are going to be created. very person concedes the right of each person in this country ve the right to go in life just as far as his ability and his am- and his efforts will take him.

at is involved here, Mr. President, therefore, is not changing and fundamental rights. It changes the field of operation, the of the work of the EEOC, bringing under its jurisdiction tens llions of additional employees, bringing for the first time under cope of its operation employees of States, counties, cities, and ies of States, counties, and cities, bringing under its operation e first time every educational institution in the entire country.

That would include colleges, universities, private schools, publ schools, church-supported schools. Every type of educational instit tion would be covered.

It would also, Mr. President, for the first time give to the EEO enforcement powers for its orders, edicts or decrees. When the EEO was set up some 7 years ago, in 1964, it was contemplated that this b reau, would perform conciliation type services, advisory services, i vestigatory services, settlement of disputes between aggrieved e ployees and their employers. And I am sure that many constructive r sults have ensued from the operations of the EEOC. But this bi would extend to the EEOC not only the power to receive complaints, investigate complaints, to seek to settle those complaints as between th employer and employee, but it would give the Commission, through i General Counsel, the authority to file complaints or charges back wit the Commission itself, so that the Commission is not only the recipien of the complaint; it is a jury, it is a prosecutor; it is the judge. Wha sort of due process is that, Mr. President?

Here is a mammoth Federal agency reaching out to become bigger That is the type of ailment or condition that seems to be built into a Federal agencies and bureaus—the desire to be more important, th desire to have more employees, the desire to have more power. That what the EEOC wants to do. It is reaching out for greater power. I wants to become more important. The work it has been doing for th last 7 years is not important enough to satisfy the EEOC. Why, it ha built up a backlog of cases that they say will take 18 to 24 months t get to, and they say they anticipate that they are going to have 32,0 compaints filed this fiscal year ending June 30, and they anticipat 45,000 cases in the next fiscal year. That is even without amending th law and bringing in the tens of millions of additional employees. S they have plenty of work to do, Mr. President, without taking on mor work.

Mr. President, it is rare that individual Members of the Senate hav the opportunity that they have with respect to this bill—to strike a blow against mushrooming Federal bureaucracy, to strike a blow against the great increase in size of the Federal establishment, to strik a blow against the Federal Government's becoming an all-powerfu government, to strike a blow against harassment of our citizens, our businesses, our industries.

How often have you had the complaint, I ask my colleagues in th Senate, from your constituents, "Well, the Government is getting to big. It is spending too much money"? Here is an opportunity to requir the EEOC to stay within the bounds that Congress has given it an under which and within which it has operated for the last 7 years.

I assume, Mr. President, that the members of the EEOC, when the have gone to the Appropriations Committees of the House and th Senate to make their case for appropriations—I am not a member of th Senate Appropriations Committee, but I know without having be there that when the representatives of the EEOC have come in to r quest an appropriation—and I am sure the request gets bigger ea time—they have not told the members of that committee, "Gentlemen we are not performing a worthwhile work over there. We are not a complishing anything. We do not need any money to carry on th Department, because it is not doing any good."

They have over 1,000 employees, and it has been brought out on the
r here that they have more than 300 volunteer employees, who are
nterested in this crusade, if it can be called that, that they volun-
their services to work for this Commission. I dare say the EEOC is
ming before the Appropriations Committee that it is doing a good
and has done a good job during the 7 years of its existence.
Ir. President, I submit that the proponents of this legislation are
hing out for more power. They are reaching out for more enlarge-
t of their functions. They are reaching out for a greater increase
ie Commission's role than can be justified. They are not content to
in the bill before the Senate, that the powers of the EEOC be ex-
led to States, counties and cities and agencies of the States, counties,
cities, and to all educational institutions. They are not satisfied to
that the required number of employees to put an employer under
jurisdiction of the EEOC be reduced from 25 down to eight. They
not satisfied with that. They are not satisfied to have transferred
the Justice Department, as they seek to do in this bill, the pattern
practice suits which the Justice Department now has the authority
e against an employer who is not guilty of just isolated instances
scrimination, but who has followed a pattern and practice of dis-
ination. In those cases, the Attorney General or the Justice De-
ment can bring proceedings against employers and the court will
ire that the employer change its pattern and practice with regard
employment practices. They are not satisfied to have that power
sferred to the EEOC.
ey are seeking the power after having received complaints, in-
gated complaints, and filed charges on complaints to judge those
laints reach a decision with regard to the complaint and enforce
decision. Therein, Mr. President I submit that the proponents of
neasure have asked for more than they should have asked for and
I believe than the U.S. Senate is willing to confer upon the
y.
. President, without disturbing any of these provisions to which
e alluded other than the decision and enforcement power, not dis-
ng the extension of power over educational institutions and over
governments, and increasing the Commission's jurisdiction by
ng the required number of employees from 25 to 8, but simply on
sue of requiring the EEOC, after receiving complaints and in-
gating complaints, to file charges, not with itself as having pre-
mined the case, but with a Federal district court. Mr. President,
say that if that amendment had failed by the narrow vote of 48
—this bill would have passed the Senate last week.
t we have a case here where a bureau or agency of the Federal
rnment is seeking too much; and having sought too much, and
no willingness to compromise on this basic and fundamental
of not depriving a person of his rights without due process of law,
well follow that there will be no bill at all.
. President, I could discuss this matter further at great length,
see my distinguished colleague the Senator from Mississippi (Mr.
is) in the Chamber, and I know that he wants at this time to
on this amendment and on the bill.
that reason, Mr. President, I am going to yield the floor and con-
with my remarks at a later date. I am delighted to yield the floor

at this time so that the distinguished Senator from Mississippi m
address the Senate.

The PRESIDING OFFICER. The Senator from Mississippi is recognize

Mr. STENNIS. Mr. President, what is the pending question befc
the Senate?

The PRESIDING OFFICER. The question is on agreeing to the amen
ment (No. 813) of the Senator from North Carolina.

Mr. STENNIS. As I understand, there is no agreement as to the co
trol of time; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. I thank the Chair.

Mr. President, I am not going to attack the agency of the Gover
ment that will administer this bill if it passes, and that is administe
ing the subject matter under the present law. I attribute to them th
good intentions that I think go with almost all officials in their pos
tion, or in any public position. Certainly they do not intend evil. Bu
I am going to address myself to the proposition of just where we ar
going now with reference to this matter of extending the power of th
Government, of this agency or any other agency, and just how th
process affects the so-called little fellow, the man who is out ther
scrambling for a living.

I mean every word of this. I am thinking of people I personall
know, and people that I find in other areas of the country.

I am looking at this bill from his viewpoint. I am talking about th
little fellow who has a small plumbing shop, a small radio shop, a
small used auto parts business that he has built up himself fro
scratch, so to speak, or anyone else who has to work and scramble fo
a living and plan from day to day and year to year, who tries to ac
cumulate a little something beyond a mere living in order to be abl
to take care of the growing needs of his growing family, who is look
ing forward to the day when they will be in high educational levels,
depending on them for support.

I am thinking of this little fellow, who has to scramble around an
pay taxes and share with the Government, percentagewise, far to
much of his earnings, as I see it - not only the Federal Governmen
but also the State government, the town government, the city govern
ment, and all the other levels of taxation under which he works, to
which he is subjected. I am thinking of the little fellow who has t
produce in order to meet his obligations, to meet his rent, if he does no
own a little shop building, and meet all his other obligations.

I am ashamed to admit it, but I know that times have already created
conditions in which a great many of the workers - I am not referrin
to any particular group or class - now do not have a sense of pride o
achievement that people had when I was a boy and a young man an
in my early adulthood. That sense of pride is not there - the sense o
pride in getting a job and holding a job and getting some promotion.

A man who was operating a very creditable small factory said t
me 3 or 4 years ago:

People used to say to me, "I need a job. I'll be a good man for you. I want yo
to give me a chance. I'll give you the very best I have, and I'll try to ear
promotion."

But times have changed so that they come by now and say, "How
much do I get?" They do not ask the details about what their duti
are going to be; just, "How much do I get?"

am not demeaning the people, and I am not bemoaning the times.
ve not lost faith in humanity or in our system of government, or
hing like that. But I think we ought to talk more about conditions
e find them in the affairs of life.

think some of this indifference is caused by the affluent times—not
the affluence of the times generally but also the affluence of jobs.
ept in certain areas of the country, it is very easy to get a job. A
on walks off one job and walks right into another.

hink part of the problem also is due to the fact that many people
this attitude: "Well, the man who employed me is afraid to fire
He is afraid to punish me in any way. He is afraid to demand more.
s afraid I will leave, and he is afraid that I can retaliate or the
nization I belong to can retaliate." But, even worse than that—
is some truth in it—he thinks he can get an agency of the Govern-
to pounce on his employer, who has given him a chance, and have
igged up and brought up before a court or even, under this bill,
e a commission, to give an accountability as to charges that may
irious.

ave never had any business experience. I am not a businessman. I
never been an employer. But I have done a great deal of work.
young man, I had positions of responsibility and operated every-
from a service station to a drug store, if I may be that personal;
know something about the responsibilities of meeting bills at the
f the month, and I know something about the problems of people
re working for you.

en I was a young man, people had great pride in their work.
gave a real day's work for a day's pay. I would be totally lost in
taking a job of that kind now. But I merely refer to that. I am
ery opposite of an expert, but I know something about human
e, because I have lived a good while and have come in contact with
many people, and have been in public office a long time. If I do
el responsibility to the people who elected me, I am not going
a good officer; and if I am working for someone to whom I do
el responsibility, I am not going to be a good employee.

putting together what we are doing and what we have done, the
governments, the city governments, and now the Federal Gov-
nt, are making too many people feel virtually independent of
mployer, as I see it, and are killing within them the fine, individ-
aracteristics of pride, responsibility, and obligation that used to
d still are—in the minds of many people. But it used to be,
the board, one of the great strengths of our truly great American
.

concerned about this trend. I could enlarge on my feelings about
ation that is eating into the very vitals of the little fellow I have
lking about. I use the word "little" not to refer to his mind or
nity or his sense of honor or anything like that. He is big in
espects. But he is a small operator.

pite of the good faith of the present Congress and the present
istration and everyone else, I think we are getting to a field of
in our Government that is becoming unmanageable. That is
t to the little businessman or the little shopkeeper with respect
problems he is facing. I think we ought to be centering more
ig things that are going to affect his future.

But, to return to the amendment: This amendment merely provid that—if adopted—it would leave the law, with reference to the exte of the coverage of the present law we have on the subject, at 25 em ployees; whereas, the bill would reduce it to eight or more.

I have no doubt that when this bill was originally passed, 25 was pr in as the bottom, and they were not going to reduce it beyond that. Th proposal now is to reduce it to eight or more, and there will be anoth proposal to reduce that. But whatever the level is now, the little ma I have been talking about has his neck in the halter.

It may not apply to him today, but it is creating an atmosphere, precedent, a bureaucracy, and a control of everything that these peo ple are trying to do. The business that they are trying to run will b controlled by laws of this kind. We know, too, that bills are passe here, with every one of them to be considered on its merits. That i theoretically possible, but as a practical matter it is observed mor in the breach than it is in the fact. I have always thought and sai that the people I represent could live with and perhaps put up wit any law that applied uniformly throughout the Nation, but here w are in a category where we can hardly apply it uniformly throughou the Nation. We cannot even put it into effect uniformly as to thes little businessmen and little shop keepers.

The big man with all his resources, the corporate enterprises, th large companies, with their capital, with adequate funds with whic to employ talent in the legal profession, for instance, and in manage ment, and so forth, have a much better chance to meet obligation which might be imposed on them by a law like this. It is so obviou that we do not even have to argue it but just mention it to be convin ing in that field. We have illustrations all over the country of litt businesses and little shops closing up and going out of business du to harassment, because of requirements and demands made on the which they cannot meet. They cannot put up with a running batt with the Federal Government all the time. What can a little fello employing eight persons do? How can he cope with the Departmen of Justice? How can he cope with the people in the community wh are, in effect, his own employees who are suing him? What resource does he have to carry on these battles? He does not have them, o course.

There is no public defender that will take care of him, no govern ment attorney going around over the counties or into the towns o through the countryside that will help him out that I know of or hav ever heard of, for that matter. It is just the "easy one" that has t carry the load, endure the threats and, the harassment, and be brough into court. I will have to correct that term, because they will not b brought into court because the bill, as presently written, will not le them be brought into court but to the Commission, as has been ful argued here already. The Commission will have the power to mak it own investigation and its own determination, in advance, as t whether charges should be filed, or this or that man should be broug to accountability. Then they have the power, after they have inves gated, to hear the evidence and to decide it, to reach a conclusion a to make a judgment—so to speak, to make a legal order. Think o that, to make a legal order.

That order and that enforcement represent a cease-and-desist order
at we have argued about. That means, "If you do not do what we
y to you, we will lock up your shop and we will put you out of
siness."

People who have never been up against the hardships of life, and
not know this problem from a practical standpoint, may just take
is as a matter of course and think nothing about it. I hate to refer
myself, but I have had some experience in that field. I was a dis-
ct prosecuting attorney for 5 years in a district that kept me busy
y and night in courts of unlimited jurisdiction, all the way from
rders and rape and other associated grave crimes on down.

At that time, I would not have thought of holding that position if
ad to be the one to pass on my own work, to decide the question of
ilt or innocence of persons charged with crimes when I was prosecut-
them, or that I was going to have to pass sentence on them if they
re found guilty. That would have been unthinkable to me. It is con-
ry to all the precepts of our common-law system. It is contrary to
mmon sense and logic. It is contrary to almost every legal system,
ch less the juris-prudence of our American system of justice.

suppose they would justify it under the law of necessity, but in an
ustrial age there is no necessity to get down to the little shopkeeper
o employs only eight or nine persons. It is ridiculous to talk about
eing a necessity, and I say that with all deference to everyone. But
idea has been adopted here that it is necessary to bring this little
up of businessmen in under the Commission rules.

When I think back over a lot of cases, large and small, that I had
handle and represent the State in, during those 5 years as a district
secuting attorney, I realize how far that would have been from my
of what was just and right—much less passing on my own work.
f I may make one more reference to that experience which is re-
d. I later became a judge and had to pass on legal and punishment
ters if they were criminal cases. I tell you right now, Mr. Presi-
t, it is a serious matter, in a civil suit, to have to sign a decree that
ld take a man's homestead away from him and turn him and his
ily out in the cold; or for a judge to have to sign a decree when he
heard testimony on the admissibility of evidence in that same case,
there may have been some close questions, and he had to make
ngs very quickly sometimes; every few minutes, and whether to
it or reject certain testimony, when maybe the decision I made
ermined the way the jury decided the case.

tell you, Mr. President, it is no fun to have to sign a decree that
ld take away a man's property, much less his homestead and
h less to pass on matters that would send a man to prison for
ears or for life.

ut that is what this Commission will be doing. It will be passing
hese cases. It will be the judge, the jury, and the executioner. It
have virtual power of life and death over these little shopkeep-
that is what it is.

he large companies, the big ones, they will have the money to em-
the talent at least to defend them and meet the situation, but those
less resources cannot afford it. They are going out of business
ywhere because of frustration or discouragement or the necessity
ay unwarranted expenses or through lack of efficient workmen.

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The workmen seem to think they have the advantage. One does not have to imagine these things. He can go down here in these shops and stores and stand around awhile and see the kind of treatment the customers get compared to the treatment they received 15 or 20 years ago. I am not referring only to Washington. One can go almost everywhere in the country and observe this. Just my idea of human nature makes me believe that bills such as the pending bill and the other conditions I have alluded to create those conditions.

We hear talk about the times and the youth and the fact that the youth are no worse than any other youth group has been. We hear it said that they are the victims of what we adults in a large way let happen or caused to happen and thus create these conditions. We do not call for the discipline, for the responsibility, and for the pride that we had in years past. We can build that up, but we are going in the opposite direction when we just keep passing one bill on top of another and putting, as a Government remedy in the bill, the things that the Government cannot do.

The Government cannot furnish the answer for most of the things about life, much less the hard things. I believe the most harassed person in America today is the small businessman, the small shopkeeper, the small storekeeper, or the small garage owner or operator. We are calling on those great hordes of people to pay these enormous taxes. We even tax charwomen that make their living down on their knees scrubbing floors. We reach in and—the States do, too, most of them—and take out a part of their earnings and put it into the great Federal Treasury to pay off these enormous appropriations that we make here. It is all right for them to have some responsibilities of Government. However, when they have to dig into their pockets and get their money to pay for it when they are making a bare living, it is going a long ways to bear down on them in that way.

The small operator, as I have said, cannot afford to have enough staff people to keep him informed of everything that all the governments expect of him. There are not enough hours in a day for him to be able to figure out all of this for himself.

I am not just thinking up anything here. This comes to me through the mail. Anyone can walk down the streets of the city and stop and talk to people who want to tell him about these things. He will find out that these are the facts of life.

In recent years there has been a steady infringement by these regulations and Federal requirements on the affairs of these average people, the average businessmen, the men who are responsible in every way. They tell me that they are reaching the point where it is becoming impossible. They are reaching a stage where even the most well-informed individual cannot be conversant with every one of the Federal regulations that he is expected to obey.

I know people who are not under this law. However, they still get a lot of this literature and all the mail that comes in. They do not know what to think. Any Member of the Senate can judge from the volume and the nature of the mail he gets from his constituents just how many citizens are already bewildered by the maze of bureaucratic processes that enter their lives.

They are not sure what is expected of them. They are thwarted in their effort to accomplish legitimate objectives. They receive conflicting instructions from different agencies and sometimes from the same

ency. They suffer inequities that sometimes take Members of the ngress weeks to get straightened out for them. And that is only ne after volumes and volumes of letters and exchanges of memo- nda have passed back and forth through our own busy staffs.

Mr. President, I know that from experience. After all, we do not gin to touch more than a fraction of 1 percent of the people, our stituents, that are the victims of these same errors and these same actices.

These agencies come before the Appropriations Committee, and I ve the privilege of being on that committee and of serving on sev- l of the subcommittees. I know how from time to time an effort is de to get into these matters and to get them worked out.

find that the men who come up to Capitol Hill—and they are mpetent people—do not know and do not realize all that is going in their own departments.

omewhere these matters are going to become really intolerable, it will be one of the weights that will help to break the back of system of government.

The loads they have to carry contribute to the frustration, the hope- ness, and the downright fear of so many of our people who, as I have to think every morning when they wake up and it is the thought in their minds—about making a living for their families. We will affect so many of those people that it will undermine part he main structures of our system of government.

This bill would not only vest cease-and-desist powers in the Com- sion, but, as I have said, it would make them applicable to a busi- with as few as eight employees. This is talking about a small iness which is without assets or capability to cope with the legal administrative tangle that can be thrust upon them arbitrarily the Commission and its employees.

With all respect to everyone, I cannot believe that the committee e the fullest consideration to these people that live out in the vil- s, the little towns, and the communities. How in the world are they g to cope with the rules and regulations of such an agency?

here are counties in this country now that do not even have a doc- much less a competent lawyer that would be available to repre- these people. And if they do have such a man, he would have to ge a fee that most of them could not pay.

he pending bill just closes its eyes to the facts of life. They may plenty of such men in Los Angeles or New York or elsewhere, in the great vast, open spaces of this country and the rural areas the rural States and the agricultural communities and I am talk- about towns on up far beyond what are purely rural areas—the ple are just not able to comply with all the requirements of this

mean the little operators. To say that employers of down to a level ight would have to comply and be subjected to all these restric- s and could not even take the case to court, with all deference to yone, that is just downright ridiculous. It is a requirement that e people cannot live with.

wonder how the number eight got into the bill anyway. Who sug- ed eight? I am not dealing in personalities. Who suggested eight? that number come from the Commission? Where did it come from?

What kind of survey was made to see what were the capabilities a little firm in a little town, even though it employed only eight persons? What resource does such a firm have? What are its capabilities How can it cope with the Department of Justice? Of course, it cann cope with it. I just think that this is a lick in the back. A lick in th back is what it will be to those small business people.

Once such a law is on the books, it will never come off. It will nev be possible to get it changed. Those people do not have politic strength at the polls. They are not organized. They will never have th political strength to get a law like this repealed.

So let us meet the problem head on if we want to reach down an get all the little people. We will just be running a lot of them out business—that is, if the law is to be enforced—and will deny the a chance to have their case considered in court. It seems to me that w are depriving them on a tribunal for what is called American justic

When we get down to a firm that employs only eight, that is truly a very small business, one, as I have said, without the assets and capabilities to cope with the legal and administrative technicalities thrust upon them arbitrarily by a commission and its employees.

What Senator has had time to read and analyze all the terms of the bill, even only the ones that might be applicable to the small employers? I know I have not had the time. I doubt that many of us have had a chance to go through this bill, and not only this bill but other bills that we will have to consider. None of us has the time to go through all the bills that will pile up on us before the time when this legislative year will be over. There is just not a chance in the world for Senators as a whole to consider them. I am sure that the manager of the bill and some other Senators understand it; but many of us who will have to vote on it just do not know what it all means. I have had the privilege of bringing before the Senate bills that the average Senator just does not have a chance to study in the limited time we have in the course of a year to pass on such matters.

My main point is: What about the little businessman who does not have a legal talent, does not have a lawyer, does not have special training, does not understand legal terms or the administration of a commission, and does not know what "cease and desist" means. He may find out by experience, but he does not understand it in the beginning. He does not have a chance in the world to know about or understand the fine points. For that reason small businessmen ought to be exempt.

Take the case of a small businessman who wants to make a start in his business. He may have only a wrench and a few other tools to work on automobiles. He may be able to work himself up to where he can have a little garage and do a good job, so that people will come from miles around to get his services. Why does he have to be put under the provisions of a law that I think was originally designed to apply to situations and problems that are created in cities, where the activities are more impersonal, and employees perhaps have never seen the people they are working for. There is a lot of difference between such a business and the so called little shops at the lower level.

I simply say that the commonsense of this matter demands justice. Justice cries out. I am not a man given to emotion, but I believe it will be dangerous if we vote to jack the little fellows up and put them in a sack and put them in reach of any commission, not only this Commission, but any other commission of this kind.

The small businessman will not have much choice about what he can
He can go to court and seek justice, or he can submit. If he goes
court, he is going to take with him his money and his personal atten-
n, both of which are more needed in his business. Logically, his in-
nation will be toward prudence instead of valor, and he will submit
l, in effect, surrender. He will be placed in a position where, in fact,
will not have a choice. In other words, the proposed legislation
uld put him in the hands of the Federal Government, where he will
outweighed. The chances are that he is not going to answer to the
rt.

That is not justice; it is not equity; it is simply a case of a Federal
ial, in the name of the Commission, issuing arbitrary orders to a
zen. That is what it amounts to.

go back to the small businessman in the small town. If he and his
oloyees do not get along before there is intervention of this kind,
y are not going to get along afterward. It is a personal thing. It is
ersonal matter. No law that we can pass will give them compati-
ty or happiness or satisfaction. There never has been any law that
uld do that in any kind of system or in any kind of country. I simply
k we are fooling ourselves when we try to make ourselves believe
at that level, anyway, we are going to help anybody by trying to
his business in this fashion.

The little men in these businesses are not getting rich. They are not
ing blood out of a man and filling up their bank accounts with a
of money. They are barely making a living. I know, because I move
ong them and I have seen them, and I have seen a lot of life along
se lines. He will be put out of business, in one way or another, if he
so much of that to put up with. It will destroy what relationship
e is between employers and employees and others who are involved,
so disrupt that business that they will be getting out. That is not
reference to race, color, creed, or anything else—it is just com-
nsense.

The present criterion of 25 or more employees is not suitable to me,
taking that as a starting point—it is worse in view of the fact that
is bill becomes law apparently the cease-and-desist orders will still
ued—to reduce the criterion now to eight employees is to strike
ctly at these very small fellows and bring EEOC activities into
y village and hamlet across the Nation.

want to make clear that I am not trying to get them out of doing
thing that they should be doing. I know enough about life at that
l to know that what they are doing is best for themselves and their
loyees, and is the best for all. I come from a State that has as large
rcentage of black people as any in the United States. I state on my
responsibility that I know, in the little place where I live, and
r areas of my State, that the black man and the white man and the
man, and the rest, who deliver the goods and work, can get a job.
e extent that the economy will carry. In almost every case, he gets
l treatment. In almost every case he will have a chance to get a
notion. There is no question about that. I know, because I have
it happen since I was a boy and it is still happening that way.
re is a desire to get those kinds of people—as I say, to the extent the
omy operates in the area.

Passing a law here now is not going to create any jobs and make stronger economy than we already have. I know people in that area a begging people to do some day work, putting up pine ceilings, fi example. They cannot get the people to do that work. They are on we fare. I am not talking about just blacks. There are a lot of whites welfare. It is so ridiculous to say it is necessary to jump on some fello because he has as many as 8 employees, because the Commission think he is not treating all of them right, when they are begging people come in and take these jobs, to the extent that the economy as it operating in those areas permits.

So let us not fool ourselves. The law is not going to bring a lot relief to employees in those businesses where there are eight or mor What part of the country caused this number eight to be selected, an what benefits do they expect it to give? I ask that in the form of a honest question.

I can give names, dates, and places where people who are willing t work, and who have applied themselves, are mechanics, and good ones in little garages and firms of that kind, to my personal knowledge Some of them have been there for years. Some of them have branche out and have shops of their own. Some of them are white and some o them are black.

Somebody is trying to act as a doctor who has not been sent for, when nobody is sick, in these little places having eight or more employees. I question seriously the applicability of a provision carrying this number in the law. I do not agree to even the number of 25, but there may be some places in the country where there is some kind of need, or at least facts that would justify some people in believing that there was a need.

As I said the other day, the average little fellow, apart from this bill, is afraid of his own Government. There are so many demands and so many agencies that are advising him of what he has got to do and what he must do that he does not know where to turn. People are frustrated and they are harassed, and I think perhaps it will have to get worse before it can get better, but I have no doubt about what the trend is in large areas of the country.

I know how relieved I was at home at the time—and this was true in other areas of the country—when last August the President came out with the idea of putting a lid on things. I know there was rejoicing in the minds of little shopkeepers and garage keepers and small business men at the position the President was taking, because they felt things were running away with the big fringe benefits, guaranteed income, and all the other things going with the large operator and more affluent people. These people saw that they were left with less and less, and what little money they had would buy less and less food and less and less clothing at the clothing store and less gasoline for their cars, trucks, and pickups at the service station. You are going to destroy the little man you are trying to save, and you will turn all his employees out along with him.

I repeat, the average middleman in this country is downright afraid of the Federal Government and often the State government. He is afraid of what it can do to him in any given set of circumstances. He cannot, as an individual, cope with the size and power and complexity of the Government, and he is afraid of what it is going to do next without asking him anything about it.

f this bill should become law, then I think it will be a further
nonstration that this little man's fears are well justified.
Mr. President, those are my remarks and my feelings on the points
t are primarily involved in this amendment. I do not particularly
e to hold the floor any longer at this time, if there is someone else
o wishes to speak.
Mr. President, I suggest the absence of a quorum.
The Presiding Officer. The clerk will call the roll.
The second assistant legislative clerk proceeded to call the roll.
Mr. Cotton. Mr. President, I ask unanimous consent that the order
the quorum call be rescinded.
The Presiding Officer. Without objection, it is so ordered.
Mr. Cotton. Mr. President, I made a few remarks the other day on
s bill, and what I have to say is in a sense repetitious, but will go
somewhat more detail as to the reasons why, as a Senator from
w Hampshire, I am so determinedly opposed to this particular
asure.
Mr. President, I do not think it can be said that I am in any sense
opponent of civil rights, an opponent of integration, or an op-
ent of fair and equal opportunity. The State that I represent has
racial problems whatsoever. It was not until I was out of college
came to Washington, as a matter of fact, to work on the staff
former Senator and go to law school here, that I had any per-
al contact with some of the problems that then existed and that
, of course, do exist in a measure.
s a young man, when I was in Washington, I rode the streetcars
n those of one color had to sit in a certain part of the car and
se of another color in another part. I have very vivid recollections
ow shocked I was, as a New Hampshire Yankee, at some of the
tices. I was here in Washington, incidentally, when a certain
gressman who felt that a black man had been disrespectful or
ant to him on the streetcar drew his revolver and shot him. He
not kill him, but he shot him. The matter was taken care of, I
k, by some kind of compromise in police court, and the State from
h that Representative came promptly elected him to the U.S.
ate, where he served for a good many years.
remember later—20 years later—when I came back to Washing-
in 1947 as a Member of the House of Representatives, being in a
e rebuked or sneered at by a colleague. We were staying in the
e hotel, and when we got into the elevator to go to the ground
, that was being operated by a black girl, I took my hat off. That
the custom in those days; we do not take off our hats to anyone
adays, I guess, in an elevator. But I remember the rather caustic
ment that was made.
r. President, I also recall, as a Member of this body, the early
ts over the successive civil rights bills.
supported them. Indeed, I well remember one of the civil rights
sures—Senators will remember that there were three or four in
ession, covering different aspects of the problem—when it was
ded by the leadership of both parties that the time had come to
k the filibuster, and we were assigned to stay in the Capitol all
t. Cots were set up in the old Supreme Court room, and enough
ators to make a quorum were kept on the floor so that the filibuster

had to be continued around the clock, day after day, until it w broken. I was one of those who stood by and helped break that fil buster and pass the bill.

But, Mr. President, there is a reaction that takes place when a cause, no matter how just, is carried to an extreme. We have only read the pages of history to know what happens. It so happens tha my ancestors in New England were of Puritan stock. I read with i terest how the Puritans rose up and beheaded their king, Charles Then came the years of the iron hand of Cromwell during whic morals, behavior, and the way of life were absolutely dictated at t point of the sword. When he died, what happened? The reaction too place, Charles II came back and dissipation to a degree perhaps u equaled in English history took place.

The Puritans came to the New World and settled up in New Eng land. Then they began to make the same rigid enforcement of wha they happened to believe to be the proper moral and ethical code. The came the witch-burnings in Salem. Fortunately, the infant country here outgrew that sort of governmental dominion.

Mr. President, there were other reactions. The excesses that too place in the days of Reconstruction after the war between the State may well have sown the seed for much of the bigotry and prejudic that followed.

I remember, as a small school boy, when my grandfather, who was a veteran of the Union Army in his teens and later became a preacher, used to talk to me about those days in our history. I am sure it will no be offensive to anyone in the Senate if I repeat what he used to say to me. He said:

> The blame for the bloodiest war we ever had in our history can be laid o the shoulders of the southern fire-eaters. But, remember the shame and th stigma of Reconstruction must always be laid on the shoulders of the North

Those days, when the sword and force were used to take one race and place it over another, resulted in the same thing that happened in the Puritan era. It resulted in a reaction—a reaction in which the inevitable occurred. The white race in the South reasserted its dominion, and I am sure reasserted it in a much more affirmative manner than it would have if the measures that preceded had been less obnoxious.

Mr. President, I supported all the civil rights measures until the omnibus civil rights bill of 1964. The reason why I feel so strongly about the pending bill is that the point I could not accept in the so-called omnibus civil rights bill of 1964 was Title VII. I was perfectly willing that we should enforce equal opportunity in employment in all those industries and all those vocations and all the business and commercial activities of this Nation in which the employment was fairly large. Whether it be a corporation or a labor union or a hiring hall, I was perfectly willing to support a measure that would enforce equal opportunity, with enough teeth in the law so that it could be enforced in those situations. But it will be recalled that the Civil Rights Act of 1964 provided that this equal opportunity unemployment should first be administered and enforced against all employers employing 100 or more employees. Then, after a year, it would decrease to those who employed 75 or more; then, after another year, it would be decreased to those who employed 50 or more; and, finally, in the fourth year to those who employed 25.

he very fact that this particular provision was placed upon the
ble of this country in installments—in homeopathic doses, one
ht say—showed that the proponents of that measure must have
ized that they were traveling on thin ice and that they were ap-
aching a problem of enforcement that was bound in the future, or
d in the future, be fraught with injustice and with violence and,
ou please, with renewed prejudice, defeating the purpose of the
because it would be bound to arouse antagonism.
felt so strongly about it that I resolved that if Title VII could
be remedied, I could not vote for the measure. I well remember
g to the distinguished Senator from Minnesota, who was a Sena-
hen and now is a Senator again, our good friend Senator Hum-
y, who was managing the bill. I asked him whether he could see
way clear to leave that at 100, because if he could, I could support
bill—both vote for cloture and for the bill—with a clear con-
ce. He was very nice to me and said he could not go quite that far,
asked what I had to say about 50. It showed that he had some
see blood in him, too.
nally, I thought it over, and I said that if the minimum number
l be held to 50 in Title VII, I would vote for the bill. Unfortunate-
owever, I was not given that opportunity—not because the Sena-
from Minnesota did not sincerely follow through on his agree-
; but we had already voted cloture, and my amendment at the desk
to fix this measure of employment at 100. When I asked unani-
consent to amend it to 50, the majority leader—as he had to, I
ose—objected. So the vote came on the 100, and I was voted
, and the provisions going down to 25 remained in the bill.
voted against the bill—one of only five Senators north of the
n-Dixon line to vote against that omnibus bill of 1964, which had
any very meritorious provisions.
. President, I am not trying to be a martyr or to plead for credit,
want to say that I suffered from that vote. Many of the people
home State could not understand why I had been one—conspicu-
one—of five Northern Senators to vote against probably the
far-reaching and most important civil rights measure perhaps in
istory of the country. Fortunately, it did not cost me my seat, or
s not yet. But that is why I feel so strongly about it.
that time, when I spoke for my amendment, I remember saying
Senate that it was all right in an industrial plant to make sure
black and white, foreign and native born, the Jew, the gentile,
veryone else should receive equal opportunities for employment,
ot when we get into a small firm that has 25 employees. Why,
are many country banks with more than 25 employees. In fact,
country banks in the smallest hamlets and villages of our land
, and in many insurance agencies, in that highly competitive busi-
of selling insurance, have more than 25 employees. We have for
wept crocodile tears and wrung our hands in sympathy about
business, and Senators serve with pride on the Small Business
nittee, and justly so, and they go home and tell their people how
fought to keep the little businessmen going. In the firms employ-
5 persons, or even 30, in a highly competitive business field and
they select an employee, it is very much like selecting a partner.
e felt and I still feel that that measure is far too low.

What have we here now?

Mr. President, this measure puts it down to eight employees.

I am sure that some of the proponents of the bill at this point, if th were listening to me—and not many are—would probably respo that this measure will be enforced with reason. They likely would s that probably in a small family business with 10 or 11 participan it would be very unlikely—where the human relationship is so vital for the Commission to be drastic in its enforcement.

When we write a Federal statute on the books, knowing—and I ca not believe but what a majority of the Senate knows—that it cann completely, equally, and impartially enforce it, but when we wri that into law, we are doing a very dangerous thing. It is a dangero thing to enact laws that depend on the judgment, the restraint, a the wisdom of those who enforce it. It could be enforced by an a bitrary person to the detriment of some of the most precious righ an American has to make a living.

I do not care where the number is placed in the labor laws. I d not care where it is placed anywhere else, but in this particular meas ure I assert without fear of intelligent contradiction that it just can not be enforced impartially.

Mr. President, can you imagine an ambitious black man who ha worked, sweated, toiled, and built up for himself a business, a litt plant, a little agency, some little business, and because he has done s under the handicap—if it is a handicap, and it still is in some meas ure—I hope it will not so continue—but under the handicap of his race, do you not expect, Mr. President, that when he has grown pros perous enough to employ some more people, that he will give that chance to people of his own race?

Of course he is. Of course, he has a right to do so.

I cannot imagine that whoever enforces this statute, if we pass it going in and saying to that black man, "You have got to employ two white people." I just cannot imagine it.

Well, if we are in a situation where fair enforcement in the eyes of the Government only works one way, even though there may be an element of justice in that attitude, we are passing an act that cannot and would not be enforced impartially between black and white or between men and women. It could not be.

Mr. WILLIAMS. Mr. President, will the Senator from New Hampshire yield?

Mr. COTTON. I yield.

Mr. WILLIAMS. I hesitate to interrupt the Senator because the pres entation of his views is so forceful. Although it is not persuasive to me, it is respected by this Senator. But he did say that the small entrepreneur black man, starting a business and growing, might be ordered to hire two white employees. I cannot understand the point of his saying, "two." Is the Senator suggesting that there might be a quota system——

Mr. COTTON. No.

Mr. WILLIAMS. Built within this legislation?

Mr. COTTON. No, I am not suggesting any quota system. I do not say that it would be two. It could be two or even one. I am saying that it would rest in the discretion of the Commission whether the black man, who had grown to the point where he had a fair number of em-

ress and turned away a white man, could have the law technically
proceed against him. I do not suggest it would be. I know that it
ld not.

Mr. WILLIAMS. I agree, certainly that is the law. The law does con-
plate that now for those who are covered. But when the Senator
"two," it suggested to me that he might be thinking in terms
demand that there be a quota of people here. That, of course,
t within the bill——

Mr. COTTON. I thank the Senator for his correction. It was not my
pose to say that this law would provide for a quota, but under the
there is nothing to prevent members of the Commission deciding,
eir own minds and consciences, as to what would be a fair num-
Would the Senator agree with that either way, whoever the em-
er is.

r. WILLIAMS. Mr. President, I do not believe that is quite accurate
r. Really it has to be found that individuals have been kept from
oyment, because they are of a race, religion, sex, or national ori-
hat dictates to the employer that he not hire them. It is discrimi-
n and is not evaluated on the basis of quotas.

r. COTTON. What the Senator is saying is perfectly correct. But
oint does not reach the basis of the issue here. The Senator is
ctly correct, however. It would not be until someone turned
one else away. It would not be until someone elevated or gave a
notion to a member of one sex or one with seniority. In other
ls, we might have the seniority system involved, a system that
any Senators protest so strongly against. It would apply in an
stry.

m not suggesting that it is a matter of a quota. I am suggesting
the latitude allowed this Commission over these very small
prises is one that could easily be abused. I am not suggesting that
ll be abused. However, when we are passing statutes, as I have
efore, we have to guard against the possibility of abuse. It could
ercised tyrannically.

o not want to detain the Senate too long. However, I did want to
into the Record my own strong feelings about this particular

. President, I suppose it is natural enough that legislators with
st of intentions and the most worthy aims fall into the habit of
ing that everything can be governed by law. I do not want to
r sentimental.

wever, one of the stories that has always been brought home to
d has always reached my emotions, I think, more than almost any
story, is the story of the artist, Holman Hunt, who painted that
painting of Jesus in the garden with a lantern in his hand and
ing at the door. The story is that a critic said to Holman Hunt,
e is a flaw in that picture. You inadvertently left out something.
is on that door no knob or latch or any other means of opening
loor."

lman Hunt's reply was, "The door to the human heart can only
ned from within."

President, we can and we have and we should and we shall, as
is fair and practicable in this law, apply it in favor of every
ican, and afford equal opportunity, equal social recognition and

equal citizenship. However, when we go too far, the act becomes
a help but an irritant. And for my part, unless this bill were amend
to permit a proper appeal of the edicts of these decisions and unl
it were amended to maintain the minimum of 25 which, as I ha
stated in my opinion, is too few—I could not bring myself possib
to vote for this particular bill.

It would either be meaningless and only be enforced in certain s
tions of the country and certain places or where certain conditio
exist, or it will become a precedent.

We have gotten to the point here that every governmental act th
takes place is beginning to make the relations between the grou
nationalities, and races in this country more hostile rather than
ameliorate them.

I feel that this particular measure, going so far and creating almo
a commissar or commissars to enforce the regulations, is fundamental
wrong and a mistake of the application of our power under the la
I feel strongly about this.

The appeal has been made by leadership to do the business of th
session so that we can accomplish the work we have here assigne
Even the President beseeches us to act on his recommendations—an
I am a strong supporter of the President and his desire to want us
act. Of course, I want to get on with the work of the Senate, but I d
not want to do it at the expense of writing into the books an unwise an
perhaps a tyrannical provision and I am not ready at this time
vote for cloture on this motion.

Mr. President, that is the reason that I wanted to state my reason
on the RECORD. I thank the Senators for their patience.

Mr. STENNIS. Mr. President, will the Senator yield?

Mr. COTTON. I yield to the Senator from Mississippi.

The PRESIDING OFFICER (Mr. Gambrell). The Senator fro
Mississippi is recognized.

Mr. STENNIS. Mr. President, I want to say to the Senator that s
usual his remarks were filled with logic, commonsense, and a practica
application to the problems of life.

I might say further that the Senator is from New England and
am from the Deep South. We have taken the same position on th
amendment for almost identical reasons even though the economy o
our respective areas is vastly different.

I commend the Senator from New Hampshire very highly for h
logic and the reasons he has given. They are down to earth. The Se
ator from New Hampshire always has speeches of substance whe
ever he speaks and is a highly valuable Member of this body.

I thank the Senator from New Hampshire.

Mr. COTTON. I thank the Senator from Mississippi.

Mr. WILLIAMS. Mr. President, will the Senator yield for an observa
tion?

Mr. COTTON. I yield.

Mr. WILLIAMS. Certainly it is fully appreciated not only by me bu
by the entire Senate that when the Senator from New Hampshi
speaks—and it is not every day, although some of us wish he wou
speak more frequently—he speaks with reason and with a depth o
conviction that, for another Member of the Senate, it is great to be
the presence of.

f course, I disagree with the Senator from New Hampshire on the ted issue to which he has addressed himself today; that is, the level mployment or of membership in unions at which the enforcement he law would take place. If the Senator does not mind standing for w moments, I should like to recall that notwithstanding a difference the Senator from Minnesota, back in 1964—the Senator from nesota sat in this place as the manager of the civil rights bill that —the Senator from New Hampshire did vote for an opportunity t the Senate as a whole come to its collective judgment and vote on matter, and he did vote for cloture. His whole appreciation of the ity of the individual, expressed in his legal rights, and civil rights, involved in the cloture votes in 1965 and 1968, and the Senator's ng on substantive measures is fully understood. But from where I d, we are dealing with the equality of life as it is reflected in the to-day opportunity for a man or a woman to make his or her living ke care of a family.

e have decided as a matter of national policy that a man should le to go to work for his family, notwithstanding the fact that he ck or white, or Protestant or Catholic; that that should not be the rmining factor; that his ability, his industry, his integrity, and all e other criteria should be the employer's judgment on the man e woman who is seeking the job. Therefore, I personally feel that enator from New Hampshire is making a differentiation in terms personal relationship between an employer and an employee, and sts more of an impersonal relationship in the larger establish-. There is a logic, as when you stand in the shoes of the man who s a job. It does not matter whether it is with General Motors e general store. He wants a job in order to take care of his family. n he comes in, if he is black, whether he goes to General Motors or to a smaller place, a job is all he wants. It is our feeling that it d not matter, really, how big or how small the establishment is. ould not be kept from his livelihood, because he happened to be black or was raised Catholic or Protestant.

ally, we have recognized the difference between big business and business in many ways. We understand the hardship of running all business in an increasingly complex society, where "big busi- is the chief business. That is why Congress has been sensitive all businessmen and has provided low interest loans and tax bene- It has provided other programs to help small businessmen and ote their economic destiny. We have included special provisions to small business.

rtainly I think we are not imposing too much at all to say that essmen should recognize that discrimination in the selection of employees is not in the spirit of the Constitution and is not ding to the law that we enact here. So I respectfully disagree with nclusion as to employment, although I will say that we recognize ractical application of the new law. That is why it was stepped from applying to 100 to 25, and that is why we feel, with time g passed, that we are now at the point where the Commission can n the responsibility of seeing that this kind of equality requires duction to eight members or eight employees.

ally, the Senator from New Hampshire said that if the proper l procedure were available to the employer and the number re-

mained at 25, he might vote for the bill. I simply wondered whet the Senator could tell me what he would consider the appropriate peal from a judgment of the Commission should be. Should the app be to the circuit court of appeals? Is there any other specific metho appeal that the Senator has in mind?

Mr. Cotton. No. First, I may say to my friend from New Jersey t he is always very fair and is always very kind in his comments appreciate them. That is characteristic of him.

In answer to his last question, I have felt, in voting on some of amendments offered by the Senator from Colorado. (Mr. Dominic as well as amendments offered by other Senators, that it may ma resort to an appeal more expensive. But frankly, I will say to Senator that I am not—this individual Senator is not—nearly so mu disturbed about the alleged inadequacy of provisions for appeal a am in the number of operatives that would bring the employer und the act.

I should like also to say to the Senator from New Jersey that it always a wonder to me that in view of these last steps for enforci conduct and rights of individuals by law, no one seems to take a notice of the fact that they may be completely counterproductive.

Suppose I am employer of 10, 12, 14, or even 20 employees. Suppo that a man of the black race should appeal to me for a job. I am su that I would give it to him. I am sure that I would like, and ma other employers would be happy, to give to those who are not of the particular color or race an opportunity. But there is something I kno as an employer from the act we passed in 1964, which will be true this act if we pass it. I know if I employ a white man and he turns o to be lazy or inefficient or unsatisfactory, I can call him right into m office and fire him and, in all likelihood, nobody is going to questi my right to discharge him, because of his incompetency. But if, in earnest desire to help a member of a race that has had all these diffic ties through the years in getting a fair break—and members of th race have had their difficulties, and I am one who sympathizes wi them in it, and realizes that the unemployment among Negroes at t present time is much greater than among white people—I also kno that if I employ him and give him a chance and he turns out not to a good employee and not to be efficient—because inefficiency and la ness are not the monopoly of any particular race—and I fire him, t first thing I know I will be under the scrutiny of the agents of th Commission.

I will have to go through the long ordeal and expense of trying prove that I did not discharge that man, because of his color; I di charged him, because he was not an efficient employee. I may have go to the Court of Appeals. I do not know.

Mr. Williams. Mr. President, will the Senator yield?

Mr. Cotton. Just one moment.

I am not saying that the statute requires this; I am talking about th practical situation. So, in a sense, when one tries to go so far in th perfectly laudable attempt to enforce equal rights—and nobody ca gain say that what we want is equal opportunity—as a practical matte we may be making things more difficult, and I might say to someo seeking employment, "Sorry, I do not have an opening right now. I a not putting on employees. Business is not so good. Sorry, young man

perhaps sometime later employ somebody of my own race. That
d be one of the byproducts of this particular act.
ay I say, before I yield again to my friend, the reason I brought
Holman Hunt and that famous utterance of his that the door to the
an heart can only be opened from within, is that we have reached
point now in this country when that is the only way we can achieve
t I am sure every one of us hopes and prays for, and that is the
l of society where no race, no creed, no nationality suffers dis-
ination. We cannot go the whole way, we cannot go the last mile,
statute. We cannot enforce it with a bayonet. It has to be by the
mple of good and earnest people of both races seeking a society in
h we can live together.
ow I yield to the Senator.
r. WILLIAMS. Mr. President, I just wanted to say that, recognizing
might be an economic hardship on a small business or a small
n in defending a situation similar to the one described by the
tor from New Hampshire, it might come to that, and if so, in all
e there should be a ruling in favor of the small businessman who
firing for justifiable reasons that had nothing to do with the race
e employee. In those situations, we have now included in the bill a
ision for mandatory legal fees to be assessed and to be paid to the
iling party.
. COTTON. If he prevails.
. WILLIAMS. Yes.
. COTTON. I did not intend to take another minute, but let me say
from practical experience. Long before I ever expected to come to
gress, I was practicing law in my own city of Lebanon, N.H. At
time the labor legislation became law. I guess it was the Wagner
but, at any rate, it was the legislation that was to protect workers
being discriminated against, because they were members of a
n or seeking to form a union. That became a Federal law. People
appointed in various sections of the country to enforce it or to try
laints. In almost every instance, those who were appointed to try
complaints were former union organizers or executives.
one day a young man was discharged from a small plant in my
I do not know how many Senators ever worked in a brickyard.
once when I was in school. Senators know, if they ever worked in
kyard, that the clay, as it is soaked and is being passed into the
where it is imprinted into bricks, is extremely heavy and can be
al weapon. This rather rough young man persisted in taking up
dful of clay—I do not know whether playfully or spitefully—and
ing it at fellow workers, until one day he struck a man on the side
neck and that man was in bed, in a cast, for more than 6 months.
efore that happened of his unruliness, his employer fired him. He
diately took his appeal to the National Labor Relations Board. In
nocence as a country lawyer, I thought I had plenty of evidence
ight on my side. We went down to Boston after the case was ruled
st us by the State authorities. I want to tell Senators that that
ion has changed. I think we now have enforcement of the labor
n a much more impartial way.
d not have any more chance of convincing that tribunal in the
f Boston that the employer who fired this man—the man who
to be the secretary of the union—was justified than I have today

of becoming Vice President of the United States, and I purpos
choose a very extreme illustration.

Immediately the order was issued that he had to restore this m
to his employment and he had to pay him wages for all the time th
he was out of employment. Of course, we could have taken an appe
to the courts, but it was not worthwhile. Later this same habit of th
young man—who I think is more thoughtless, perhaps, than vicious
caused the injury that I mentioned, and he was then discharged a
nobody objected.

This is just an example of what happens when you have a stat
administered by people who are fanatically in favor of the purpo
of the statute. I am not reproaching those who are. I have every a
miration for the Senator from New Jersey, the Senator from Ne
York, and other Members of this body who are earnestly seeking t
millenium, who are earnestly seeking a society in which every membe
as the Senator from New Jersey has so eloquently stated, has a chan
to earn a living for himself and his family. I am simply saying w
have reached the point where we have to try to do it by other mea
than with a club.

Mr. President, I yield the floor.

Mr. STEVENSON. Mr. President, equal employment opportunity h
been enshrined in the Constitution for over 100 years as part of th
concept of equal protection of the laws under the 14th amendmen

That great amendment gave Congress the power "to enforce, l
appropriate legislation" equal protection of the laws. Yet it was n
until the enactment of Title VII of the Civil Rights Act of 1964 tha
Congress acted forcefully to combat employment discrimination.

Now that we have had nearly 8 years of experience under the 19
act, it is appropriate to take stock of what has been done and wha
has not. It is clear that despite much progress, we cannot expect EEO
effectively to combat the subtle yet vicious forms of employment dis
crimination we can expect to encounter in the 1970's. It would only b
repetitive of me to belabor the unhappy statistics of the EEOC
conciliation record over the last 7 years. My distinguished colleagu
from New Jersey and other Senators have placed these statistics o
the record, and they reveal the inadequacy all too clearly.

These same statistics, however, also reveal that discriminatio
in employment continues to exist—perhaps in greater and in more in
sidious ways than any of us had imagined—and that therefore the fig
for improved legislation continues on discrimination against wome
discrimination against blacks, discrimination against Spanish-speak
ing people, discrimination against American Indians, discriminatio
against Orientals—the list grows in size and diversity with each pas
ing year.

That mere conciliation powers might be inadequate was recognize
early, and so in each of the last four Congresses there has been legis
lation to give EEOC something more. In the 89th Congress the Hous
acted upon a measure to give the EEOC the power to issue cease and
desist orders, but the Senate failed to act. In the 90th Congress, th
Labor and Public Welfare Committee of the Senate reported out a
similar bill, but the full Senate failed to act. The Senate did act in th
91st Congress, passing a cease-and-desist bill 47 to 24, but the Hous
did not act.

n the meantime the evidence of employment discrimination
nted. After three abortive efforts, there is simply no justification
further delay—a bill giving the EEOC new and more meaningful
ers must be passed this year to put the full force of Government
ind the effort to end employment discrimination. As the U.S. Civil
hts Commission concluded in its report of last December, "The
eral Civil Rights Enforcement Effort: One Year Later"—

e problem which permeates all EEOC activities is its lack of enforcement
rs. Until this crucial legislative deficiency is corrected, EEOC's ability to
tively deal with the enormous issue of employment discrimination will
in limited.

EEOC's workload mounts and its staff increases, all of these unresolved
ems will loom even larger as factors affecting its potential effectiveness.
the continuing viability of the agency these impediments to EEOC success
be addressed promptly and vigorously.

e Senate has been considering in these last weeks whether to give
EOC the power to issue cease-and-desist orders or only the power
k a court to issue such an order if the EEOC finds discrimina-
Last week the Senate had the opportunity to make this choice
clearly and very directly on three separate occasions, and on each
sion it opted for the former alternative, just as it did in the 91st
gress.

this point, Mr. President, I ask unanimous consent that at the
usion of my remarks there be printed a report of the Civil Rights
mittee of the Chicago Bar Association relating to the proposed
dments to Title VII of the Civil Rights Act of 1964. This report
forwarded to me by Mr. Jacques G. Fuller, executive director
e Chicago Bar Association. The report cogently and logically
s the case for expanded powers for the EEOC, and concludes
—

pervasiveness of discrimination in employment throughout the United
s and the complexity of this problem requires the expertise of an admin-
ive agency equipped with judicially enforceable cease-and-desist powers to
a maximum of enforcement effectiveness under the provisions of Title VII.

ere are, of course, many other elements of this bill besides grant-
ease-and-desist to the EEOC: The expansion of the jurisdiction
EEOC to State and local governments and to employers with as
s eight employees; the transfer of the antidiscrimination func-
of other agencies—the OFCC, the Justice Department, the Civil
ce; the removal of the exemption for educational institutions
t for religious institutions in pursuit of their religious activities.
y every one of these various provisions has been the subject of a
amendment, and each Senator has had a chance to study the
s of those provisions and cast his vote according to his respective
sions. And in some instances—the transfer of the functions of the
of Federal Contract Compliance, for example—an individual
sion of the bill has been found not to be in accord with the wishes
ajority of the Senators voting.

now the will of the majority of the Senate has been made clear
rtually all of the major provisions of the bill, and the time has
to get on with the business of the Senate. I have already ex-
d my belief that the Senate should get on with its business of en-
g the 14th amendment, the raison d'etre of this Government, by
to invoke cloture.

So let us be about the business of our Government. Let us act, in t
words of the Commission on Civil Rights, "promptly and vigorousl
to give all women and all men something very simple: The opportun
to be able to pursue the employment of their choice with the know
edge that their color, their sex, their nationality, or their religion w
not be held against them.

I ask unanimous consent that the report be printed in the Reco

There being no objection, the report was ordered to be printed in t
Record, as follows:

REPORT OF THE CIVIL RIGHTS COMMITTEE OF THE CHICAGO BAR ASSOCIATION
PROPOSED AMENDMENTS TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

On September 16, 1971, the House of Representatives rejected H.R. 1746, l
islation that would give the Equal Employment Opportunity Commission (EEO
power to issue cease and desist orders comparable to those powers now exercis
by most federal regulatory agencies. 117 *Cong. Rec.* H8542. In its place, t
House passed a substitute bill, H.R. 9247, proposed by the Nixon Administrati
giving the EEOC the right to sue in the federal courts to enforce the provisio
of Title VII of the Civil Rights Act of 1964. §§ 701–16, 42 U.S.C., §§ 2000e
2000e–15 (1964), prohibiting discriminatory employment practices.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimina
by employers, labor organizations, employment agencies, and joint labor-manag
ment training programs on the grounds of race, color, sex, religion or natio
origin. Sec. 703(a), (b), (c), (d). Under Section 706(a) of Title VII, the EE
was created to deal with the charges of employment discrimination under t
title. Although the Commission is empowered to investigate charges of di
criminatory employment practices, its function in the attempt to resolve su
grievances, after making a finding of reasonable cause, is limited to "informa
methods of conference, conciliation, and persuasion." Sec. 706(a). If these me
ods fail, Title VII provides that a civil action may be brought by the aggriev
party in a federal district court. Sec. 706(e). If the court finds an unlawf
employment practice, it may enjoin the practice and order any affirmative acti
considered appropriate including particularly reinstatement or hiring with
without backpay. Sec. 706(g).

Ever since Title VII was first enacted, dissatisfaction with the Commissio
limited function of conference, conciliation, and persuasion has been reflecte
in strong efforts to pass legislation giving the Commission cease and desist po
ers. The Johnson Administration, for example, asked Congress repeatedly
give the Commission such powers. *H. Report*, No. 82-238, p. 2. Finally, in 197
in the 91st Congress the Senate passed S. 2453 giving the EEOC cease an
desist powers, although the Nixon Administration opposed the measure with
own bill authorizing the EEOC to go to the federal courts for enforcement order
Id., p. 2. H.R. 17555, a bill similar to S. 2453, was reported in the House but die
in the Rules Committee. *Id.* Thus, neither S. 2453 nor H.R. 17555 reached th
House floor.

In the present Congress, Mr. Byrd of West Virginia and others introduced
the Senate on September 14, 1971, S. 2515, a bill which included the provisio
approved by the Senate in 1970 providing cease and desist powers for the EEO
S. 2515 also consolidates federal equal employment programs under the EEO
by transferring to the Commission the authority of the Office of Federal Co
tract Compliance (OFCC) in the Department of Labor to require compani
receiving government contracts to be equal opportunity employers and of th
Civil Service Commission to require equal opportunity in federal employmen
Although the House Committee on Education and Labor voted to report H.
1746 a bill identical to S. 2515, on June 2, 1971, the House passed instead th
Administration substitute, H.R. 9247. See *H. Report*, No. 92-238; 117 *Cong. Re*
H8542. S. 2515 is, however, still pending in the Senate and awaiting both
Committee Report and final action by the Senate. *See Hearings on Equal E*
ployment Opportunities Enforcement Act of 1971, 92nd Cong. 1st Sess. (1971

Because of the prevasive nature of employment discrimination in our societ
the strongest possible enforcement powers are needed to eliminate such dis
crimination. It is the recommendation of this Report that by giving the EEO
judicially enforceable cease and desist powers the EEOC would become mo

ctive in overseeing the enforcement of equal job opportunities than it would had only the power to seek court enforcement on its own. Accordingly, we ress our support for the grant of cease and desist powers to the EEOC as d in S. 2515 and oppose the enactment of court enforcement powers as re- passed by the House in the substituted bill, H.R. 9247.

INEFFECTIVENESS OF CONFERENCE, CONCILIATION AND PERSUASION UNDER THE PRESENT STATUTE

itle VII of the Civil Rights Act of 1964 prohibits discrimination in employ- t by four major groups: (1) employers of 25 or more persons (Sec. 701(b)); labor organizations with 25 or more members, or which operate a hiring or hiring office (Sec. 701(e)); (3) employment agencies (Sec. 703(b)); and joint labor-management committees controlling apprenticeship or other ning or retraining programs (Sec. 703(d)). To enforce Title VII, the Act blished a five-member commission whose members are appointed by the ident and approved by the Senate, "as a national counterpart to State and fair employment practice commissions. . . ." *See Federal Civil Rights rcement Effort, A Report of the United States Commission on Civil Rights* p. 263. It is estimated that the coverage of Title VII includes approximately rcent of the Nation's labor force. *Id.*, p. 264. Exemptions from coverage in- : employees of federal, state, or local governments (Sec. 701 (b) (1)), *fide* private membership clubs, (Sec. 701 (b) (2)), Indian tribes, (Sec. b) (1)), employees of religious organizations who perform work related to ious activities, (Sec. 702), and employees of educational institutions who ngaged in educational activities. *Id.*

spite the wide jurisdiction of the EEOC and the prevalance of discriminatory oyment practices, the function of the Commission is limited to seeking the nation of job discrimination through the "informal methods of conference, liation, and persuasion." Sec. 706 (a). The commission process begins when plainant files a sworn, written charge that he is aggrieved by one or more e unlawful employment practices listed in Sections 703 and 704 of the Act nen a Commission member charges that a violation of the Act has occurred. vestigation follows, and if probable cause is shown, the Commission must the offender's voluntary compliance with the Act. If such conciliation efforts unsuccessful, the EEOC, not later than sixty days after the filing of the laint, must notify the complainant who may then file suit in federal district Sec 706(e). If there is applicable state or local law prohibiting employment imination, the complainant must first seek redress under those applicable before filing with the EEOC. Sec. 706 (b). In addition to this conciliatory ion, the EEOC can refer cases to the Department of Justice for action e it is alleged that a "pattern of discrimination" exists and it can file *s* or supporting briefs when individuals file cases. Sec. 706, 707(a).

hough the conciliation process does have some theoretical merits to com- it, the failure of the EEOC's conciliatory function to even dent the abund- of discriminatory employment practices throughout the country is not seri- questioned by anyone. William H. Brown III, Chairman of the EEOC, in mony before the Subcommittee on Labor of the Committee on Labor and c Welfare of the Senate, stated that since its beginning in 1965, the Com- on has received 81,004 charges and that in less than half of this number he Commission able to achieve a totally or even partially satisfactory con- ion.[1] *See Hearings on the Equal Employment Opportunities Enforcement 1971*, 92d Cong. 1st Sess. (1971), p. 53. It is clear that significantly large ers of aggrieved individuals have not been able to achieve any settlement at rough the EEOC and, consequently, are forced either to give up their claims seek redress through the federal courts. *Id.*, p. 53. The current estimate is during the present fiscal year, more than 32,000 charges will be filed with ommission. *Id.*, p. 55. Because of this rapidly increasing work-load, charges ot resolved on a timely basis and, as of June 30, 1971, the EEOC had a g of almost 32,000 cases. *Id.*

Commission's inability to deal with the ever-increasing number of com- s with the limited authority currently available to it is especially disturb-

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successful agreement is one in which EEOC, the respondent and the charging party signatories. In a partially successful conciliation, the respondent does not sign an ent but does agree to eliminate the discrimination identified in the decision. If no s secured the conciliation is considered a failure." *Federal Civil Rights Enforcement* n. 715 at 327.

ing in the light of the relevant statistics regarding the employment and inco of minority groups and women. Chairman Brown's testimony, mentioned above especially revealing:

"In a special report released this year by the Bureau of the Census, 'The Soc and Economic Status of Negroes in the United States,' it is clear from the stat tics presented that while Negroes have made strides toward bettering their po tion, the goal of social equality is not yet to be seen . . .

"For example, the reports show that the median family income for Negroes 1970 was $6,279 while the median income for whites for the same period w $10,236. This earnings gap between the races is obviously largely attributat to disparate employment policies. This conclusion is supported by statistics whi show that Negroes are concentrated in the lower-paying less prestigious positio in industry, and are largely precluded from the higher-paid more prestigio positions. . . .

"While the statistics on Spanish-speaking Americans are not nearly as curre or as complete, available data indicates that this, the second-largest ethn minority group in the Nation with approximately 7.5 million members, faces similar plight. In 1969, the median family income for Spanish-speaking Americ families was $5,641. About 17% of these families had incomes of less tha $3,000. . . .

"The other major group which is subject to blatant discrimination in emplo ment are the approximately 30 million employed women in the Nation. [Thes women constitute approximately 38% of the total work force. . . .

"[I]n 1968, 60% of women but only 20% of men earned less than $5,000 p year, while only 3% of women but 28 % of men earned $10,000 per year or more *Id.*, pp. 50–53.

These figures show what critics of the EEOC's lack of enforcement authorit have been saying all along: the EEOC must be given the strongest possible e forcement powers to carry out its objective of eliminating discrimination in em ployment. When the weak conciliatory function of the Commission is considere together with the small proportion of cases resolved by private litigation an the total of only sixty-nine pattern and practice cases that the Department o Justice has brought, the inadequacy of the present means of enforcing our s leged goal of equal employment opportunity becomes glaring. Federal Civil Right Enforcement Effort (1970), pp. 336, 341. During fiscal year 1970, for example, th Commission itself participated in 167 private suits and recommended only 7 pattern cases to the Attorney General. *See Fifth Annual Report, E.E.O.C.*, p. 1

THE NEED FOR CEASE-AND-DESIST POWERS

Contrasting the EEOC's settlement record with that of the NLRB and sta fair employment practices commissions (FEPC's) helps to expose the primar reason for the EEOC's comparative failure. The NLRB, for example, has settle 90% of the discriminatory employment charges it has retained through setth ment agreements, voluntary withdrawal of the charges or dismissal. *See* A. Cox & D. Bok, Labor Law: *Cases and Materials* at 138 (7th ed. 1969). FEPC's wit cease and desist powers have achieved a 95% successful conciliation rate wher probable cause is found. *See* Note, "Employment Discrimination: State FEP Law and the Impact of Title VII of the Civil Rights Act of 1964," 16 W. Res. L. Re 608, at 622 (1965).

Without effective enforcement power the EEOC will not be any more successfu in resolving its increasing volume of complaints than it has been in the past. Suc power, it is generally conceded, could take two forms: either the Commissio could have the power to bring suits in the federal courts on behalf of complai ants, or the Commission could have administrative cease and desist powers co parable to those powers presently exercised by most federal regulatory agencie The basic issue, then, is which of these alternatives will insure the most effectiv enforcement of Title VII.

One of the main arguments of the proponents of the judicial approach is th the court remedy will provide relief more quickly. Surely quick relief is essenti to effective enforcement. But the experiences which appear to be most relevan as possible indicators in respect to the relative comparison of delays do not su port the judicial approach. The delay experienced in the administrative proces ings before the NLRB, for example, from the filing of a charge in an unfair labo practice case until the trial examiner's decision is issued, averages only 7 months. *House Report No. 92-238*, p. 11. Moreover, approximately 95% of th unfair labor practice cases do not go beyond this stage! *Id.* The experience of th

e fair employment practices commissions may be even more to the point. In 5 there were twenty-five states that had some form of prohibition against dis- nination in employment. *See* Note, 16 W. Res. L. Rev. at 614, *supra*. Only five hese states did not have statutes providing cease and desist power for their employment practices commissions or their counterparts. *Id.* In all of the nty-five states where probable cause was found, in about half of the cases filed ty-five percent of these cases were disposed of by conciliation without even need of a hearing. *Id. See also* a 1963 study of the Senate Labor Committee, *Cong. Rec.* 7207 (April 8, 1964). The more recent experience in New York as ted by Congressman Reid, the former chairman of the New York State Com- sion Against Discrimination (now the division of human rights), is especially ificant:

The figures in New York's experience clearly emphasize my point. Between 5 and 1967, 16,1[illegible] complaints were received by the New York commission; 98 ent of them—all but 326—were settled before they were ordered for hearing more than two-thirds of those ordered for hearing were settled before the ring was completed.

That means that in New York in 22 years only 110 cases out of 16,000 needed ner action, and that is largely because the State commission possessed e-and-desist powers." 117 *Cong. Rec.* H 8522 (Sept. 16, 1971).

ring the EEOC cease and desist powers, as the experience of state fair em- ment practice commissions amply demonstrates, would work to reduce both delays and the backlog by effective action and by encouraging settlement of plaints *before* enforcement becomes necessary. If the cease and desist ap- h did not work or if there were advantages to the court enforcement ap- h, then why has the administrative alternative, been chosen by, at latest t. 32 States? *See* remarks of Congressman Reid, 117 *Cong. Rec.* H 8522 (Sept. 971).

addition, the problems of court congestion should not be overlooked. The C has estimated that, should the court enforcement alternative be chosen, an tional 20,000 cases would be introduced into the federal system. *Id.*, at H Chief Justice Burger has opposed any increased burdens for the federal s without first providing for the reorganization of the federal judicial system. ssing the American Bar Association last year, he stated:

ne difficulty lies in our tendency to meet new and legitimate demands with laws which are passed without adequate consideration of the consequences e terms of case load." Burger, "State of the Judiciary—1970," ABA Journal 970, p. 932.

en though delays vary considerably from district to district, the courts are congested than ever before. In the major population center of the Southern ict of New York, for example, the wait from the time a case was ready rial until the nonjury trial in fiscal 1970 was 38 months. *See House Report*, . p. 11. The delay in the Eastern District of Louisiana was 24 months. *Id.* econd argument advanced in favor of the judicial approach is that questions ployment discrimination arouse strong emotions and such matters, it is said, nore appropriately resolved in a court where federal judges command the t of the public. *House Report, supra*, p. 62, Minority Views. Public respect ie forum of resolution in such matters is unquestionably important, but the nistrative cease and desist machinery would not lack public esteem. To the ary, the administrative process appropriate to resolving the complex prob- n the employment discrimination area requires the expertise that an admin- ive tribunal is better suited to supply. Remedies fashioned by experts in the t matter will more likely command the public respect than not. Problems of t, moreover, have not arisen in regard to the state fair employment prac- mmissions and there is no apparent reason why such problems need occur in leral context.

connection with the above point on the greater prestige of federal judges, a argument for the judicial approach is that the courts are better able to needed evidence for an appropriate disposition of the cases because of their ery and subpoena powers. But there is little, if any, support for the proposi- hat the federal agencies, like the NLRB and the FTC, armed with the cus- y administrative investigatory powers, have been substantially handicapped development of adequate evidence for the proper disposition of cases. There genuine positive value in the circumstance that administrative tribunals ss subject to technical rules governing evidence, pleadings and motion prac- *House Report, supra*, p. 11.

The opponents of cease and desist power for the EEOC also argue that t administrative process would be inherently unjust if administered by the EEC and that principles of justice require employment discrimination cases be hea only in federal courts. In support of this position, two claims are made: first, th claim that the EEOC has "attained an image as an advocate of civil rights" and such "cannot be an impartial arbiter" of Title VII cases. *House Report*, *supr* p. 59, Minority Views; second, they also claim that by giving the EEOC cea and desist powers, a party would be presumed guilty before he would have be properly heard, or in short, the agency making the initial finding cannot al adjudicate the final order, *Id.*

As for the first claim, it is true that the EEOC has been an advocate of civ rights, but then this role has come about only because its lack of enforcemen powers. The filing of *amicus* and supporting briefs is certainly compatible wi the Commission's proper concerns, and considering that this has been its on participation in the enforcement process, this is hardly a basis for condemnatio Moreover, the EEOC experience thus far does not indicate a lack of objectives in the disposition of the charges filed with it.

The claim that the EEOC is too biased to objectively adjudicate Title VII issu merges with the claim that the Commission should not make both the initial find ings and the final orders. Both these claims ignore the procedural safeguard provided by the Adimnistrative Procedure Act. Hearing examiners, for exampl would be employed by the Civil Service Commission and not by the EEOC. If an party feels that bias has occurred during any proceedings, records are kept t insure adequate judicial review.

The sixth argument advanced for the judicial approach is that lack of sufficien funding causes more delay in the administrative process than in the courts and it is claimed, this has been the real reason for the two-year backlog of cases pres ently before the Commission. *See* Comment, "Developments in the Law—Employ ment Discrimination and Title VII of the Civil Rights Act of 1964," 84 Harv. L Rev. p. 1271. First, as mentioned earlier, the major cause for the current back log before the Commission is its lack of enforcement power. Without effectiv enforcement provisions, recalcitrant employers have little motivation to attemp the conciliation process, and they are well aware of the fact that the final burde for attaining compliance would involve a time-consuming and costly court suit that most employees can ill afford. As for the funding problem under Title VII the best question appears to be: Where would the small amount of funding th Commission would be likely to get do the most good? Would it be better spent i proccessing cases before the Commission or in bringing suits in courts? Experi ence seems to point towards administrative processing rather than court enforce ment as the better choice.

CONCLUSION

Besides granting the EEOC the authority to issue judicially enforceable cease and desist orders in the Courts of Appeals, there are other provisions of S. 2515 which would serve to augment its administrative effectiveness. This bill woul extend the coverage of Title VII to employers of eight or more workers and t unions with eight or more members, instead of the twenty-five figure limit now im posed. Also, federal, state, and local government employees as well as employee of educational institutions would be covered. We believe that the pervasiveness o discriminatory employment practices justifies such broadened coverage.

S. 2515 would retain the right of private suits under the existing law. It woul also transfer the right to bring "pattern of practices" suits in employment case from the Department of Justice to the EEOC, and it would transfer the func tions of the Office of Federal Contract Compliance to the EEOC. These admin istrative transfers are based on the eminently sensible concept of concentratin all related enforcement responsibilities in a single agency. Overlap would thereb be reduced and coordination of a concerted effort to eliminate discrimination i employment might be better achieved. All of these provisions perhaps should b justified at some length, but that would miss the central focus of S. 2515 and th major contention of this Report. This pervasiveness of discrimination in em ployment throughout the United States and the complexity of this problem re quires the expertise of an administrative agency equipped with judicially en forceable cease and desist powers to attain a maximum of enforcement effective ness under the provisions of Title VII.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) to rther promote equal employment opportunities for American rkers.

Mr. FANNIN. Mr. President, I rise in support of amendment 813 to 2515.

First of all, I want to state that I am opposed to this bill without Dominick amendment, which was narrowly defeated in two earlier es. If we are to have this legislation, however, we must try to reduce detrimental effects and correct some of the other obvious short- nings of the bill.

The amendment before us is a very reasonable one, and I think goes ng way in helping in this direction.

t would maintain the present law which exempts employers with er than 25 workers from coverage. S. 2515 would reduce the num- of employees to eight.

n other words, the new, arbitrary power we are granting to the al Employment Opportunity Commission could be and would be l not only against small businesses and small factories, but against t are essentially family businesses.

ow I am not arguing that family businesses nor any businesses ld discriminate in employment. I fully believe that people should ired for jobs on the basis of their ability and their compatibility the tasks that are to be performed. Twenty-five is not any magic ber, nor is the number eight. We might make it 50, or 20, or three, erhaps total coverage of all businesses clear down to the number though I think this would be very inequitable. But to arrive at the e of eight is just as inequitable.

ut there is an element of practicality that must be taken into ideration.

is estimated that the change in the coverage from businesses em- ing 25 down to businesses employing eight would bring another million persons under the equal employment opportunities isions.

his is, of course, very misleading because it makes it sound like 6½ on persons really are gaining some new benefit. Actually, in my nation, this legislation will cause more harm than good and will more employees, as well as employers, than it will help.

r. President, in Arizona we have many small businesses which are by families. They have several family members as employees, they other workers that are as much close friends of the owners as they mployees of the firm.

e have more Indians in our State than there are in any other. We vast reservations on which Indians are living. We are trying to g industry to those reservations. We have many towns adjoining reservations and we are attempting to bring industry into those s. Many of them would be operated by families and would have as as 8 or 10 employees. I am wondering whether this bill would ute to their detriment. I would say that if it were enforced the some Senators are discussing, it would be very detrimental to Indian citizens. On some of those Indian reservations we have ployment of 50 to 70 percent and as I stated previously, we are g to correct this situation.

We have many firms elsewhere that are, in essence, ethnicall oriented.

The National Economic Development Association office in Phoeni has been doing an excellent job of providing loans for minorit operated businesses. The NEDA is described as a catalyst in both th Federal and private sectors to develop and coordinate opportunitie for Spanish-surnamed individuals and corporations to engage in pro fitable business enterprizes.

This week I received in the mail a booklet from the National Eco nomic Development Association. This 22-page booklet is entitled, "D rectory of Mexican-American Businesses in the Greater Phoeni Metro Area."

The National Economic Development Association determine whether or not these businesses are operated by Mexican Americans b the identification of these individuals by their racial parentage.

Mr. President, approximately one out of every six Arizonans is o Spanish or Mexican-American descent. Phoenix and Tucson are filled with businesses—firms that have operated for many years even back into territorial times—that have been established by persons with Spanish surnames. We are proud of this heritage, and we are proud of the industry and progress of Mexican Americans. They are a proud people who work hard, who are honest and law abiding. They take just pride in their own heritage, and their language.

Spanish surnames are carried on many small businesses in the Phoenix area. In many cases, of course, these businesses employ people of not only Mexican American descent, but of other races—white, black, Chinese, Indian or whatever.

It also is true, that many of these small businesses employ Mexican Americans almost exclusively. These are small businesses, perhaps of 10 or 12 employees at the most, operating quite successfully in those areas of Arizona.

In some cases, the businesses are in effect an extension and an intensification of the heritage of these people. They have a common culture and heritage which they live 24 hours a day, on the job and off.

Mr. President, there are other cases in which small businesses are operated in a very like fashion.

I know this certainly is true all over the United States, but it is especially true in the southwestern United States, and in many cases the firm is in itself an element of the culture of a people—Mexican-American, Jewish, black, or whatever.

Are we to tell these small businesses that they can no longer operate in this manner, that—if they have an all-Mexican American, or all-Jewish, or all-whatever, staff of workers—they must integrate?

We talk about our welfare rolls, and the tremendous increase in them that has come about in the last few years. What would they do with these people who would be displaced if we insisted and the EEOC made it mandatory that they integrate such establishments?

Mr. President, it seems to me that we still have room in our country for these small businesses which do no harm, and indeed, fill a great need for certain people who like to work in a friendly, personal, culturally comfortable atmosphere.

I am concerned about what happens to part-time workers. It is possible that this legislation may cause some firms to eliminate the services of semi-retired employees?

Ve have many retirement areas in Arizona. These people need, ecially since we have had inflation in the past few years, some loyment to make it possible for them to support themselves. I that it is vital that they have a chance to work part time.
f a firm has, say, seven employees, would it add the eighth, the h, or the 10th, if this legislation goes into effect? In fact, even , would they add more than 24? Would reducing the number to t not be a disincentive from giving employment to additional kers? Is it not possible that a small company which simply does want to be under the provisions of this law might cut back its force and thus cost the jobs of people who are desperately in of the income? I believe this is entirely possible and even likely.
here are some businesses that are established in retirement areas, I think that we all realize that there are no doubt a great number rtain ethnic groups in those retirement areas. Consider the hard- that would be placed upon the employer if he had to bring people om miles away, and also the problems the employee would have, any instances, where he is just working part-time and certainly l not afford the cost of transportation to a distant place of business otain employment.
me may say that my concerns in the area are not realistic. But there is reason for concern. With the extremes that we are seeing ning is possible.
alots who have the best of intentions could bring about eradication ltures and heritages which we have built upon. I do not want e this happen; not to my own heritage, not to the Mexican- rican; not to any one of the many ethnic groups or races which helped build the foundations of America.
o not want to see one great mass of faceless Americans who speak, , dress, and act identically. Yet that seems to be the ultimate e direction our Federal bureaucracy is trying to take us.
. President, I also would like to make a few additional com- s about bureaucracy—and this is just another huge layer of ucracy we are adding here. I want to talk about what we are to the small businessman, the entrepreneur. Again I say we rowing up one roadblock after another to private enterprise. are building regulation-after-regulation that means only one —the little man does not have a chance.
nagazine I was reading this week carried a very good example hat I am saying.
is is what a would-be businessman was saying:

my life. I've wanted to be in business for myself. I wanted to be an reneur. I thought a small operation could be swifter, could run rings l the big outfits by accentuating personal service, and provide the boss— ith greater personal satisfaction.
e years ago, I left a pretty good job to start my own show. It was a n-and-a-girl establishment. We had a good product a service. We had larned good customers. Everything looked dandy.
n came the forms. There were forms to be filled and reports to be made federal government, to the state, to the city, like you wouldn't believe. ajority of my time was spent struggling with forms and there wasn't time or energy left to do the primary job.
gave it up and went back to work for a larger organization.

President, this is happening all over America, unfortunately. e the small entrepreneur going out of business. We see very rner groceries or other small business operations now, whereas

just a few years ago, before we had all the redtape and the proble
that they have to solve, they were doing quite well.

Mr. President, I have heard that lament time after time, that th
have given up their places of business because they just could
do the work that was involved as far as Government restrictions w
concerned. Now we are going to add another Government restricti

Men and women who are very able and eager to run small busines
find that they are overwhelmed by paperwork and regulations a
redtape. I realize that it is not only the Federal Government, b
they also have the same problems with cities, counties, States, a
other jurisdictions.

Still, at every level of government we are encouraging people to
into business, to try to do something for themselves.

Operating businesses should be relatively simple if everyone
to enjoy fully the opportunities we like to believe we have in Americ
Every day something seems to be done in Congress or in the ma
of Federal agencies that works to defeat this part of the America
dream. On one hand we are telling our people that we are going
be of assistance to them, and on the other hand we are passing legisl
tion that will be very detrimental to them in many areas.

The Mexican-American citizens are in various businesses—air-co
ditioning service, appliances, architecture, automobile body repairi
and painting, bakeries, ballrooms, a large number of barber sho
beauty shops, bicycle shops—and array of talent that is being utiliz
now by these people in small businesses. Some are in the contracti
business and are producing, in most cases, low-cost homes. They a
having great difficulty in construction work because of the regulatio
with which they have to contend. I do not think we should give the
further concern.

As I have said, operating businesses should be relatively simple
everyone is to enjoy fully the opportunities we like to believe we ha
in America. But we are putting up a barrier to these opportunities.

Mr. President, any type of small firm may find itself with eig
employees. They start out small; they are successful; we want them
be successful. In many instances, they desire to employ their neig
bors, their friends, their relatives. Should we block that operation?
does not take a very large operation to utilize eight employees. It co
be a family run restaurant that stays open, say, for 12 hours a day
14 hours a day and has two shifts. It could be a small department sto
a garage, or even a lawn mowing service.

I know of one illustration in which a witness testified before one
our committees about a tamale factory that employed quite a number
people. They would like to branch out and have smaller factories
some of the other communities. If they were employing as many
eight people in these smaller factories, they probably would st
where they are and just deliver out of the central factory. But I th
it would be very beneficial to the communities if they could operate
those communities; and they say that they could do so successfully
they did not have too many restrictions.

It really does not take too much of a business to have 25 employe
but there is quite a difference between eight and 25. It seems much m
likely that a firm with 25 employees no longer can be considered a fa
ily business per se. Many family businesses employ more than eight.

iness of 25 employees, if it stays in business very long, will have the
power and experience to cope with the bureaucratic redtape that
been growing in this country. The business with 25 employees also
bably will be recruiting employees from the population in general,
ier than relying on family and long-time acquaintances for a work
e.

Ir. President, I do not believe that reducing the coverage of the
l employment law from businesses with 25 employees to businesses
eight employees -family businesses—will significantly help
ority employment in America.

recall that when we were talking about passing this legislation, the
arose as to whether or not small businesses would be brought
er these regulations. Of course, at that time that was one of the
ments in favor of passing it—that this would not affect small
nesses which had fewer than 25 employees. Now we are bringing it
n to eight employees.

s I have suggested, if carried to the ultimate, as bureaucratic zea-
are prone to do, it could actually hurt minority employment. It
l provide new impediments to the creation of small businesses, es-
lly by minority groups.

is time for us to start making life a little simpler for our people,
our businessmen. We keep passing law after law here, and, more
than not, we compound the problems we already have in America.
less we adopt this amendment, we will have added another com-
tion and will have done nothing to help the people we seek to
through this bill.

firmly support the amendment. I feel that the adoption of this
dment will at least be of some benefit with respect to this
lation.

. President, I yield the floor.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DOMINICK to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 38, strike out line 7, and insert in lieu thereof the following:

"(f) (1) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission, which determination shall not be reviewable in any court, and, after investigation, that there is not reasonable cause to believe that the alleged unlawful employment practice was willful, the Commission shall proceed under subsection (r) of this section. If the Commission determines, after attempting to".

Amdt. No. 856

On page 38, line 11, after the word "court" insert a comma and the following: "and the Commission determines, after investigation, that there is reasonable cause to believe that the alleged unlawful employment practice was willful".

On page 39, between lines 5 and 6, insert the following:

"(2) In making a determinaiton under this subsection, the Commission is required to overcome a rebuttable presumption that evidence of equal treatment of individuals by an employer, union, or employment agency constitutes compliance with the requirements of this title."

On page 39, line 21, after the word "practice" insert the following: "and that the unlawful employment practice was willful.".

On page 40, line 14, insert after the period the following new sentence: "If the Commission finds that the respondent has engaged in an unlawful employment practice and that the unlawful employment practice was not willful, the Commission shall proceed under subsection (r) (2) of this section.".

On page 50, line 7, strike out the quotation marks.

On page 50, between lines 7 and 8, insert the following:

"(r) (1) In any case in which the Commission determines that there is not reasonable cause to believe that the alleged unlawful employment practice was willful, and if within sixty days after a charge is filed with the Commission

or within sixty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to obtain voluntary compliance with this Act, the Commission shall so notify the General Counsel who may bring a civil action against the respondent named in the charge. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person named in the charge as claiming to be aggrieved, or (B) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attor-

ney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance.

"(2) In any case in which the Commission finds by preponderance of the evidence taken by the Commission that the unlawful employment practice was not willful, and if within thirty days of such finding, the Commission shall so notify the General Counsel who may bring a civil action against the respondent named in the complaint. If the Commission does not file a civil action under this subsection, the Commission shall so notify the person aggrieved and within thirty days after the giving of such notice a civil action may be brought against the respondent named in the complaint by the person named in the complaint as claiming to be aggrieved. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in

such civil action if he certifies that the case is of general public importance.

"(3) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not exceed that which accrues from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable."

On page 50, line 8, strike out through line 10, and insert in lieu thereof the following:

"(b) (1) Subsection (f) of section 706 of such Act is redesignated as subsection (s).

"(2) Subsection (g) of section 706 of such Act is repealed.

"(3) Subsections (h) through (k) of section 706 of such Act and all references thereto are redesignated as subsections (s) through (w), respectively."

On page 50, line 11, strike out "Section 706(r)" and insert in lieu thereof "Section 706(s)".

On page 50, line 18, strike out "(q)" and insert in lieu thereof "(q) and (r)".

On page 50, line 19, strike out "(u)" and insert in lieu thereof "(r) and (u)".

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Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. SPONG to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, line 24, strike out the word "religious".

Amdt. No. 857

[From the Congressional Record—Senate, Feb. 3, 1972]

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

AMENDMENTS NOS. 858, 859, 860, AND 862

Ordered to be printed and to lie on the table.)

Ir. ERVIN (for himself and Mr. Allen) submitted four amendments ended to be proposed by them jointly to the bill (S. 2515) to further mote equal employment opportunities for American workers.

AMENDMENTS NOS. 863 AND 864

Ordered to be printed and to lie on the table).

Ir. HRUSKA submitted two amendments intended to be proposed by to the bill (S. 2515), supra.

he PRESIDING OFFICER (Mr. Hughes). Under the previous order, Chair lays before the Senate the unfinished business, which the k will state.

he assistant legislative clerk read as follows:

bill (S. 2515) to further promote equal employment opportunities for rican workers.

he PRESIDING OFFICER. The pending question is on agreeing to the ndment (No. 813) of the Senator from North Carolina (Mr. in).

r. BYRD of West Virginia. Mr. President, I suggest the absence of orum.

he PRESIDING OFFICER. The clerk will call the roll.

he assistant legislative clerk proceeded to call the roll.

r. ALLEN. Mr. President, I ask unanimous consent that the order he quorum call be rescinded.

he PRESIDING OFFICER. Without objection, it is so ordered.

r. ALLEN. Mr. President, earlier this week, the junior Senator n Alabama was delivering a speech in opposition to this bill, S. , and in favor of an amendment that was pending at the time. Due e fact that there was an agreed time limitation on debate on that icular amendment, the junor Senator from Alabama was unable nclude his remarks with respect to the bill and the amendment. At time, he desires to continue with the speech he embarked upon er this week.

ward the end of his remarks on that occasion, he was pointing out of the iniquitous provisions in this bill that gives the Commission power to act as prosecutor, jury, and judge, to decide the case having received the complaint, investigated it, and filed the ges. In addition, the Commission is given the right to go into the eral district court and obtain injunctive relief against an em- er—an employer of as few as eight persons.

In the course of my remarks, I pointed out that the use of injunctio in labor disputes was severely criticized by Samuel Gompers, head o the American Federation of Labor, and that under the Norris-LaGuar dia Act of 1932, the use of injunction in labor disputes was outlawed and the wise provisions of that bill are still the law of the land, as they should be.

Mr. President, the parallel was drawn by the junior Senator from Alabama that the use of injunction by employers against employees was outlawed under the Norris-LaGuardia Act. Yet, this bill provides for injunctive relief on behalf of employees against employers. It would be well for those representing labor who advocate S. 2515 to pause and ponder the wise words of Samuel Gompers which I quoted in my earlier remarks this week and which, of course, already appear in the Record, and to review thoroughly the cases involving labor disputes prior to 1932.

Mr. President, I am sure there are few among us who will not say that perhaps the most shameful chapters of our judiciary history were written by judges in labor relations cases prior to the enactment of the Norris-LaGuardia Act. Indeed, the susceptibility to abuse by judges of the injunctive process is clearly illustrated by the example of the years prior to 1932 when judges, acting without juries, in an almost unbroken line of cases, used the injunction to frustrate the efforts of labor to secure fair wages and safe working conditions.

That is one of the great milestones in labor relations law and procedure in this country—a great act. But if it be good, on the one hand, to bar injunction in labor disputes against employees, why would it not also be fair to bar injunction in disputes as to unfair employment practices by the Commission on behalf of aggrieved employees against the employer?

If this bill becomes law, many of the most cherished benefits which organized labor has attained in the last 40 years would no longer be matters of right, but would automatically become matters of administrative grace to be doled out by EEOC bureaucrats as rewards for good behavior or withheld as punishment when any union does not comply with their demands. So the EEOC is going to have control over the union as well as the companies themselves. I believe that if this bill is enacted, if it does become law, it is going to be such a monster, such a colossus, such a Frankenstein monster, that it could well destroy many of the rights of employers and many of the rights of labor unions and the employees they represent. The law which tells the employer who his workers shall be today can be reversed and the worker told who his employer shall be tomorrow—and at what wages.

Under the broad grant of power in the bill before us, the seniority system, a basic fabric of unionism, would be adversely affected, if not destroyed.

Mr. ERVIN. Mr. President, will the Senator from Alabama yield for a statement by me on that question, with the understanding that he will not lose his right to the floor by so doing?

Mr. ALLEN. I am delighted to yield.

Mr. ERVIN. A number of officials of one of the largest industries in the United States visited my office some time ago and informed me that they were having trouble with the Office of Federal Contract Compliance in the Department of Labor. They informed me that af

ximately 35 percent of their employees were black and that, for t reason, there was no solid basis for any claim they were dis- ninating against blacks in employment. They stated that the per- tage of blacks was far in excess of the numerical percentage of ks in the population from which they drew their employees. They me, however, that they were having a great deal of trouble nego- ing with the Office of Federal Contract Compliance because that e was not even as enlightened a legislator or a regulator as the ient Roman Emperor Caligula.

aligula, as the Senator from Alabama knows, wrote his laws in ll letters and hung them high on the wall so that people could read or reach them, and therefore he could punish them for ations of laws of which they were ignorant.

rom what these gentlemen told me, Caligula was a far more ible regulator than the Office of Federal Contract Compliance in Department of Labor, because if a man could get a long enough er and a big enough magnifying glass, he could climb up the lad- nd read Caligula's laws.

ut these gentlemen told me that they could not read the regulations ne requirements of the Office of Federal Contract Compliance in Department of Labor because that office refu ed to commit its irements to writing. They said that they would hold oral con- ations with them and make suggestions about what they should in their employment practices so as not to discriminate in the of the Office of Federal Contract Compliance. They informed hat they would follow those suggestions and bring their product for consideration of the Office of Federal Contract Compliance, the Office of Federal Contract Compliance would then demand they do other things that had not been mentioned to them before.

ese gentlemen informed me that their particular industry was ndent to a high degree on Government contracts. They said, ly, that the Office of Federal Contract Compliance told them would have to alter their entire seniority system in order to put blacks in positions of seniority, even over others who had been them a much longer time. They told me that they informed the e of Federal Contract Compliance that their seniority system was p and defined by collective bargaining agreements that they had with the unions representing their employers under the provi- of the National Labor Relations Act.

. Allen. This bill would throw collective bargaining agreements he window.

. Ervin. When they called this to the attention of the Office of ral Contract Compliance, they said that if they did what they demanding they would be sued by the union for breach of con- and might induce a strike.

. President, they said they were informed by the officials of the e of Federal Contract Compliance in the Department of Labor the performance of the Office of Federal Contract Compliance ar superior to the enactments of Congress in respect to collective ining, and that those officials demanded that they forthwith up- eir seniority system.

old these gentlemen, as chairman of the Subcommittee on the ration of Powers, that I thought the Office of Federal Contract

Compliance was guilty of a gross violation of the doctrine of the separation of powers, and that although it was an executive agency, it was usurping the power to make laws by not reducing them to writing so that people could know what they are.

I asked these gentlemen to come down and testify before my subcommittee. They said, "No, we cannot do that. If we get the Office of Federal Contract Compliance angry with us, we cannot get any Government contracts, and our industry will be bankrupt."

Now, I ask the Senator, Is that not in line with what he has been saying?

Mr. ALLEN. It certainly is.

Mr. ERVIN. The officials in the Office of Federal Contract Compliance are not elected to anything. They were not elected by anyone. They are not responsible to anyone. But they are riding roughshod in this tyrannical manner over thousands of American citizens, over thousands of American businessmen.

I think that Congress is the only legislative body I know of that is willing to sit supinely by and allow executive officials, who have no legislative power whatever, to make laws which they will not reduce to writing so that they can be understood by citizens, and be able to practice this terrible tyranny over American industry.

If American businessmen of great power are afraid of the Federal Government, what about the little fellow whose economic power is so small that he is only able to employ eight or nine persons to assist him in his business?

Mr. ALLEN. He will be covered by this and would be probably driven to the wall.

Mr. ERVIN. I thank the distinguished Senator from Alabama for yeilding. This points up exactly what the Senator from Alabama has been saying, that apparently those members of organized labor who support this bill need a prayer uttered on their behalf: "Forgive them, for they know not what they do." They are advocating the passage of a bill, as the Senator from Alabama says, which would put them under a cease-and-desist government which could designate who would be members of a union, or could deprive the union of the power to determine for themselves who their members would be.

Mr. ALLEN. That is certainly correct. I appreciate the remarks of the distinguished Senator from North Carolina and the contribution that he has made to this debate. I certainly agree with him that passage of the bill could have an extremely adverse effect upon labor unions, that it could completely destroy or vitiate the seniority system of unions, that it could provide that unions must take into membership individuals that they do not want to take into the union, and that it could require employers to employ people contrary to the express provisions of the collective bargaining contract that has been reached between the employer and the union in arm's-length dealings. Not only could it destroy the seniority system of unions, it could also destroy the apprenticeship program of unions.

Union apprenticeship programs would be drastically altered. Failure to comply with EEOC edicts would make it possible for unions to be denied representation status under the National Labor Relations Act, thus removing protections against raiding or displacement by a rival

ion. Moreover, an employer would no longer have any legal obliga
ion to bargain with a union whose representation status has been
nceled by the National Labor Relations Board.
. . . would be a fine union. I have not had a single union man tell
that he favors this bill, not a single one. Yet is has been stated on
floor that organized labor is in favor of the bill. I have not had a
gle member of organized labor ask me to vote for the bill.
n short, under S. 2515, the EEOC would be empowered to tell a
rker and an employer which labor organizations were officially ap-
ved for membership and which were deemed unsuitable by the
leral authorities. In other words, the EEOC would be empowered
tell one that it is all right for him to join some unions, but not
ers. This, to my way of thinking, Mr. President, seriously jeop-
izes the freedom of expression and the freedom of association
ranteed by the first amendment to our Constitution. One real effect
S. 2515, therefore, would not be to promote equal employment op-
tunities for American workers, but to expose and punish persons
organizations who give countenance to views regarding freedom
xpression and association which are inimical to the Equal Em
yment Opportunity Commission.
fere again is the ever-present and coercive threat of punitive ac-
against those who do not give strict adherence to the social and
tical philosophies of those who wield power. Here, in the name of
ual employment opportunity," it is demanded that we pass a law
ch would permit a Federal bureau to arrogate unto itself the
er to examine, pass judgment, and extinguish the essential free-
s of expression and association. The Senate of the United States
not afford to let the EEOC be a law unto itself regarding the most
ed and fundamental rights of the American people.
r. President, if S. 2515 is enacted into law, we can add industrial
tions directors and union business agents to the list of endangered
ies.
What do we need industrial relations directors and union business
nts for if the EEOC is going to tell us whom to employ. So they
well be classified with others of the endangered species that we
of in the new environment, which so many people, including the
or Senator from Alabama, are so much interested in preserving.
to that list we might as well add academic freedom and States
ts. Not even Jimmy the Greek would cite odds on the chances of
r survival.
ne of the prime tenets of Anglo-Saxon jurisprudence is that a
is presumed to be innocent until proven guilty. While the bill
re us does not presume to go so far as to repeal this concept, it
inly subverts it. It arrogantly undermines and brushes aside the
anteed and fundamental principles of due process and invokes
noply of repressive procedures as alien to justice as the rack and
thumbscrew.
nder the bill, the Equal Employment Opportunity Commission
ld be given a "judicial" function, permitting it to order respond-
to "cease and desist" from alleged unlawful employment prac-
with such orders subject to limited review in a U.S. court of
als.

What is government by cease and desist? Government by cease and desist is government according to the personal convictions, inclinations, predilections, and precipitant notions of government bureaucrats rather than government by certain and uniform laws applying alike to all men and institutions in like situations.

This being true, it is no wonder that Justice Jackson, in the well-known Flag Salute case eloquently declared:

> The very purpose for a bill of rights was to withdraw certain subjects from the vicissitudes of public controversy, to place them beyond the reach of majorities and to officially establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights, may not be submitted to vote; they depend on the outcome of no elections.

Subsequently, Mr. President, Justice Jackson declared:

> If there is any fixed star in our national constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.

One of the real difficulties in connection with the type of authority being sought here is the attitude of the Commission and its staff. The Commissioners and the staff of the Equal Employment Commission are appointed because of a particular philosophical bent—it is expected, however, that they are to be objective and impartial advocates of equal employment opportunity and to conciliate charges found to be supported by the facts adduced in their investigations.

The Commission, however, has not been and is not now the impartial agency it was supposed to be and as charged to be by law. Instead, the Commission has been a rabid advocate of its own preconceived ideas of fair employment opportunity and has been spending much of its time assembling arguments in behalf of its obsession with obtaining from Congress the power to issue coercive orders. The Commission has degenerated into performing a private pressure job for cease-and-desist authority.

The mingling of the functions of conciliation and compulsion in this agency would be tragic. The EEOC conciliator, in such instances, cannot, in any light, be viewed as a friendly counselor, but only as an incipient prosecutor. In other words, when he also possesses the power not only of prosecuting, but also of rendering an enforceable judgment, his persuasion takes on the immediate character of coercion.

Yet, this ambitious bill would lodge in an unelected Federal agency the unfettered authority to act as investigator, prosecutor, judge, and jury—all racked up in one power-laden package. S. 2515 does this by granting the Commission the power to receive complaints; granting to the Commission the power to investigate complaints; granting the Commission the power to prosecute complaints; and granting the Commission the power to pass judgment on complaints and to fashion a remedy enforceable by a cease-and-desist order.

As if this were not bad enough, the bill also grants the Commission the power to be the complainant. It is proposed that a member of the Commission may file a complaint, and, although the Commissioner filing the complaint may not participate in the hearing, he is not forbidden to sit in judgment on his own complaint.

r. President, I am sure all will agree that the other members of
Commission would be less than human if they did not give special
tion to complaints filed by one of their own members. It is diffi-
to see how this Commission, in rendering decisions on a com-
t filed by one of its own members, could act objectively and in
nbiased manner. Remember, the member filing the complaint
l be privy to all of the discussions leading up to the final deci-
of the Commission, and I say that it would be asking too much
uman nature to expect his colleagues to embarrass him by dis-
ng a complaint which he had filed. One would have to be blind
d not to see that this particular aspect of the bill overbalances
cales of justice against defendants in ways that do absolute vio-
to the best of Anglo-American judicial traditions.
s true that appellate review of orders by the Commission is pro-
. But the fact that an employer or a labor union may be entitled
to a U.S. court of appeals carries no assurance that he will get
On the other hand, if a respondent is able to defray the expense
ng, drawn-out litigation, the restrictions and the limitations
l on the courts by the bill will make it almost impossible for the
to rectify a prejudicial order by the Commission.
me point out, Mr. President, that the court entertaining the
would be limited by the record of the hearing examiner as
ved by the Commission and would be required to affirm the Com-
n upon a finding of some evidence supporting the Commission's
on.
l what would the record of the Commission consist of? Let us
rget that many of these charges of discriminatory employment
ces will be made by persons who are motivated by revenue,
y, persecution, and perfidy. This is especially true inasmuch as
5 removes the requirement that charges must be made under
In addition, the bill permits the Commission to deprive the
d of the customary and time-honored rules of evidence and pro-
. Hearsay evidence with its inflammatory effect can easily be
tire basis of a finding by the Commission. What all of this boils
to is that this bill seeks the enormous power of "cease and
" and yet provides no safeguards against a possible arbitrary
nination by the Commission. The Commission can, therefore,
d to issue a complaint and institute a proceeding which could
o the exercise of enforcement powers based on a tenuous claim
crimination and the courts would be powerless to touch it. In
words, the bill makes an out and out mockery of our dedication
process of law.
s is not government by law. It is government by the Equal Em-
ent Opportunity Commission, for better or worse.
President, I turn to the most preposterous and repugnant fea-
S. 2515. The bill seeks to vest in the Equal Employment Oppor-
Commission autocratic and despotic power over the internal
istration of State and local governments. As a consequence,
5 is completely incompatible with the constitutional doctrines
sovereignty and indestructibility of the several States. Even
from this consideration, S. 2515 is inimical to Federal-State
ns inasmuch as it would place in the hands of the Commission
l club by which it can browbeat State and local officials into

submission and thus assume outright control of the functions an power of State and local government in vital areas of our life.

The proposal to substitute federally controlled employment pra tices for State and local personnel is in direct violation of the 10 amendment to the Constitution which states:

> The powers not delegated to the United States, nor prohibited to it by t States are reserved to the States respectively, or to the people.

The proposal is also in direct violation of the ninth amendment our Constitution which states:

> The enumeration in the Constitution of certain rights, shall not be constru to deny or disparage others retained by the people.

I, of course, realize that many of the proponents of S. 2515 regar the ninth and 10th amendments to our Constitution as obsolete, or a best, treat them as mere truisms. I also realize that the rights guar anteed to the States and their people under the Constitution hav been severely abused and invaded in recent years. But there is n provision in our Constitution which, by the widest stretch of th imagination, can provide a legal cover for the extraordinary author ity sought in this bill.

If enacted, this bill would permit an agency of the Federal Gov ernment to enter the political field in the appointment of State an local government employees. It is true that many State and local jo requirements are, in part, unrelated to the job. But it is wholly i keeping with our political traditions to give our State and loca leaders, and our national leaders for that matter, the discretion t give reasonable weight to factors other than job fitness in filling jobs

Frankly, it is difficult to imagine a more intolerable interferenc by the Federal Government with the rights of the States than t dictate their employment practices. The States' power over employ ment practices is basic and essential to the very existence of Stat sovereignty and, consequently, to our federal system which was de vised by our forefathers and which they intended to be held foreve sacrosanct by the Bill of Rights. If we deprive the States of thei basic functions, it is pointless to maintain that we have a dual form of government

History makes it crystal clear that the Constitution of the Unite States would never have been ratified by the requisite number o States if they had not been assured that it would subsequently be amended as to embrace the principles and guarantees enunciated by the ninth and 10th amendments.

Let us recall that in 1787 when the Constitution was written, th States were absolute sovereign. They had joined in the Declaratio of Independence. They had fought through eight long, terrible an bloody years to wrest themselves from the British Crown. In essenc they stood independent and free from any other sovereignty on earth

This amendment, by the way, provides that powers not delegate to the United States nor prohibited by it to the States are reserve respectively to the States or to the people, people being synonymou with the States.

The proposal is also a direct violation of the ninth amendmen which reads:

> The enumeration in the Constitution of certain rights, shall not be construe to deny or disparage others retained by the people.

here is no provision in our Constitution which, by the wildest
ch of the imagination, could provide a legal cover for the extraor-
ry authority sought in this bill.

herefore, when the representatives of the free, independent States
in Philadelphia to determine what form of government would
ed the tyranny of the British Crown, they had deep feelings
t their State sovereignty and jealously guarded it and were deter-
d to protect against any undue invasion. The delegates were not
t to surrender any more than absolutely necessary of their sov-
nty in their endeavor to form a national government and they
resolute in holding this to a minimum. The deliberations and
lebates at the Convention and, of course, in the very drafting
e Constitution and its ratification by the several States make it
dantly clear that the Constitution would have never come into
nce if the sovereignty of the States and the rights of the people
ot been positively recognized in the Constitution itself.

s, Mr. President, of all the liberties which the founders of our
Nation enshrined in the first 10 amendments they specifically
ned the ninth and 10th amendments as the impregnable guardians
e sovereign rights of the States and of the people. They dele-
to the Federal Government the powers necessary to enable it
scharge its limited functions as a central government and left
States and to the people all other powers.

vas the strong belief in the concept of government by the people
nspired Thomas Jefferson, author of the Declaration of Inde-
nce, to declare:

laws which must effect the happiness of the people must flow from their
abits, their own feelings and the resources of their own minds.

hose few words, Mr. President, Thomas Jefferson expressed the
hts and beliefs of the framers of our great Constitution, who
that the States, with their State governments, their county gov-
nts, and their city governments, would ever be citadels of liberty.
knew that their concept of a government by the people de-
d full recognition of the rights of the States.

vhere is the doctrine of the separation of powers more eloquently
bed than by Chief Justice Salmon P. Chase in his opinion in
against *White* (7 Wall. 700) when he said:

nly, therefore, can there be no loss of separate and independent autonomy
States through their union under the Constitution, but it may be not un-
ably said that the preservation of the States, and the maintenance of their
ments, are as much within the design and care of the Constitution as the
ation of the Union and the maintenance of the National Government.
nstitution, in all its provisions, looks to an indestructible Union, composed
structible States.

re these rights become any less meaningful to us today? Are the
rs of the exercise of arbitrary power by a centralized government
ess? I say no. Senator William E. Borah, of Idaho, a giant
g men, once wisely warned:

n the people lose control of their Constitution, they have already lost con-
their government.

holeheartedly agree with Senator Borah when he added:

an old story that when the people lose power, they lose liberty.

The exercise of the powers sought under this bill would so tip t balance toward the Federal Government, particularly the executi branch, that the division of authority as envisioned by our Foundi Fathers and as yet contained in our written Constitution would b come passé. The Constitution would no longer serve as a safeguard f the right of the people to govern themselves. Consent would no long flow from them. Even Alexander Hamilton, who advocated and b lieved in a strong central government, would have been scandalized b the interposition of the Federal Government into State and loc affairs as envisioned by the provisions of S. 2515.

I submit that if one of the delegates to the Constitutional Conve tion in 1787 had proposed that the Federal Government be empowere to interfere with the domestic policies and domestic institutions State and local governments, he would have been laughed out Independence Hall.

Surely such a departure from a written Constitution that expressl assures the rights of the States is reason enough to sound the deat knell for legislation which conceives such a recommendation. If w deprive the States of their basic functions, it is pointless to maintai that we have a constitutional Federal Government.

When the Constitution of the United States was written in that ho tiresome summer 185 years ago, provision was made for amending i If our Constitution is to be amended in the drastic manner propose by S. 2515, it should be done so in the orderly process provided for i the Constitution itself, by the people themselves, who hold title to tha great document.

The Senate has no right to amend the Constitution by legislativ fiat. We not only have no authority to do so, but we are betraying trust to the people and an oath to ourselves when we attempt to d so. Any proposed changes in our Constitution should be submitted t the people in the form of constitutional amendments, and, as I hav said, this magnificent document should not be changed except by th popular mandate of the people themselves.

Giving to a Federal bureau the power to control and form the pra tices of State and local governments would, in the judgment of th junior Senator from Alabama, be, in effect, an amendment of th Constitution, because the Constitution does not envision any suc power to be placed in the Federal Government or any bureau or agenc thereof.

George Washington stated the proposition eloquently in his Far well Address when he said:

> If, in the opinion of the people, the distribution or modification of the co stitutional powers be, in any particular wrong, let it be corrected by an amend ment, in the way in which the Constitution designates. But let there be n change by usurpation; for though this, in one instance, may be the instrume of good, it is the customary weapon by which free governments are destroyed.

Mr. President, there may be those who think that the system of gov ernment that was devised in this country nearly two centuries ago obsolescent. In answer to any such thinking, I should like to point out that one of the most baffling problems that faces contempora democracies arises from the deadening effect of sprawling, impersona overcentralized governments.

he bill would centralize in a bureau or any agency the control over employment practices of every employer in the country who em- s as many as eight persons. It would give to such bureau or agency er over the employment practices of every State, county, and city ne country, over every agency of ever State, county, and agency, over every educational institution in the country, be it a college, a ersity, a private school, a church-supported school, or, for that er, a secondary or an elementary school which would be included e term "educational institution."

ow does one keep democracy fresh, vivacious, and close to the s of the people in the face of the ponderous and monolithic ines of government?

have the answer, Mr. President. We have always had it. The al system which was devised by our forefathers in the 18th cen- provides the brightest hope for the survival of real democracy he rights of free men in the 20th century. If we tamper with the tenets of the system bequeathed us by our forefathers, if we le upon this precious heritage, we will deserve the fate that will ubtedly befall us.

. President, this Nation has become history's finest illustration w people can enrich their lives, can raise their level of well-being, ulfill the goals of their pursuit of happiness when they are given y, freedom, and the encouragement for initiative and incentive a democratic system made possible by a blueprint of democ- -a written Constitution.

n find nothing in S. 2515 to merit the approbation of a free peo- say again that its far-reaching and drastic provisions will de- and negate much more individual rights and liberties than they possible protect. Far from securing the rights of our people, they ularly constitute a grave threat to the precious rights sought to d forever sacrosanct in the Bill of Rights. They are, to be sure, an nt to the authors of the American Constitution and the idea of d governmental authority they sought to safeguard.

his legislation ever becomes the law of the land, we will have l our people and our free institutions on the threshold of a tragic om which they may never recover. We will have moved one step to complete control and regimentation of all aspects of our lives entralized and all-powerful Government in Washington.

us not turn our backs on the magnificent heritage and the system vernment of and by free men, the indestructible union of inde- ible States that have come down to us at such great sacrifice.

President, I urge the adoption of this amendment and the de- S. 2515.

rting at 12:45 p.m., there will be a period of 1 hour for argument cloture motion. The time will be equally divided. During that I will conclude my remarks on the question of the amendment motion for cloture.

eld the floor.

WILLIAMS. Mr. President, will the Senator yield, before yielding or, for a question or two?

ALLEN. Yes.

WILLIAMS. Did I understand the Senator correctly to say that nator will address himself to the amendment in the time he con- uring the time prior to when the cloture vote time begins to run?

Mr. ALLEN. Yes. I would feel that any Senator would have the rig to address himself to any portion of it——

Mr. WILLIAMS. No. I want to get a little appreciation of the inte tentions of the Senator. Of course, he can say, "Wait and see."

Mr. ALLEN. Yes, I intend to discuss the amendment further, and al the bill.

As I understand the procedure on cloture, 30 minutes are allocat to those who want to impose gag rule and 30 minutes are assigned t those who oppose gag rule. Since the junior Senator from Alaban opposes gag rule, he will have an opportunity to speak on the amen ment, on the bill, on the propriety of imposing gag rule.

Mr. WILLIAMS. I respectfully suggest to the Senator that it is stron language to use the term "gag rule" to describe rule XXII, one of th rules of the U.S. Senate.

Mr. ALLEN. To choke off debate. That would be called a gag rule.

Mr. WILLIAMS. Under the rules, rules that were developed unde law and the Constitution.

Mr. ALLEN. A rule which provides for gagging debate, yes.

Mr. WILLIAMS. Well, I say it is strong language to apply to the rule of the United States Senate.

Mr. ALLEN. The Senator understands what the Senator from Al bama has in mind; does he not? He is not in doubt as to what the Se ator meant?

Mr. WILLIAMS. Under the rules of the Senate, the Senate will vote o closing debate. Of course, to review the rule, even after that there abundant time for Senators to address themselves to the issue.

Mr. ALLEN. Yes. Sometimes it is referred to as choking off debat I believe the Senator has heard that expression also.

Mr. WILLIAMS. As the Senator knows, we have been a long time o this particular measure.

Mr. ALLEN. I am hopeful it will end today.

Mr. WILLIAMS. And it is the second time on the bill, basically as it before us, a bill that was favorably voted on by the Senate 2 years ag

Mr. ALLEN. I am hopeful that the debate will end today as we tur back for the second time that cloture motion.

Mr. WILLIAMS. This has all developed out of one question the a swer to which I wanted to know, because Senators have asked me whe I expect there will be a vote on amendment 813, the amendment that the pending business, and I have no answer. When the last Senato asked me that, I said, "I do not know when that will be called up fo a vote." The Senator said, "Well, if you do not know, nobody knows My reply was, "No; I believe those who offered the amendment prob ably know when they would want a vote on their amendment."

Mr. ALLEN. After debate is ended voluntarily or after it has bee checked off. That is when the vote will come on the pending amend ment.

Mr. WILLIAMS. That answers in part at least another question. Doe the Senator have any idea when, as far as he is concerned, he will vo untarily end discussion of his amendment?

Mr. ALLEN. Yes; I think that on tomorrow, if the bill has not bee laid aside as a result of the defeat of the second cloture motion, would feel that there would be a vote on this amendment.

r. WILLIAMS. Would it be fair to ask the Senator then, if when friends, the Members of the Senate, ask me when a vote on amend- t No. 813 is expected, I can say that if it is still the business of the ate, the vote will be on tomorrow?

r. ALLEN. Speaking for the junior Senator from Alabama, that ld be my estimate of it. The distinguished senior Senator from th Carolina (Mr. Ervin) is also to be consulted, but I would feel if the pending bill and the pending amendment are still the busi- of the Senate on tomorrow, we will have a vote on the pending ndment, which by the way, the Senator realizes, is an amendment would prevent the sponsors of this legislation including the dis- uished senior Senator from New Jersey, from reducing from 25 n to eight the number of employees that an employer must have in r to be covered by the provisions of the EEOC bill. The purpose e amendment, in short, is to leave the requirement at 25 for cover- under the act, rather than to reduce it to eight, as the distinguished r Senator from New Jersey seems desirous of doing.

r. WILLIAMS. The senior Senator from New Jersey, I believe, has sition on this matter similar to that of the junior Senator from Jersey, but I am the junior Senator from New Jersey.

r. ALLEN. I beg the Senator's pardon for not calling him the r Senator.

r. WILLIAMS. Is that matter of such degree of significance that, prevails on this amendment, the Senator thinks the measure will eatly improved from his standpoint?

r. ALLEN. Yes, I think it would be a great improvement. It would nt small employers, employers of some 6 million people, from ng under the provisions of the act. It would improve it greatly, would not improve the bill to the point where the junior Senator Alabama would be willing to support it.

elieve there is great sentiment in this body for the court procedure provided in the House bill. I believe that would remove the objec- of many Senators.

eel that the sponsors of the legislation have reached out for too when they seek to extend the coverage of this bill to all State, y, and city employees, to all educational institutions, and to all oyers of as many as eight people, and then seek to lodge in the nission the powers of judge, prosecutor, and jury.

elieve this bill would have already passed the Senate if the spon- of the legislation had followed the House bill, which does pro- for court enforcement of the charges and complaints of people feel they been aggreived by the employment practices of some oyers.

m hoping that at some stage of the proceedings the distinguished r Senator from New Jersey will be agreeable to handling these rs through the courts rather than setting up this Frankenstein er that has the power to receive complaints, investigate com- s, prosecute complaints, decide those complaints, and then e them.

. WILLIAMS. In partial reply, I would like to say that the Senator New Jersey has deeply ingrained respect for the Federal Judi- and, of course, under certain of the provisions of the bill cement would be, even in the first hearing aspects, before the

Federal District Court. I would say that it is out of no disrespect f the judiciary or no feeling other than a concern for effective enforc ment, mainly because of the time factors involved and the load of n decisions that the district courts must make.

Mr. ALLEN. Does not the Senator feel that he might get quick action through the 398 district courts throughout the land than throu one commission lodged here in Washington? Would that not divi the work up approximately into 398 parts?

Mr. WILLIAMS. Well, from the Chief Justice, the head of a coequ branch of the Government, comes the observation that Congress h already heaped upon the judiciary a great new burden of work wi other laws that we have passed within the last few years which ha created a crushing burden, and we have not relieved that burden b creating the additional judgeships to take care of it.

I would say that my respect for the Federal judiciary was n dimmed at all the other day when debate following the debate on th measure was directed at district court decisions in another area life, and even some suggestion made that perhaps it was unwise th the Federal district judges have life tenure, and that perhaps it wou be better if they had terms of office.

The Constitution provides that Federal judges shall hold office du ing the period of their good behavior, that being the only limitatio It is a life appointment, and I gather that the reason for that was th the framers of our Constitution wanted the judiciary to be in a Olympian setting, above the passions of the time. I was quite distress to hear the debate directed personally at the Federal district judicia the other day. I certainly did not join in that debate, and, as I say, have the greatest respect for it. But I also have respect for the Chi Justice of the United States when he tells the lawyers gathered at t American Bar Association Convention that the burden right now too much, a crushing burden without a vast number of addition judges.

So one of the reasons is the effectiveness of full court enforcement compared to the cease-and-desist procedure, which is honored an tried and working in many other agencies.

Mr. ALLEN. Well, the EEOC is behind some 24 months now wit its docket, according to statistics that have been presented here, an I do not know of any Federal court, certainly not the average Feder court, that is that far behind.

If we open up the jurisdiction of the EEOC to cover these tens millions of additional people, plus allowing each respondent, I assum a day in court, that would slow down the procedure rather than hur it up. It would build up the backlog instead of cutting it back.

Mr. WILLIAMS. I am glad the Senator has raised the question of t present backlog. The EEOC, as a matter of observation, if it we given the enforcement procedure, the cease-and-desist authority, h suggested that its backlog would be even greater.

The whole point is that the Commission, without any enforcem authority, really is only in the position of a debater, a negotiator, persuader. It has no muscle, no force, no effectiveness. It is not back by authority to have its conclusions made effective with any enfor ment procedure.

Mr. ALLEN. I thank the distinguished Senator. I must yield t floor, because my time will expire within 1 minute.

Ir. President, I yield the floor.
The Presiding Officer (Mr. Spong). The hour of 12:45 p.m. hav- arrived, pursuant to the unanimous-consent agreement, the remain- time from now until the hour of 1:45 p.m. will be equally divided ween and controlled by the manager of the bill, the Senator from v Jersey (Mr. Williams), and the Senator from North Carolina r. Ervin).
Who yields time?
Ir. Williams. I wonder if I could inquire of the Senator from rth Carolina, if the absence of a quorum were suggested now, ether the time could be equally divided.
Ir. Ervin. That would be all right.
Ir. Williams. Mr. President, I suggest the absence of a quorum, a the time for the quorum call to be equally divided.
he second assistant legislative clerk proceeded to call the roll.
r. Ervin. Mr. President, I ask unanimous consent that the order he quorum call be rescinded.
he Presiding Officer. Without objection, it is so ordered.
r. Ervin. I yield 10 minutes to the distinguished Senator from issippi (Mr. Stennis).
r. Stennis. Mr. President, I appreciate the fact that the Senator yielded some time to me, because I am vitally concerned about this and its practical operation and application to the small industries, small shops, the little plumber shops, and the very small business le, craftsmen who have worked things out and started a little ness of their own that grew and prospered.
believe that this bill not only violates rights that belong to all ricans, but, as a practical matter, it goes far too far in investing er in the Commission, which will have absolute power to regulate, ntrol, and to destroy thousands and thousands of these so-called l businesses that just cannot carry the load. They do not have esources to employ the necessary talent to follow up on what may eir rights under the bill and the facts of the case; and, as so ably ed out here yesterday by the Senator from New Hampshire, the ical effect of it will be that these employers are going to have eld to the demands of this Commission; and when they do, then ext question is, will they be able to survive in business?
ere is no doubt in my mind about that, if this measure is ever en- d. Maybe it will start out with slow enforcement at first, but they get around. They will get down to the village level, the township and, still talking about these little businessmen, they will control igh fear, implied intimidation, and uncertainty in the minds of little people.
m not an expert in anything, but I do feel that I know that that e the situation, because I know those people. I know their moti- ns. I have practiced law in a small town where they would come with their troubles, a long time ago, before we had as many ations as now—people who were not able to pay a fee and said en they came in, and I knew they were telling the truth. We have d a long, long way from there.
aised this point yesterday: Why set the number down to eight? not set it at seven? If a principle is involved here, if it is a right hese employees have, why exempt those who employ less than

eight? Why not make it six, five, four, three? There is as much log in that as in eight. If someone has only two employees, if a princip is involved, this bill ought to cover it. I was about to say that if had only one employee, if a principle is involved, it ought to apply the applicant for that position when it becomes vacant. But I will n go that far, because he has to have one employee to keep all the records, to keep the records required by this bill. So I do not sugge that it is logical to apply it to a man with one employee, but I thi it is logical in the case of a man with two employees. The same princip is involved. Just exempt the man who is going to keep all these record

I have always lived near or in a small town, and I know about th people. They elect their town board and their county officers, the coun boards of government. They elect the other county officers. That very serious business and is so considered by the voters and by th office holders. If we mean it when we say that we are a government the people, for the people, and so forth, why not let the responsibility operating stay with those officials after they are elected? We co along, it seems to me, and contradict everything we have said abo the responsibilities of the officers and the voters by putting all th power not in a court but in a board which has the power, and therefo the influence, to intimidate the little people. That is the way it w work. I am not imagining things; I am not picturing things. Th is the practical way it will work.

So I think we march up the hill one day, talking about our syste of government and the people having the right to choose their officers and so forth, and that the officers have the responsibilities; and th we march in the opposite direction and invest these boards and the staff with this power.

I am not attacking them personally, but they do not know the peop with whom they are dealing, and the people do not know them. Th is the way arbitrary rulings and uncertain rulings and unknown ru ings come in. I could enlarge on that.

Do not think you are giving a man a remedy, either, if you say, "I you don't like the ruling, you can appeal to the court." To what cou will he go? As I read it, it is the Circuit Court of Appeals. What that? It is a very fine court, but where I live, it includes everythi from West Texas to Puerto Rico. That is the area these judges cove and that is a long way on the globe, and it is a long way through ma States. That is literally true—from West Texas to Puerto Rico is th jurisdiction, up through Georgia, including Georgia, Alabama, a Mississippi. I think they now have all that area. There are about judges, because they have so much volume.

I know a man who started as a plumber with just a wrench and no has a little shop. He bids on and gets contracts, and he goes arou through several counties. But what about the man smaller than he What kind of court of appeals, what kind of judicial right do y give him when you tell him a lawyer has to charge a thousand dolla to go into a court such as that, even though they sit in panels? T way things have gone up, a lawyer has to charge a thousand dolla to take a case such as that and prepare it and go to New Orleans Houston, Tex., or Atlanta, Ga. This is not imagination. From t little town, they have to go to Atlanta and go before a three jud panel of this court to get matters decided.

So we are not giving him a practical remedy, a judicial remedy. He ound, in practical effect, by whatever this Commission says or does; I imagine that 99 times out of 100, the Commission does about at the investigators report to it and whatever these investigators clude.

o I hope, Mr. President, that there will be a second thought here that we will not go all the way.

remarked briefly yesterday about these quotas, and I say flatly that his bill is passed, it will lead very rapidly into adjudication on a ta basis with reference to the little employers; and I speak from erience, as I have observed. Not a word in the Supreme Court de- ons talks about a quota with reference to the integration of the ols. But if you analyze these decrees, you will find that virtually y one of them is written on that basis. It is not spelled out, but is the pattern that is applicable. It is just natural that there would trend toward a quota. So let us keep our eyes open to that fact, too.

ow much time do I have remaining, Mr. President?

e PRESIDING OFFICER. The Senator has 2 minutes.

r. STENNIS. I have already mentioned the records and everything that this bill will require these so-called little people to keep. ne, it is pitiful to place these requirements on a little business like About the only record he keeps now is enough to be able to are his income tax report. I am talking about people who pay s, and it hurts them. It takes away from them money that they y need to live on, in many cases.

ith respect to the idea of a judgment against him for back pay n man he considers—as the Senator from New Hampshire said erday—worthless and trifling and indifferent and lazy, this little loyer has to take a chance on having to go through this trial, not re a court, and have a judgment rendered against him, anyway, be assessed with the back pay. That is a chance he cannot afford ke. He will not run that risk. He will knuckle under.

course, he cannot violate the law or he will go out of business. does not go out of business voluntarily, they will bankrupt him. will break him one way or another. To someone not familiar the facts, that may sound an exaggeration, but it is not.

e PRESIDING OFFICER (Mr. Spong). Who yields times?

. WILLIAMS. Mr. President, I suggest the absence of a quorum.

e PRESIDING OFFICER. On whose time?

. WILLIAMS. Equal division?

. ERVIN. I cannot agree to that.

e PRESIDING OFFICER. Will it be on the Senator's time?

. WILLIAMS. I suggest the absence of a quorum.

e PRESIDING OFFICER. The clerk will call the roll.

e second assistant legislative clerk proceeded to call the roll.

. WILLIAMS. Mr. President, I ask unanimous consent that the for the quorum call be rescinded.

e PRESIDING OFFICER (Mr. Mondale). Without objection, it is so ed.

. WILLIAMS. Mr. President, I shall not take up a great deal of the of the Senate in these closing minutes before we vote on cloture. ave been all over this ground before and quite recently at that. nen I last spoke in favor of the cloture motion, we were in the day of debate.

Now we are in the 12th day of debate and we have not proceeded very far with this bill.

When the cloture motion was voted on last Tuesday, there had already been 18 rollcalls on this bill. Since the cloture vote, there has only been one rollcall vote, and that was last Tuesday.

We have had 2 more days of time-filling debate on this bill. I do not say that the debate has not been instructive, it has; but it appears clear to me that there is a desire on the part of some Members of the Senate to keep this bill from coming to a vote and third reading.

There is no reason or basis for delay in passing this bill. As I stated 2 days ago, our goal is to increase the employment opportunities of our minorities and women by providing the necessary machinery to bring an end to job discrimination once and for all in our country.

Mr. President, the committee reported a bill that accomplishes this goal in a fair and reasonable manner. The Senate, in its wisdom, has provided a number of improvements to this bill. I do not fear the possibility of the Senate providing still more improvements to this bill.

But, Mr. President, we cannot improve the bill if we do not come to a decision on the remaining nonobstructive amendments and move on to the final decision and a vote on the bill itself.

I believe that we are still under the threat of an attempt to revise the debates of 1963 and 1964. I think we are too far along the road to continue debating whether minorities and women need protection against job discrimination. I will repeat again, Mr. President, the issue is settled. The only issue before this body is for the Congress to define the scope and kind of enforcement powers that the Government of the United States should have, which will help our disadvantaged Americans to attain equal employment.

I will again remind the Senate that the Committee on Labor and Public Welfare was unanimous in its views that an enforcement mechanism is needed and that the President of the United States agrees that an enforcement mechanism is needed.

Mr. President, I realize, and many of those who are advocating the passage of this bill realize, that legislating civil rights requires a long and hard effort. It is not easy to undo the evils of the past. However, the fact that it is a hard task should not deter us and will not deter me from this effort.

The time has come to provide the EEOC with the tools necessary to end job discrimination. The bill to provide these tools is now on the Senate floor. It may take a great deal more effort to pass this bill. I believe that it is the will of the Senate that this bill pass. I am confident that the Senate will persevere until this job is completed.

I urge the Senate to bring to a close this extended debate and vote for the cloture motion now pending before the Senate on S. 2515.

And, Mr. President, if this cloture motion does not pass, we shall continue to press for speedy consideration and early passage of this bill. It is important to all of the people of the United States. We owe it to our minorities and women and to ourselves to provide this measure of protection.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS. Mr. President, I yield to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

r. JAVITS. Mr. President, one has but to look around the Chamber see the unbroken array of empty desks except for the managers oth sides, and the presence in the Senate for the time being of some e what has come about. This is strictly a test of voting strength. o one needs to be convinced, because everyone is convinced or not inced, as the case may be, or has his own particular idea as to t is going to convince him.

ever I saw a naked and clear example of a classic case of a civil ts issue which is traditional for filibustering and how the Senate notwithstanding the Constitution, this is it.

ie Senate runs by two-thirds and no less, and no measure can pass except by two-thirds, notwithstanding the Constitution and notstanding all of the protestations about the fact that if a majority y wants something, it can get it.

. President, it is tremendously instructive to me also that not those running for President, or many of them, will be here today. , too, feel that this is not the final showdown, that it is a naked nd no more, for the votes to be counted. They will come around they feel the issue is really to be decided. That is the crunch.

hink that is a mistake. I think it is wrong. I think the only way ich these issues are ultimately decided is if there is enough appren on the part of enough Senators because of a surge of opinion in untry that causes two-thirds of the Members to vote in favor of e.

vertheless, this is a display, with no adornment, in its most prisorm of how the Senate operates and how the country operates, se although we cannot do anything without the other body and resident, we can certainly stop anything without the other body President. That is the negative power.

e Senator from New Jersey has made it very clear that there is a mental policy in the country that there should be no discriminan the ground of color, sex, or race.

h relation to such deeply held opinions as those concerning jobs—ncidentally in my opinion jobs are the most fundamental issue of he fact is that we passed a bill not too unlike this a couple of ago and we passed a landmark bill 7 years ago. The President of nited States and a great proportion of the people in the country hat this is one area in which legislation is deserved. Indeed, the oldest of the civil rights remedial statutes of modern times se the first State statute was passed in 1945 in my State of New And it has been a remarkable success ever since.

ddition, time and experience in all of these 26 years has demonl that the hobgoblins raised about the inquisition of companies ndividuals that would be imposed upon and bled white by the ion in the agencies and by the operation or application of a law is, are simply Halloween concoctions. And the cases that go to cuit court of appeals, or in my own State of New York, the appelurts, are relatively few.

President, we all know, and know very well, the frustration and n of minorities in this country. We know that the feelings of ce, in being discriminated against, have erupted in what was nount to revolution, and that the United States had a hard time g with it, and may again. By no means is it an ended question,

especially if we are going to run into, circa 1971, the same kind o attitude as to civil rights legislation that we faced for as many years which has brought on emotions that erupted in violence and riots and brought our country to the brink of anarchy.

So this is a moment in which to take counsel. We are a very experienced people. We shall overcome; I have no doubt about that whatever. But it will be difficult. In the meantime, much human weakness is exposed, and it is our duty to remedy it.

One final thought. It is very clear—and the reason I speak of this is the naked display of what the power of the filibuster means—it is very clear, again notwithstanding the many obfuscations which come in speeches and declarations that it is a filibuster, that this action is expressly designed to make a majority of the Senate accept the position which it has rejected not once, but in five votes, and that when that position is adopted, the bill may be permitted to pass. I think it is going to pass anyhow, because, as I say, the country can be marshaled behind it if those who are the major opinion makers now will indicate that they are deeply pledged to the success of the bill. The candidates for the Presidency—and they are very influential and important in such a crisis as this, in respect to a very important measure—can make an appeal for it. This is the most important kind of campaigning they can do. I have campaigned a lot myself, and I have always found that there is no substitute for doing the job. The majority leader was very eloquent on that score many days ago. I cannot hope to equal his eloquence, but I am hoping to underline and emphasize the substantive fact that faces us today, when we are about to have a second cloture vote on the bill.

One further observation: We have about gone through the whole gamut of things which could be objected to in the bill on the grounds of policy differences. In each case there has been a resolution of the issue. We started with whether or not the Office of Federal Contract Compliance should be transferred. We decided that it should not.

A number of Senators had disquiets about voluntary services to be used by the Equal Employment Opportunity Commission. We decided very sharply to limit the nature of that service. So we were willing to accept specifically what we had in mind.

We had questions about alleged deficiencies in handling by the Government of affirmative action plans. We worked out an agreement as to that.

We had questions raised about the ambit of the exemption for religious institutions and educational institutions in respect of their right to discriminate. We voted on that.

In addition, we took care of the small business problem. We compensated small business concerns which might be oppressed by lawyers' fees, et cetera, by making provision for them.

The remaining two issues are the transfer of pattern and practice suits, which is the amendment we are expecting from the Senator from Nebraska (Mr. Hruska), and the pending amendment, which seeks to strike out the new applicability of the statute to employers of eight or more employees contrasted with the present number of 25 or more.

Both of those amendments could be disposed of very easily and very definitely in an afternoon. They certainly could be disposed of within the 1-hour rule which will obtain once we have cloture. I think it is fair to say that there is no substantive reason whatever why this matter

uld not now be brought to a final conclusion, except the fact that the ority has determined that the majority shall have not had its way. t is all it comes to. I say that for this reason. I know the leadership blems are very great. But unfortunately, as happens in so many n and other negotiations around the country, the pressure is always upon the "good guys." I use that term not invidiously. We should and will not cave in, because otherwise there will be no bill. Why? is a government of the people, for the people, and by the people? s it a government by a minority which says, "Give me my way, or I not let you have anything?"

ometimes we may decide it is better not to have anything and let e who have responsibility bear the responsibility.

I think we have reached a critical point. We are on a two-track ission. It is unthinkable that there should be a question now of takhe bill down. Those in authority had better know what they are g and whom they are penalizing. We have argued many less imnt bills than this and for much longer times. There were no con- then about how busy we were or about taking the bills down.

hink it my duty to state the facts and act accordingly and to reny effort to take this bill down. It is too early in the session. We months ahead of us now. The bill is one of the most crucially imnt for the rights of American people who need this kind of ance. A majority agrees on that throughout the country.

e PRESIDING OFFICER. All time of the Senator from New York has ed.

. JAVITS. I thank the Chair.

. ERVIN. Mr. President, the bill is an insult to the people of all the s and all the people of the political subdivisions of the States. about government of the people, by the people, and for the peo- This would be a government by the EEOC and for the EEOC. It ll that seeks to take away from 200 million Americans their right ct their own officials and their own employees.

hink the people of my home town of Morganton, N.C., have h intelligence to determine for themselves without interference a Federal agency whom they want to be their officers and emes. I think the people of my county have sufficient intelligence and cter to perform that function for themselves. I think the people State have enough intelligence and character to decide for elves whom they wish to have as their officials and State yees.

e is a proposal to give a commission more power, actually, than resident of the United States has. But we are charged with atng to frustrate the will of the majority of the Senate. I think hen the Senate of the United States is asked to destroy the fedstem of government, and if the majority of the Senate wants ose that tyranny on the American people, it is time for the ty—if it is a minority—to try to point out to the majority the f their ways.

we ask on this cloture vote is that we not be gagged and denied ortunity to tell the truth about this bill.

of the most perplexing things to me about the Washington scene men are elected to the Senate and to the House of Representay the people of their States and the people of their districts and, inately for the cause of liberty, for the cause of self-government,

so many Senators and Representatives, shortly after their arrival on the banks of the Potomac, succumb to Potomac fever.

What is Potomac fever? Potomac fever is a disease which causes some kind of psychological or psychiatric condition or obsession in the minds of Senators and Representatives that the people who elected them and sent them to Washington to protect their freedoms and their right of self-rule have not got sense enough and character enough to manage their own affairs or govern themselves.

It has gone so far in this case that this is the most virulent attack of Potomac fever that I have witnessed during the 17 years I have been in the Senate. This disease has got Senators obsessed with the idea that the people in the 50 States, in the thousands upon thousands of political subdivisions in those States, have not got enough character, have not got enough intelligence, to determine for themselves whom they wish to have as officers and as employees to exercise the legislative, the executive, and the judicial powers of the States. And so they ask the passage of a bill like this that would give a commission of five men or women, elected by nobody to do anything, the power to place under bondage to themselves, the power to control who is going to hold office in this country on the State or local level, who is going to be permitted to earn a livelihood.

The Declaration of Independence states, in substance, that all just powers of government are derived from the consent of the governed; and here is a bill which is actually an insult to the intelligence and the character of the people, which says that, instead of these people being allowed to rule themselves and select their own officers and select their own employees, we will have five men sitting here in the midst of the Potomac fever who are going to control all of those things.

This is not a bill to prohibit discrimination. It is a bill to give absolute power to practice discrimination to five men. These men are given power over everybody who belongs to a race—any race—over everybody who has any religion or no religion, over everybody who has any national origin, and over every person of either sex. It gives them jurisdiction over the right of livelihood of everybody in the United States, because if there is only one applicant for a job, there is not going to be any controversy, but where there are two or more applicants for a job——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. I yield myself 1 more minute.

The Commission is given the power to say which man of which race is going to have the job, to the exclusion of all men of other races, which man of which religion is going to have the job, to the exclusion of men of all other religions, which man of which nationality is going to have the job, to the exclusion of persons of all other nationalities, and the same thing with respect to sex.

It is another way of saying these States or industries shall not have the power to determine these things, but that this Commission shall have the power to discriminate, because discrimination is nothing more or less than preferring one person to another person.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. I yield myself just 1 more minute.

I want to say that everybody who believes that Senators ought not to be gagged to prevent them from expressing the truth, and every

y who believes in the federal system of government, and every-
y who believes in freedom, and everybody who believes in self-rule
ht to vote to give us a greater opportunity to persuade two more
ators that they erred in voting against the Dominick amendment.
yield the floor and yield the remaining time to the distinguished
ator from Alabama (Mr. Allen).

he PRESIDING OFFICER. The Senator from Alabama.

r. ALLEN. I thank the distinguished Senator from North Carolina
yielding to me.

r. President, everyone favors the right of every person in this
try to have a fair and equal opportunity, without discrimination
ny sort, to obtain employment where employment opportunities
ent themselves.

his is not a case of the proponents of the bill being opposed to
imination, and the opponents of the bill being in favor of dis-
ination. Not one single amendment has been directed against any
e basic substantive rights of our people.

here are two issues involved in the bill before the Senate at this
One, shall the power of the EEOC be extended over State,
ty, and city governments, and agencies of State, county, and city
rnments? Shall it be extended over every educational institution
he country, including church-supported schools, every college,
university, every private school, every high school, every ele-
ary school? Shall it apply to every employer of as many as 8,
r than the current limit or minimum for coverage of 25?

e second issue is, how shall the rights of the people to be protected
ist discrimination be enforced?

t one single thing is being sought to be taken away from the
r of the EEOC by the opponents of this bill. The distinguished
or from New Jersey has said that the enforcement mechanism
ded. He wants the enforcement mechanism by the same agency
receives the charges, which investigates the charges, which
cutes the charges, and which decides the charges, which issues a
se-and-desist decree against the respondent, whereas the opponents
e measure would like to follow the procedure that the House of
esentatives follows, to have court enforcement of the rights of
eople to be protected against unfair labor practices.

. President, debate should not be brought to a close on this issue.
e is no pressure whatsoever on the Senate. The majority leader is
g doubleheader sessions of the Senate. We are operating two
r procedures; we are having a discussion of this bill (S. 2515)
he part of the day, and then going on with the rest of the calendar.
epeat, debate on this issue should not be brought to a close. If
oture motion is defeated, I would hope that the majority leader
l lay this measure aside, but that would not be the end of the
r, because the very next bill on the calendar is the House bill
. 1746). That could come up later, and in all likelihood be
ed into law.

; if cloture does prevail today, all bars would be down and the
ity could write the bill to suit themselves, and we would be sure
t in EEOC full power as judge, jury, and prosecutor; whereas,
debate is allowed to continue, there might be some possibility,
f we stay on the bill, that an agreement might be reached.

Mr. President, a great deal has been said about the "good guys" which the opposition Senators characterize themselves as being. I assume that makes the opponents of this measure the "bad guys."

No one favors discrimination. As I say, the only issue is how the rights shall be enforced. Shall it be before a supposedly impartial judge, or before the Commission, which has received the complaint, investigated the complaint, brought the charges, and then reaches the decision?

The distinguished Senator from New York (Mr. Javits) has called on the Members of the Senate to rise above their views and their opinions with regard to this measure, and vote to end debate. So apparently, according to the distinguished Senator from New York, any time a majority of the Senate votes one way, there is to be no field of operation for rule XXII.

Mr. President, the Senate decides every 2 years that rule XXII is to remain in full force and effect just as it is. That issue has been brought up every 2 years here for more than the last decade. So apparently the Senate wants the protection of requiring a two-thirds vote to cut off debate. But apparently the distinguished Senator from New York feels that every time a bare majority is arrived at with respect to a bill, all public debate should end, and that there should be no field of operation for rule XXII.

Now he says that the issue of whether we shall have court enforcement or commission enforcement has been decided five times. According to the recollection of the junior Senator from Alabama, one of those decisions was adverse to the view of the distinguished Senator from New York, and the proponents of the bill carried on extended debate or filibuster for a day or two to prevent the Senate from exercising its will at that time, which was in favor of court enforcement instead of commission enforcement.

So, Mr. President, I submit that debate should not end on this measure, and I am hopeful that Senators will stand firm.

Where is the great demand for this bill? The Senators who seem to favor it are not present.

The PRESIDING OFFICER (Mr. Mondale). All time has expired.

Mr. ALLEN. I yield back the remainder of my time.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 1:45 p.m. having arrived, pursuant to the unanimous consent agreement, and under rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

Harold E. Hughes
Jennings Randolph
Gaylord Nelson
Claiborne Pell
Edward M. Kennedy
Philip A. Hart

ee Metcalf
oseph M. Montoya
acob K. Javits
harles H. Percy
ordon Allott
ark O. Hatfield
arrison A. Williams, Jr.
obert T. Stafford
ichard S. Schweiker
Glenn Beall, Jr.
ed Stevens
arlow W. Cook

Call of the Roll

he Presiding Officer. Under rule XXII, the Chair directs the k to call the roll to ascertain the presence of a quorum.
ne legislative clerk called the roll and the following Senators an-ed to their names:

[No. 29 Leg.]

	Fannin	Moss
	Fong	Nelson
	Fulbright	Packwood
rson	Gambrell	Pastore
	Goldwater	Pearson
on	Griffin	Pell
ett	Gurney	Percy
en	Hansen	Proxmire
	Harris	Randolph
	Hart	Ribicoff
	Hatfield	Roth
e	Hollings	Saxbe
ey	Hruska	Schweiker
ck	Hughes	Smith
Va.	Inouye	Sparkman
W. Va.	Jackson	Spong
	Javits	Stafford
h	Jordan, N.C.	Stennis
	Jordan, Idaho	Stevens
	Kennedy	Stevenson
r	Long	Symington
	Mansfield	Talmadge
ton	Mathias	Thurmond
	McClellan	Tower
	McGee	Tunney
ick	McIntyre	Weicker
on	Metcalf	Williams
nd	Miller	Young
er	Mondale	
	Montoya	

. Byrd of West Virginia. I announce that the Senator from In- (Mr. Bayh), the Senator from Alaska (Mr. Gravel), the Sena-om Indiana (Mr. Hartke), the Senator from Minnesota (Mr. phrey), the Senator from Washington (Mr. Magnuson), the or from South Dakota (Mr. McGovern), and the Senator from (Mr. Muskie) are necessarily absent.
rther announce that the Senator from Nevada (Mr. Cannon) is t on official business.
Griffin. I announce that the Senator from Tennessee (Mr.), the Senator from Pennsylvania (Mr. Scott), and the Senator Ohio (Mr. Taft) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The PRESIDING OFFICER (Mr. Mondale). A quorum is present.

VOTE

The PRESIDING OFFICER (Mr. Mondale). Pursuant to rule XXII, a rollcall has been had, and a quorum is present.

The question before the Senate is, Is it the sense of the Senate that debate on S. 2515, a bill to further promote equal employment opportunities for American workers, should be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Alaska (Mr. Gravel), the Senator from Indiana (Mr. Hartke), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Magnuson), the Senator from South Dakota (Mr. McGovern) and the Senator from Maine (Mr. Muskie) are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon) is absent on official business.

I further announce that, if present and voting, the Senator from South Dakota (Mr. McGovern), the Senator from Washington (Mr. Magnuson), the Senator from Minnesota (Mr. Humphrey), and the Senator from Indiana (Mr. Hartke) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Pennsylvania (Mr. Scott), and the Senator from Ohio (Mr. Taft) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting the Senator from Pennsylvania (Mr. Scott) and the Senator from Ohio (Mr. Taft) would each vote "yea."

The yeas and nays resulted—yeas, 53, nays, 35, as follows:

[No. 30 Leg.]

YEAS—53

Aiken	Hart	Pastore
Allott	Hatfield	Pearson
Anderson	Hughes	Pell
Beall	Inouye	Percy
Bellmon	Jackson	Proxmire
Bentsen	Javits	Randolph
Boggs	Jordan, Idaho	Ribicoff
Brooke	Kennedy	Saxbe
Burdick	Mansfield	Schweiker
Case	Mathias	Smith
Church	McGee	Stafford
Cook	McIntyre	Stevens
Cooper	Metcalf	Stevenson
Cranston	Mondale	Symington
Eagleton	Montoya	Tunney
Fong	Moss	Weicker
Griffin	Nelson	Williams
Harris	Packwood	

NAYS—35

	Eastland	Long
ett	Ellender	McClellan
	Ervin	Miller
r	Fannin	Roth
ley	Fulbright	Sparkman
Va.	Gambrell	Spong
W. Va.	Goldwater	Stennis
s	Gurney	Talmadge
n	Hansen	Thurmond
s	Hollings	Tower
	Hruska	Young
nick	Jordan, N.C.	

NOT VOTING—12

	Hartke	Mundt
	Humphrey	Muskie
n	Magnuson	Scott
	McGovern	Taft

e PRESIDING OFFICER (Mr. Cotton). On this vote there are 53 and 35 nays. Two-thirds of the Senators present and voting not g voted in the affirmative, the cloture motion is rejected.

. BYRD of West Virginia. Mr. President, I have been asked by istinguished Senator from Indiana (Mr. Hartke) to insert the ving statement in the Record. I ask unanimous consent that his nent be printed in the Record.

ere being no objection, the statement was ordered to be printed Record, as follows:

HARTKE. Mr. President, I deeply regret that I was unable to be present to vote for the petition to limit debate on S. 2515, the Equal Employment unities Enforcement Act. Had I been present I would have voted to invoke . I feel that a major flaw in the American democractic system has been lure to secure equal employment opportunity for all American citizens. It is nion that S. 2515 of which I am proud to be a co-sponsor will provide the ry enforcement powers to permit the Equal Employment Opportunity ssion to act affirmatively to eliminate discrimination in employment.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, insert the following between the comma after the word "State" on line 19 and the word "or" on line 20: "or the employment of physicians or surgeons by public or private hospitals".

Amdt. No. 858

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Ordered to lie on the table and to be printed

AMENDMENT

ntended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, insert the following between the comma after the word "State" on line 19 and the word "or" on line 20: "or the employment of teachers or other members of the faculties of elementary and secondary schools operated by any religious corporation, association, or society".

Amdt. No. 859

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, insert the following between the comma after the word "State" on line 19 and the word "or" on line 20: "or the employment of teachers or other members of the faculties of public elementary and secondary schools".

Amdt. No. 860

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, lines 20 and 21, strike out the words "educational institution".

Amdt. No. 862

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. HRUSKA to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

Delete the word "two" on line 23, page 50, and insert the word "three" in lieu thereof.

Delete everything between the word "functions" on line 5, page 51, and the word "The" on line 8, page 51, and insert the following in lieu thereof: "if the Attorney General and at least three of the members of the Commission certify to the Congress that the Commission has the capacity and the intention to carry out the functions set forth in this section, and that a transfer under this subsection would contribute to carrying out the objectives of title VII of this Act.".

Amdt. No. 863

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Ordered to lie on the table and to be printed

AMENDMENT

intended to be proposed by Mr. HRUSKA to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

Delete everything between the word "functions" on line 5, page 51, and the word "The" on line 8, page 51, and insert the following in lieu thereof: "if the Equal Employment Opportunity Coordinating Council certifies to the Congress that the Commission has the capacity and the intention to carry out the functions set forth in this section, and that a transfer under this subsection would contribute to carrying out the objectives of title VII of this Act."

Amdt. No. 864

[From the Congressional Record—Senate, Feb. 4, 1972]

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

he PRESIDING OFFICER. The Chair now lays before the Senate the inished business which the clerk will state.
he assistant legislative clerk read as follows:

2515, to further promote equal employment opportunities for American kers.

he Senate resumed the consideration of the bill.
r. ERVIN. Mr. President, I suggest the absence of a quorum.
r. JAVITS. Mr. President, will the Senator from North Carolina dly withhold that request?
r. ERVIN. I withhold the request.
r. JAVITS. Just so I can make a short statement.
r. ERVIN. Of course.
r. JAVITS. Mr. President, the manager of the bill, the Senator from Jersey (Mr. Williams), and myself as the ranking member of the committee and the subcommittee from this side, are engaged ie moment in hearing witnesses in opposition to the bill dealing the west coast dock strike.
aving consulted with the leadership, I believe it is fair to say it duty which we have which is entitled to at least a few hours that ill take this afternoon. I understand that Members who wish to k on the EEOC bill, of course, will be free to do so but I would hope that the leadership would accommodate the Senator from Jersey (Mr. Williams) and myself so that there are no votes or r actions taken which would be materially related to the future of bill.
r. MANSFIELD. Mr. President, let me say that I am fully in accord what the distinguished Senator from New York has just said. lize that they have Harry Bridges and representatives of man- ient before the Committee on Labor and Public Welfare this after- . Those hearings have been interrupted twice already. There will) further votes today and I want to assure the Senator that even gh he and the chairman will be absent, their rights will be fully cted, but I do not anticipate any difficulties whatsoever. I might hat we expect to adjourn shortly anyway.
. ALLEN. Mr. President, may I state that there is no necessity at r the distinguished Senator from New York (Mr. Javits) asking the majority leader protect his rights. He knows full well that dvantage will be taken of him.
. JAVITS. Mr. President, I was sure of that but I thought we had ake sure about the pending business and I wanted the Record to ade clear on it.

[From the Congressional Record—Senate, Feb. 7, 1972]

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971, UNANIMOUS-CONSENT REQUEST

Ir. MANSFIELD. Mr. President, I ask unanimous consent that the on the Ervin amendment, which is pending, occur at 4 p.m. today that the time, after the disposition of the three nominations which be taken up at the conclusion of morning business, be equally di- d between the manager of the bill and the sponsor of the amend- t, the Senator from North Carolina (Mr. Ervin).

he PRESIDENT pro tempore. Is there objection to the request of the tor from Montana? The Chair hears none, and it is so ordered.

r. MANSFIELD. For the in ormation of the Senate, that will be a all vote.

r. MANSFIELD subsequently said: Mr. President, earlier today, I d unanimous consent that the vote on the Ervin amendment occur o'clock this afternoon. That consent was granted. Since then, I that some Senators vitally interested in this bill have raised objec- So I ask unanimous consent that the consent agreement be viti-

ie PRESIDING OFFICER. Is there objection? The Chair hears none, t is so ordered.

* * * * * * *

AMENDMENT NO. 871

rdered to be printed and to lie on the table.)

. DOMINICK (for himself and Mr. Hollings) submitted an amend- intended to be proposed by them jointly to the bill (S. 2515) irther promote equal employment opportunities for American ers.

* * * * * * *

. MANSFIELD. Mr. President, I ask unanimous consent that the e proceed to the consideration of the unfinished business.

e PRESIDING OFFICER. The bill will be stated by title for the in- ation of the Senate.

e assistant legislative clerk read as follows:

ill (S. 2515) to further promote equal employment opportunities for can workers.

e PRESIDING OFFICER. Is there objection to the present considera- f the bill?

ere being no objection, the Senate proceeded to consider the bill.

. MANSFIELD. Mr. President, I ask unanimous consent that the ng business be laid aside temporarily.

e PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

The Senate resumed with the consideration of the bill (S. 2515) to further promote equal employment opportunities for American workers.

Mr. JAVITS. Mr. President, the manager of the bill, the Senator from New Jersey (Mr. Williams) and I, as the ranking minority member of the committee, are currently engaged at this moment in a special meeting of the Committee on Labor and Public Welfare to deal at the issue of the dock strikes. This is an immediate emergency. We have had to give it preference to our duties on the floor with respect to the bill on Equal Employment Opportunity Commission. The leadership is thoroughly acquainted with the situation and desires to give this measure the priority it deserves.

Mr. President, I make this explanation to the Senate with respect to our failure to actually be here currently debating the pending measure. We will, once we finish the matter we are working on, be free again to return to the floor. However, I felt that the Senate should have an explanation as to the situation this afternoon.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Boggs). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STENNIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Boggs). Without objection, it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) to further promote equal employment opportunities for American workers.

AMENDMENT NO. 871

Mr. DOMINICK. Mr. President, on behalf of Mr. Hollings and myself I send to the desk, for printing and future consideration, an amendment to S. 2515, the Equal Employment Opportunities Enforcement Act of 1971.

This amendment offers probably the best opportunity to resolve a deadlock existing since January 25 when my court enforcement amendment was first voted on. Since that time the deadlock has solidified through three reconsideration votes and two cloture votes. During this period I have exhausted all reasonable sources and suggestions in seeking a fair compromise. In the course of such a search, I have carefully considered numerous compromises informally and formally. I introduced amendment No. 856 in an effort to resolve the deadlock. Unfortunately, all efforts have gone for naught and the Nation's employees and potential employees remain largely devoid of enforceable employment rights.

This amendment contains essentially the same court enforcement procedures as my earlier amendment. I remain firm in my resolve not to desert 45 of my colleagues who faithfully supported the court enforcement procedure and not to comprise my principles concerning the superiority of court enforcement.

espite voluminous rhetoric to the contrary, my convictions that District Court enforcement provides employees and potential oyees with the fairest, most effective redress of their grievances ain unshaken.

ne most rational argument against court enforcement is the po- al delay threatened by backlogged Federal courts. I acknowledge problem and remedy it by incorporating in this amendment rity language from the same Civil Rights Act of 1964 that created Commission. Pursuant to language contained in Title I—voting s, Title II—public accommodations, and section 707—"Pattern ractice," and included in this amendment, unfair employment ice suits will be accorded priorities in hearing and determination re Federal court judges. Upon certification that the case is of eral public interest," the case would be assigned for hearing and quent determination "at the earliest practicable date" before a -judge panel with appeal to the Supreme Court. In the event etitioner does not certify the case as being of general public inter- would be assigned to a district court judge for an expedited ng.

is newly incorporated language cures any alleged defects in the enforcement procedures. The final result would be machinery ich the respondent's due process rights will be protected by an ienced, impartial judge relying on stare decisis while the alleged eved is guaranteed an expedited hearing before a Federal forum has in the past exhibited great compassion for minority rights. e amendment contains several cosmetic differences from the al amendment as well as one substantial change which reduces me period within which the Commission may file a civil action st the respondent from 180 to 150 days from the time the Com- n first issues its informal charge.

importance of this amendment should not be underestimated. represents my last best offer it signals, insofar as I am concerned, al effort to resolve the court enforcement cease-and-desist issue presenting a strong step toward salvaging the entire bill. Pre- pponents of court enforcement would be well advised to consider asonableness of this amendment versus the very real prospect equal employment opportunity enforcement law at all—a most unate and unnecessary consequence.

sistent with my previous efforts on behalf of employment dis- ation enforcement, I shall continue to keep an open mind con- g suggested compromises embodying substantial court enforce- nachinery but I have exhausted my own resources, so the future bill now lies in the hands of the those who adamantly insist se-and-desist powers.

PRESIDING OFFICER. The amendment will be received and d, and will lie on the table.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DOMINICK (for himself and Mr. HOLLINGS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 38, beginning with line 7, strike all through line 7, page 50, and insert in lieu thereof the following:

"(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall so notify the General Counsel who may bring a civil action against any respondent not a government, governmental agency, or political

Amdt. No. 871

subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such repondent in the appropriate United States district court. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and fifty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the General Counsel has not filed a civil action under this section or the Attorney General in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon appli-

cation by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance.

"(2) In any such proceeding the General Counsel or the Attorney General in a case involving a government, governmental agency, or political subdivision may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the General Counsel or the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request

it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"In the event the General Counsel or the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case in pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest prac-

ticable date and to cause the case to be in every way expedited.".

On page 50, beginning with line 8, strike all through line 19, and insert in lieu thereof the following:

"(b) (1) Subsection (f) of section 706 of such Act and all references thereto are redesignated as subsection (h).

"(2) Subsection (h) of section 706 of such Act, as redesignated, is amended by adding at the end the following sentence: 'Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper.'

"(c) Subsection (g) of such section 706 is redesignated as subsection (i), and a new subsection (g) is inserted as follows:

"'(g) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.'

"(d) Subsection (i) of section 706 of such Act, as

redesignated by paragraph (2) of section 4(d) of this Act, is amended to read as follows:

"'(i) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Backpay liability shall not exceed that which accrues from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable.'

"(e) Subsections (h), (i), (j), and (k) of section 706 of such Act, and all references thereto, are redesignated as subsections (j), (k), (l), and (m), respectively."

On page 60, beginning with line 7, strike all through line 9, page 61, and insert in lieu thereof the following:

"(h) Section 705(i) as redesignated by section 8(c) of this Act is amended to read as follows:

"'(i) The General Counsel appointed under this section shall appear for and represent the Commission in any case in court, except that the Attorney General shall conduct all litigations to which the Commission is a party in the Supreme Court.'."

On page 65, line 21, strike out "(q)".

On page 65, line 23, strike out "section 706 (q) through (w)" and insert in lieu thereof: "section 706 (f) through (m)".

[From the Congressional Record—Senate, Feb. 8, 1972]

QUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

AMENDMENT NO. 878

Ordered to be printed and to lie on the table.)

Ir. WILLIAMS (for himself and Mr. Javits) submitted an amend- nt intended to be proposed by them jointly to the bill (S. 2515) to ther promote equal employment opportunities for American kers.

* * * * * * *

he ACTING PRESIDENT pro tempore. Under the previous order, the ir lays before the Senate the unfinished business, which the clerk state.

he assistant legislative clerk read as follows:

bill (S. 2515) to further promote equal employment opportunities for Ameri- workers.

he Senate resumed the consideration of the bill.

Ir. MANSFIELD. Mr. President, I suggest the absence of a quorum.

he ACTING PRESIDENT pro tempore. The absence of a quorum has suggested. The clerk will call the roll.

he assistant legislative clerk proceeded to call the roll.

r. ALLEN. Mr. President, I ask unanimous consent that the order he quorum call be rescinded.

he PRESIDING OFFICER (Mr. Gambrell). Without objection, it is so red.

r. ALLEN. Mr. President, yesterday on the floor of the Senate I essed the hope that Congress would not recess before action had taken to bring to an end the crippling and devasting west coast strike, and I was much encouraged to learn from reading the spaper this morning that last evening at 6 o'clock the Senate Com- e on Labor and Public Welfare had voted to report out to the ite floor legislation which would accomplish that end.

r. President, I would much prefer that the Senate at this time be idering that most important legislation, rather than to be con- ing S. 2515, which would extend the powers of the Equal Employ- Opportunities Commission to grant to that Commission powers it has not had during the 7 years of its existence, powers that are eeded at this time, jurisdiction that it does not need, and juris- on that it has not had for the last 7 years of its existence.

. Mr. President, it would seem to the junior Senator from Ala- that we are in the attitude of fiddling while the economic struc- of this country is burning down.

is hoped that soon today this measure, S. 2515, will be set aside, t permanently—which would be preferable—then certainly tem- rily, in order that the Senate may proceed to the consideration, I

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assume, of Senate Joint Resolution 187, which was introduced by th distinguished Senator from New York (Mr. Javits). Even though th committee voted to report the resolution, or a resolution, it is th understanding of the junior Senator from Alabama that the resolu tion has not yet been presented to the clerk, to become the property o the entire Senate.

So, whether a new resolution drafted by the committee itself o Senate Joint Resolution 187 is to be before the Senate, the junior Sena tor from Alabama does not know; but that will become known late in the morning.

To compare the need for S. 2515 with the need for the passage o legislation to bring to an end the dock strike is certainly to make a unequal comparison, because there is no comparison between the nee for Senate Joint Resolution 187 and the need for S. 2515. It is the hop of the junior Senator from Alabama that the measure before th Senate will soon be set aside in order that we can proceed to legislatio which is in the national interest, to bring to an end the work stoppag on the west coast, which is having an adverse effect on all the people o this country. This is a work stoppage involving the entire nationa interest. We are losing our markets abroad. If customers abroad are no able to depend upon supplies and goods from the United States, the of necessity, they will have to turn to the products of other countries

For the first time in 80-odd years, last year was the only year i which the United States has bought more goods from abroad than w have sold abroad. So this unfortunate trade deficit is being compl cated by the continuation of the dock strike on the west coast.

Mr. President, I have previously discussed in great detail many o the inherent dangers and evils of S. 2515, the bill before the Senate.

The pending business is an amendment offered by the distinguishe senior Senator from North Carolina (Mr. Ervin) and myself, whic would seek to nullify the effort of the sponsors, of the bill to redu from 25 to 8 the minimum number of employees that an employer mu have in order to come under the provisions of the EEOC bill.

The sponsors of the bill and the committee seek to reduce that num ber from 25 to 8, so that, under the committee bill, every employer i this country who employs as many as 8 people would be covered by th provisions of EEOC. The pending amendment would nullify th effort and, if adopted, would leave the present law intact—that a employer must have as many as 25 employees to be covered by th EEOC.

Mr. President, let me hasten to say that I strongly favor the rig of every person in this country to have a fair and equal opportunity t obtain employment, without discrimination of any sort against him. employment is available. It has been made to appear that this bi would confer certain basic and fundamental and substantive rights o employees throughout the country. The bill does not change the bas right of anyone that he not be discriminated against. The bill does n change that right. Under the law, everyone has the right not to be di criminated against as he seeks employment.

This bill does not create a single job in the private sector. It does n make any jobs available that are not already available. It does n require that business or industry or small business or small employe create additional jobs for people; and, of necessity, if any jobs a

ed that are now held by someone else, someone is going to lose his , because not a single job is created in the private sector by this bill. e bill will create an army of additional bureaucrats, additional Fed- l employees.

Mr. President, there is no denying that the line is so well drawn as it n this bill. We hear from people throughout the country—our con- uents—the citizens of our respective States, that the Government is ting too big, that the Government is spending too much money. Yes, Government is spending too much money. The accumulated deficits this administration at the end of the fiscal year for which we are considering appropriations will run in the neighborhood of $83 ion. So, yes, the Government is getting too big and it is spending much money. It is taking too great control over the everyday lives ll our people.

Mr. President, while I was home for the Christmas recess, I received lephone call from a small businessman, whom I did not know but was and is a resident of my State. He called me not to protest inst any specific piece of legislation—not to protest against S. 2515. did not know anything about the pendency of this bill. That is one he reasons this extended discussion is going on, Mr. President, so the people of this country will find out and be informed as to the nitous provisions of the bill and so that they can protest against nactment.

his man who is a small businessman was pointing out the heavy tax lens under which he was operating, the government red tape he was ired to submit to, and to the impositions of the Federal Govern- t in putting him on the carpet and checking his records. He said ie, "Senator Allen, the small people of this country are getting to oint where they are afraid of their Government."

r. President, that is a pretty sad state of affairs for our people to that the Government of this great country is not on their side, that have a fear against the actions of their Government, or that they the actions of their Government.

r. President, I did not have the heart to tell him what he is going et hit with when S. 2515 is enacted into law—if ever it is.

it is left up to the junior Senator from Alabama, it will not be ted into law. I am hopeful that before very long it will be sug- d that the junior Senator from Alabama conclude his remarks, in r that this piece of legislation can be laid aside, in order that we ake up legislation designed to end the disastrous west coast dock e. I do not know whether this bill that has been supposedly re- d out of the committee—I guess a more accurate statement would at it has been voted out of the committee but has not yet been ed in to the clerk.

. JAVITS. Will the Senator from Alabama yield to me?

. ALLEN. I am delighted to yield to the Senator from New York.

. JAVITS. Mr. President, I should like to make a comment, that I l the Senator say, with great interest, that he felt we should deal the dock strike, that it represents an infinitely greater priority for ountry, and that we should not be debating the pending EEOC

ise only for the purpose of expressing my own disagreement with I believe that under the two-track system which the leadership

has inaugurated, we can deal with the immediate emergency—to wi the dock strike, and we can also deal with the EEOC bill.

My own deeply held view is that though it is less sensational i terms of its not being a burning fire day, right this morning, it coul be a burning fire tomorrow, and has been before, so deep is the feelin of millions of Americans about the denial of opportunity in the mos basic of all opportunities to any American—to wit, a job.

That is a commitment to housing. That is a commitment to educatio and to dignity, which we now learn is more important than anythin else to the poor and to the minorities who feel themselves oppresse

Thus, I know that the Senator and I have had our disagreements It does not change in any way our regard for each other. But I think that the record should clearly show that we who are contending fo the EEOC bill give extremely high priority to that bill for deep social, and economic reasons in the country. We see nothing whatever mutually exclusive between the consideration of an emergenc measure or a major strike which is a serious disadvantage to th national interest and a particular part of the country, and are pursuing a basic reform so critical to the future health, in a social an economic sense, of the United States.

I thank my colleague from Alabama for yielding to me.

Mr. ALLEN. I thank the distinguished Senator from New York (Mr Javits) for his comments with respect to the pending measure an the other measure.

Might I inquire of the distinguished Senator from New York whe it may be anticipated that the report of the committee with respec to the dock legislation will be reported to the Senate?

Mr. JAVITS. I believe within the next couple of hours. We have go it in galley and we are just looking over the galley proof.

Mr. ALLEN. I see.

Mr. JAVITS. We are looking it over now and I expect that the dis tinguished Senator from Iowa (Mr. Hughes) will be reporting th bill unanimously on the part of the committee, by the way, within th next hour or so.

Mr. ALLEN. Mr. President, I would say to the distinguished Senato that when the bill is ready to be reported, the junior Senator fro Alabama will be glad to yield the floor for that purpose.

Mr. JAVITS. I thank the Senator.

Mr. ALLEN. Mr. President, in my discussions of the bill, I hav strongly denounced and criticized the fact that the legislation woul violate the Constitution by empowering the Federal Government t interfere with the basic and fundamental functions of State and loca governments by dictating their employment practices.

Mr. President, I might say parenthetically that this bill will, i enacted, extend coverage by the EEOC to some 10 million employee of State, county, and city governments and agencies of State, county and city governments.

I say again that the States power over their employment functio is not only basic, but essential, to the very existence of State sove eignty. If we deprive the States of their basic functions, it is pointle for anyone to maintain that we have a dual form of government.

Mr. President, we comment from time to time to the effect that th Federal Government is taking over the roles of the States, that th

ht to think is being invaded by the Federal Government. And, tainly here is a classic illustration of that charge.

The EEOC is going to take over the employment practices of the al governments. The EEOC is going to determine who is going to employed, not the elected officers of States, counties, and cities. If t is not a classic example of expanding the Federal power and anding the Federal bureaucracy, I do not know what it is.

Ir. President, we have an opportunity to defeat this iniquitous slation. On two occasions efforts have been made to bring this ate to a close by resorting to a cloture motion and by resorting to it has been referred to by many as gag rule.

Ir. President, we hear that the U.S. Senate is the only deliberative y in the world that has unlimited debate by its Members. The ate does have the right to unlimited debate on a debatable ques- . And amendments are certainly a debatable question, subject only ne right to try to invoke cloture. Cloture, according to the rules ne Senate, requires a two-thirds favorable vote of a quorum of the ators present.

, on two occasions since this bill was pushed out before us in the ite, an effort has been made to invoke cloture. Both of those efforts voted down in the Senate. And, Mr. President, I would antici- that if another cloture motion is presented, it too, will be voted n. And I would hope that if the bill has not been set aside perma- ly by the majority leader before that time, that after the vote on ird cloture motion, if it be unsuccessful, the majority leader will set this bill aside as not having come up to the requirement of Senate rules as being such a bill as two-thirds of the Members of Senate feel that it is so important that debate on the issue should rought to a close. Thus far, I am pleased to say that two-thirds of Senate has not seen fit to end the debate on this question and vote ie bill.

r. President, as I sense the feeling in the Senate, the Senate prob- is willing to see the powers of the EEOC extended over State, , and city employees, as the committee bill does and as the bill, troduced, does.

e Senate is probably willing to extend, as the committee bill does, rovisions of the EEOC over every educational institution in the ed States, including every university, every college, every high ol, every elementary school, every private school, and every h-supported school.

e Senate is probably willing to swallow all of these provisions. what the Senate has been unwilling to do, in the judgment of unior Senator from Alabama, is to accept the provisions which nforcement power to the EEOC, along with the powers it already of receiving complaints, investigating complaints, filing charges, n general, reaching a decision.

under the bill the function of the EEOC would be greatly ex- d with respect to its jurisdiction over the millions of people that uld cover, not only with respect to the extension of its jurisdic- ut also with respect to the extension of its powers: the power a judge, a jury, and a prosecutor.

. GURNEY. Mr. President, will the Senator yield.

. ALLEN. Mr. President, I would be delighted to yield to the dis- ished Senator from Florida.

Mr. GURNEY. Mr. President, I was listening with interest to t remarks of the Senator from Alabama and particularly those he ju made concerning the power and authority which this bill would gi insofar as the employment of people by the colleges, universities, an educational institutions is concerned.

Mr. ALLEN. That is one of the provisions.

Mr. GURNEY. Mr. President, suppose we had a number of educ tional institutions in the country that were concerned about the polit cal philosophy and whether their faculties should be liberal or con servative—and there are some on both sides of that question.

We also have colleges and universities founded by religious sec that still are very concerned about the fact that their curriculum an thrust should be oriented in a religious direction.

We have others that perhaps are concerned about political ideolog or economic ideology; that is, they would prefer not to employ a a faculty member to teach economics someone who believe in th Socialist concept of government.

Now, my question is: As far as all of these colleges and universiti that might have rather strong feelings on those various matters, wou this bill mean that if they refused to hire a professor, for exampl in a college that had a strong religious philosophy, an atheist, perhap who did not believe in any kind of religion, who applied to teac in the college, that this Commission could come in and say, "You ha to hire or employ that person, otherwise you would be discriminatin against him."

Is that what this bill means?

Mr. ALLEN. Yes, it certainly does. As to educational institutio that are not church supported or that are not religious education institutions, there is no exemption whatsoever; but as to religio institutions, if they were church-supported schools, then the exem tion would apply only to the teaching of religion or religious activitie but they could be forced to employ an atheist to teach economics i a church-supported school along with religious subjects. So the answe is, "Yes," the employer of such a person could be forced under th provisions of this bill.

QUORUM CALL

Mr. MANSFIELD. Mr. President, will the Senator from Alaban yield without losing his right to the floor?

Mr. ALLEN. I would be delighted to yield, if it is satisfactory wi the distinguished Senator from Florida who was engaged in a co loquy with me.

Mr. GURNEY. Yes, indeed.

Mr. MANSFIELD. I thank the Senator.

First, I suggest the absence of a quorum, which will be brief.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that th order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

he Senate continued with the consideration of the bill (S. 2515), ill to further promote equal employment opportunities for Ameri- workers.

Ir. ALLEN. Now if the distinguished Senator from Florida desires ngage in further colloquy with respect to this bill, the junior ator from Alabama will be delighted to yield to him.

Ir. GURNEY. I thank the junior Senator from Alabama.

Ir. President, I must say I agree with the sentiments the Senator n Alabama just expressed about the importance of the dock strike slation as opposed to the bill that is now on the floor and which are discussing.

might go further and say that I would think any piece of legisla- coming before the Senate at this time ought to have priority this particular bill, which is such poor legislation. But if we continue now to probe some of the provisions within the bill, ould like to pinpoint once more the religious aspects of the bill. am sure that the Senator from Alabama has had the same ex- nce I have had over the years, and that is chats with parents have expressed concern about the selection of a higher educa- l institution for their son or daughter. I know some of them ery concerned about putting their sons and daughters in a school still does consider that religion is a powerful force in this country. r example, there is a little preparatory school near my home in ida whose main emphasis is on religion, and when boys and girls uate from that school, they try to go to colleges which emphasize ion, too, usually smaller colleges.

received a fund-raising letter in the mail last week from such stitution, seeking to raise funds for its expenses and its endow- . It underscores that fact that one of the things it still places aasis on in this college is the teaching of religion.

t us suppose that this college made known to the academic com- ty that it wanted to hire a new instructor in economics, and it we will say, two applications for that opening, one from a very nguished economics professor, who had a brilliant academic r, second to none in the country, and one from another, who aps had a good record, but not that distinguished, except that econd person believed also very strongly in religion and that basic precept in this individual's life.

: us say the college wants to decide which one it wants to hire, t actually hires the second person, on the basis that the second n does have a strong belief in religion and the school emphasizes particular quality in all faculty matters. So it hires the second cant and turns down the first.

w suppose the first applicant goes to the Equal Employment rtunity Commission. If this bill goes into effect, what happens, question?

. ALLEN. Well, it would be up to the EEOC to investigate the laint after having received it. Then, if it felt that this person een discriminated against because of his religion, or lack of on, the EEOC could have its General Counsel prepare and file es, not with an independent agency, not with the court, but arges back with the Commission; and the Commission, having ed the charges, investigated the charges, prejudged them to the that it turned them over to counsel for the filing of the charges,

would then reach the decision as to whether this person had been discriminated against. Then, when it reached that decision, it could with respect to this person, order the institution to cease and desist from discriminating against that man and require that the institution employ the person who had been rejected by the university or the school.

Then the university, if it saw fit to appeal that matter, would have to appeal to the circuit court of appeals, and the matter would not be tried de novo, but would be tried on the basis of the record which had been certified to the court by the Commission. So the EEOC, then would receive the complaint, prosecute the complaint, judge the complaint, and enforce the authority.

Mr. GURNEY. In other words, the judge, jury, and prosecutor, all tied into one.

Mr. ALLEN. Exactly. That is what the bill would provide, and that is one of the iniquitous provisions which the junior Senator from Alabama objects to so strenuously.

Mr. GURNEY. What would happen in the meantime, while the school or college is without a faculty member? What would the bill provide as to that? Would they have to stop hiring this man they had proceeded to hire, and wait until the Commission had decided?

Mr. ALLEN. The bill makes no provision as to that, but if the employee who is alleged to have been discriminated against does win out before the Commission, the Commission could order that he receive back pay from the time he was not employed.

This provision would relate, for example, to a church school that would like to have its professors religiously inclined. It could require it to accept someone with another religion, or someone who had no religion whatsoever. That is just exactly the opposite from what the Senator from Florida suggests many parents want for their children and what the children want for themselves.

Mr. GURNEY. And it could, I suppose, impose very serious financial burdens on a small school with a limited budget.

Mr. ALLEN. Oh, yes.

Mr. GURNEY. Most colleges these days operate at a deficit, anyway.

Mr. ALLEN. Yes.

Mr. GURNEY. And I suppose colleges that have to watch their budgets very closely would hesitate before they would take on a professor if they anticipated the possibility that a big charge could be run up against them that they would have to pay eventually.

Mr. ALLEN. Yes: of course, the college would have to pay for its defense.

Mr. GURNEY. But let us take an extreme case. I posed the question of someone who did not believe very strongly in religion, or was an atheist, as opposed to a faculty member who would believe strongly in religion.

Let us suppose the professor who was turned down had a well known track record on this subject of atheism in all the other colleges and universities of which he had been a member of the faculty and in which he had taught, that he had not only made very plain that he was an atheist, but had spent a lot of time practicing and preaching, if we can use that word in this colloquy, that anyone who believed in religion and any faculty member who taught it ought to have his head examined, and that any college or university should fire any faculty member who believed in religion. Suppose you had an extreme example like that

the college or university turned that man down; what would pen then?

r. ALLEN. Well, the Commission would be empowered, in its wis—or lack of wisdom—to say that that person had been discrimid against, and that the school would have to employ him because rimination on account of religion would not be permitted. So it ld be up to the Commission, and it is a judge unto itself. It is not verable to anyone except to the court of appeals, based on the record it sends up to the court of appeals for consideration.

r. GURNEY. Then, if I gather the meaning of this colloquy corly, this motto that we have on our money in the United States, "In We Trust," would sort of go out the window like the baby with bath water, would it not?

r. ALLEN. Well, there are reasons for feeling that way about it, I d say to the distinguished Senator.

r. GURNEY. Let me pose another question. We claim to be a nation rivate free enterprise in this country of ours, as opposed to the listic kind of government which exists in a great many nations e world—chiefly, of course, in our principal adversary, Russia—ll of us know that on colleges and university faculties these days is an ever-increasing tendency—at least I think I am correct in ng that—of professors and instructors, especially in the liberal arts ges, to believe in socialism as opposed to free and private enter-. At least that is what students tell me with whom I talk, and other le as well, that there is a growing number of people with that kind nomic belief.

ppose a college or university believes very strongly in private prise. When they selected their professors to teach in the economic they would be particularly careful to try to get a professor who elieves in free private enterprise. Now, we have a vacancy on the mics faculty at this X college, and we have a couple of applica-. One man, Professor A, believes very strongly in free private prise, but it happens that the other, Professor B, does not believe at all; as a matter of fact, he thinks it is a total failure, and that nly way to run any kind of a government, whether in Russia, the ed States, or any other country, would be a socialist kind of eoc system, where the government owns all the facilities of produc-nd distribution, and everyone works for the government as they Russia.

e college makes a decision; they decide they would rather have ssor A, the free private enterprise professor, as opposed to Pro-B, the socialist believer. So they hire Professor A, and then Pro-B brings a complaint against the college before the Commis-What would be the result of a case like that?

. ALLEN. Of course, it would be up to the Commission to whether there had been any discrimination. But I doubt if it l use a person's employment because of his economic philosophy. bt if that, even by the Commission, would be held to be discrimi-n. I feel that even the Commission would say that was not dis-nation of the type forbidden by law. If it were discrimination be-of sex or religion or race, then that would be discrimination that mmission could make a case against, but possibly not as regards mic philosophy.

I wonder if the distinguished Senator has considered the damage th
this Commission and its operations could do to the academic freedo
of various institutions. I wonder if he would comment on his view wi
regard to that.

Mr. GURNEY. Well, let me pursue this other question one more ste
which is what I really intended to do in the beginning, because I unde
stand the bill forbids discrimination on those three grounds the di
tinguished Senator has outlined.

But now we get into the shadow area, and this is what I am co
cerned with. Let us take that same area of economic beliefs again, an
let us inject into it one or two things: Sex—which, of course, is a mo
or less delightful subject to inject into anything—or we could inje
race, but one or the other. Actually, so far as the institution is co
cerned, it is not opposing the hiring of the professor who believes
socialism, who might be a woman or might be a member of a minori
group. Then the professor who is rejected brings the complaint befo
the Equal Employment Opportunity Commission, but he or she mak
the complaint on the ground of sex or of race.

Would this not pose a pretty difficult and serious problem so far
the hiring institution is concerned, even though they were oppo
ing it purely upon the belief of this person in a socialistic kind
government?

Mr. ALLEN. Yes, definitely. That would allow the EEOC to s
that the institution had discriminated in these areas where protecti
is granted under the law. Even though they objected to that applica
on other grounds, the Commission could find that it was in one of t
protected areas and force the employment of that person.

Mr. GURNEY. Is not that danger particularly true the way this b
is worded?

Mr. ALLEN. Yes.

Mr. GURNEY. We go right back to the point that the distinguish
Senator from Alabama made a short time ago—that the Commissi
is the indicter, the prosecutor, the judge, the jury, and the fact finde

Mr. ALLEN. That is correct.

Mr. GURNEY. In other words, it handles all these things. So that
you have people on a commission—heaven knows, all of us ha
prejudices one way or another; we cannot help it; it is ground into
in our upbringing and our teaching and where we have lived, all alo
life's path. We cannot completely disassociate ourselves from beli
we have picked up earlier. So if you had a commission that was "go
ho" to prevent any possible violation of this act, they could easily ma
a finding of fact, I suppose, that the institution turned down this app
cant on the ground of sex or of race rather than of economic beli
in socialism. Is that not true?

Mr. ALLEN. Very definitely. They would be empowered to do th

Mr. GURNEY. So, then, the institution finally could be saddled w
somebody who had an economic belief that was violently opposed
what this institution was trying to teach its young men and you
women. Is that not a fact?

Mr. ALLEN. That is correct.

Mr. GURNEY. And that is the real danger of this bill.

Mr. ALLEN. This procedure is somewhat reminiscent of the S
Chamber procedure back in England of some two centuries ago.
almost rises to the Inquisition back in the medieval days in Euro

s a pernicious business, setting up a system of harassment of every
eational institution in the country, and every employer of as many
ight people would be covered.

Ir. GURNEY. As a matter of fact, have we not had a previous ex-
ple of this kind of procedure? I am talking now about the pro-
ure, not the substance of the bill. It seems to me that under the
ional Labor Relations Act, which set up the National Labor Rela-
s Board, we had a similar example.

Ir. ALLEN. Somewhat, yes.

Ir. GURNEY. Where there was a judge, jury, and prosecutor all
pped into one. In times past, it has been pretty difficult, under that
edure, to get more than a one-sided opinion, and the cards really
been sort of stacked in favor of one party as opposed to the
r. Is that not true in some of the past history of that particular
rd?

r. ALLEN. Certainly, there is an analogy between the two
edures.

r. GURNEY. I would think that we would hesitate before we
ped into some other kind of trap.
y understanding of the position of the junior Senator from Ala-
a—at least on the procedural aspect we are talking about—is that
e really are going to follow the kind of legal proceedings that we
always thought we had in this country, we ought to have a check
balance there, too, and not have everything all tied up in one
edure. That is why the junior Senator from Alabama—if I cor-
y understand his argument—feels that the court process ought to
iected in the decisionmaking of this Commission rather than the
e thing being wrapped up in the decisionmaking in the early part
Is that not correct?

r. ALLEN. That is correct.

r. GURNEY. Would the junior Senator from Alabama explain that
se difference a little more for me, so that I can precisely under-
l it?

r. ALLEN. The Senator has reference to the procedure under the
Of course, at the present time the Commission has powers of con-
ion, advisory capacity, and it has a backlog of about 18 months
years of cases before it now. It is anticipated that this year
oximately 32,000 more cases are going to be filed and that next
approximately 45,000 more will be filed.
e Commission receives these complaints and investigates them
gh its employees. By the way, I might suggest that it was pointed
n answer to a question I propounded to the distinguished Senator
New Jersey (Mr. Williams), that it is anticipated that in the
year or two, the employees of the EEOC are going to double in
er, to increase from approximately 1,000 to 2,000 employees.
would use some of these Federal bureaucrats to investigate these
es. Then, if they feel, at that stage in the proceedings, that there
een discrimination—they prejudge the matter, or they would not
n the General Counsel to prefer charges—they refer the matter to
eneral Counsel. He prefers the charges against the respondent,
ier the respondent be an educational institution or a religious
l or a private school or a small employer who employs as few as
people. Then the matter is tried before the Commission itself, the

very Commission that had turned the matter over to the counsel fo prosecution.

So it seems to the junior Senator from Alabama that that provide no due process. The junior Senator from Alabama recalls that th Constitution says that nobody shall be deprived of life or propert without due process of law.

Mr. GURNEY. It is at this point, as I understand it, that the junio Senator from Alabama would bring in a Federal judge.

Mr. ALLEN. That is correct.

Mr. GURNEY. To hear this matter and try it and decide it.

Mr. ALLEN. That is correct. They would be the jury and the prose cutor, but they would not be the judge.

I do not think that asking the Federal judiciary to take over thi problem is in any way showing a lack of sympathy for those who fee that they have been discriminated against, because the record of th district judges over the country certainly is one of compassion and e sympathy with civil rights, with the desegregation of schools in ou area of our country. I am not going to try to get into that situation. I will comment on that another day. But the district judges have bee especially compassionate in matters of civil rights.

Also, in the judgment of the junior Senator from Alabama, the ma ter could be determined more readily, more quickly by the court rout for this reason: There are 398 Federal district judges in the country There is only one Equal Employment Opportunity Commission lodge here in Washington so that with this tremendous backlog of cases tha the Commission already has, seeking to decide all the discriminatio cases that would arise in the 50 States, and all of that to be decided b a five-man Commission, it would certainly seem to the junior Senato from Alabama to be the sure way to prevent a man getting a decisio any time soon, whereas if the workload is divided out as the occurren of the acts of discrimination might dictate, or if it is divided ou among the 398 Federal district judges, it would be quite apparent tha a final determination could be arrived at much quicker by going th court enforcement route rather than having the complaints aired be fore the Commission itself. So that they would get speedier action, in the judgment of the Senator from Alabama.

Mr. GURNEY. It would seem to me it would also obtain a muc broader kind of decisionmaking if we had the Federal judges in the 5 States of the Union deciding these matters instead of one Commissio located in Washington, D.C. It would seem to me we would get a muc broader viewpoint and perhaps even a fairer viewpoint.

Mr. ALLEN. That is true. Also on the matter of witnesses, should a matter come up in the district where the discrimination took place, it would obviously be easier for the witnesses to appear in their distric Justice could be better done by handling it at the local level. Also Fe eral district judges that are, I assume, but have not always been i ivory towers, at one time they were practicing attorneys, have a fami iarity with local conditions and local problems and they would obv ously carry that knowledge with them to the bench.

Mr. GURNEY. On that very point, I was interested in the Senator' observation about the progress made in the field of civil rights, esp cially school desegregation and integration. While I realize it is not subject matter under this bill, it certainly is a closely relate subject——

Ir. ALLEN. Yes, indeed.

Ir. GURNEY (continuing). To the whole area we are discussing
. For the life of me, I cannot understand, and perhaps the junior
ator from Alabama can explain to me, the opposition of the man-
rs of the bill to the Federal district courts, because we all know
the civil rights revolution—and I do not think there is any other
to term it but as a revolution which we have had in the past decade
a half, which has occurred mainly in the South where many people
he North think that people in the South do not understand the
blem—in school desegregation and integration, and the further-
of the cause of civil rights, came right out of the South, right off
benches of Federal district court judges. While it is true they were
ner practicing attorneys in the South, it is fair to say, so far as
ol desegregation is concerned, that probably 99 percent of case law
chool desegregation has been made in the South and all of it by
eral judges. If we have that kind of track record of getting along,
fairly rapid pace, and certainly in the past few years in the area
vil rights, why would it not work so far as equal employment op-
unity is concerned?

would almost seem to me as though the managers and the authors
e bill, seeing that the record would place a greater degree of sure-
in their cause, would like to put it in the jurisdiction of the Fed-
district courts and the Federal judges. What answer would the
tor have for that?

r. ALLEN. They have not answered it to my satisfaction. I do not
l that they have given any plausible answer, not one that seems
sible to me, at least. Apparently they want the Commission to
le the whole package and not bother to take it before a judge, who
d probably try the matter under the rules of evidence, who would
iat the respondent had his day in court, that the matter was tried
out any bias or prejudice; whereas possibly the Commission
t be more inclined to go into a matter it had already investigated
nad preferred charges on, so that they might already have their
s made up that discrimination did exist.

gree with the Senator from Florida that they should have no fear
ke a matter to the Federal district court with the track record, as
listinguished Senator from Florida refers to it, of the Federal
iary in the Federal district court on civil rights matters. So the
nents of the bill come in and say, "We want some enforcement
anism." Well, there is no opposition, so far as the junior Senator
Alabama knows, to giving an enforcement mechanism. The chief
of difference at that point—and I disagree with covering State
ocal government and I disagree with covering educational insti-
ns—as to the matter of an enforcement procedure, I am willing
nfer on the Commission an enforcement mechanism for their de-
, and remove them from the lack of an enforcement procedure—
s, supply that need. They have been operating for 7 years. I as-
they claim they have done a good job because they come back
year to state their case for appropriations, and they have never
to be disbanded, so I assume that they say they are doing a
job under present law.

it seems to me that the court decision enforcement right should be
table to all parties. By and large, that is what this whole discus-

sion is about, because it is apparent from the temper of the Senate as the junior Senator from Alabama assesses it, that the Senate is willing to cover State, county, and city employees, that it is even willing, based on the amendment which we offered but which was turned down, to cover educational institutions. I disagree with the wisdom of that, but apparently the Senate is willing to do that. But what it has been unwilling to do is to make of this Commission prosecutor, jury and judge. Apparently it is willing to give it the mechanism of allowing it to prosecute these complaints and these charges in the Federal district courts throughout the country. So it is hard for the junior Senator from Alabama to see what the objection is all about. The court procedure route confers on the Commission a power it does not now have. So why they are not willing to accept that is something I find hard to understand.

Mr. GURNEY. One thing about this procedure is that under the Federal court system, and speaking now of the criminal side, or the cases where U.S. attorneys are involved as prosecutors, even in the case of a person who is beyond the Federal Government, the judiciary's part has suffered from the office of the U.S. attorney.

I mean by that that if the U.S. attorney has a matter before him or if he has a civil matter before him, he is the one who makes the decision as to whether to go ahead and prosecute it. The judge does not tell him what to do. He decides what he is going to do. Yet it seems to me that under the procedure that is set up in the bill, we do not even state anything beyond that, because the Commission, the General Counsel's office, the whole kit and caboodle are wrapped up in one package and going in one direction.

Mr. ALLEN. The Senator is correct.

Mr. GURNEY. And seemingly his guidance over these things does not accomplish much, even in the Federal court; does it?

Mr. ALLEN. No, it certainly does not. Consequently, a better opportunity for the due process of law would be exercised under the court procedure route rather than having it wrapped all in one package which would be the effect of the bill pending before the Senate.

Mr. GURNEY. Another thing bothers me about the way the bill is drafted, both as to its substance and as to what it includes and does not include at the present time and its procedures. We could go back again to the example of a religious school that wanted to hire a religious person, a person that is more religiously oriented than another person.

It seems to me that we have had examples in the past of zealots in some fields who have pinpointed certain areas that they want to zero in on, not only in the civil rights field, but also in the educational areas and institutions.

I can remember, for example, some years ago when the Department of Health, Education, and Welfare sent down to Florida during the summer time a group of college students that were still in college but were on summer vacation. The mission of these students was to come down to Florida and harass the boards of education in the State of Florida concerning their hiring practices.

This, of course, was in the civil rights field. But it actually happened. These young college students, who had not even had their first job in life as yet, came down to Florida like a swarm of locusts and proceeded to tell these people exactly what they had to do to get their institution

hape or how to shape up, if we want to put it in that way, on a job some of them had spent most of their lifetimes in doing. We have an example like that.

t seems to me that if we are going to create a commission such as this give it the judicial powers that this bill calls for, as well as the adonal coverage, we can go back to the example of a college that nted to keep itself as a religious institution and hire faculty mems who believe in the religion of their own faith—whether it be Bap-, Congregationalist, which is my own faith, or whatever it be. bunch of people who were zealots and who wanted to change the ept of that particular college would zero on their target and apply et on the faculty and keep that institution embroiled constantly re the EEOC. Also, if we had a commission that wanted to be overous on the kinds of suits they entertain and the kind of prosecus they preferred, such an institution could be harassed almost out xistence. Does the Senator from Alabama see that danger in the

r. ALLEN. I very definitely do. There is also the danger of the loss cademic freedom by educational institutions. With the constant ssment that is possibly under the bill, I see a possible loss of acitation by some of our institutions.

s the Senator knows, there is always a constant battle by institus of higher learning to have adequate libraries, adequate facilities equipment, and adequate teaching staffs to maintain their accredon so that the young people of the State can go to those schools ng that they are going to an accredited institution from which they nt transfer their credits to other institutions.

ne of the causes that results in loss of accreditation by an institution igher learning is that when politics creeps into the institution, it is that the institution is run, not by educators, but by politicians or government agency.

is then the feeling that the institution is not there for education poses, but for political reasons. And that sometimes results in the f accreditation by students. So, if the EEOC is constantly harassnstitutions of higher learning, or a secondary school for that matthere would be considerable alarm that the institution might lose ccreditation.

r. GURNEY. Mr. President, that brings to mind another interesting t on which I would like to ask a question of the distinguished tor from Alabama. It is a well-known fact that the contributions stitutions of higher learning have dropped very considerably, with ence to alumni funds, for example, and also with reference to of the large gifts that have been made in the past outside of ni funds every year to colleges and universities in the Nation. It vell-known fact that no college or university today of any size or h or merit could get along financially with either the tuition that id by its students or from the income they receive from their enments. Every single one of them, needs a substantial income other from the alumni and special gifts.

know that this drop off is [illegible] because of two reasons. One has the turmoil on the campuses which has discouraged some of the who had contributed before. Another concerns the policies of unions. That is the thing we talked about a little but before. Many

of the donors are unhappy and upset because of the policies of the institutions or the kind of instruction they give in political science or economics or special studies or because of the permissiveness they permit on the campus.

I am not making a general indictment of colleges or universities. I am simply saying that these are some of the causes why alumni are not giving any more or are giving less and why other special grants are not being brought in.

As we know, we have institutions that are strongly religious in their orientation and teaching. Suppose, for example, when this bill is passed, if it is passed in its present form, there were faculty members on the faculties of these particular colleges that did not believe in religion, so the whole thrust of that college or university as far as religious doctrine went out the window. Might that not affect giving by alumni as well as others who wish to support that kind of institution?

Mr. ALLEN. I think definitely it would because if the institution has ceased to carry out the mission or the function approved by the alumni, obviously they are going to withdraw their financial support and transfer it somewhere else if they find an institution they feel worthy of their support.

So any institution that is constantly being harassed and that has a bad image and gets the reputation of having on its faculty—and I am speaking of religious institutions at this time—people who are not in favor of carrying out the mission which has been conceived for the institution, obviously people are going to be dissatisfied and it is going to cause a lessening of their contributions. I think definitely it would be to the disadvantage of such institutions.

Mr. GURNEY. So one of the inherent dangers in this bill, in addition to the other dangers that the Senator from Alabama and others have discussed in debate on this bill, is the inherent danger that we may be shooting down the cause of higher education, at least to some extent, in some schools that want to run their particular institutions in certain fashions that have been time honored, and as near as I can see, it has little to do with discrimination in employment of people; they want conditions as they have always been and it just has to do with how they want their curriculum and studies handled and what kind of instructions they want to have in their institutions as opposed to some other kind.

I thank the distinguished junior Senator from Alabama for the colloquy and for answering some of these questions that have troubled me and I know they are going to trouble a great many of my constituents in Florida, as they are now troubling them, as I know from the mail I receive from day to day. I think constituents of other Senators would be greatly troubled if they had any idea of what is in this bill and what might happen if the bill were passed in its present form.

I thank the distinguished Senator from Alabama for the real light, a sort of glare of the searchlight, he is bringing to this bill so we can be informed what it is all about.

Mr. ALLEN. I thank the Senator for his generous comments and for the contributions he made to the colloquy, as well as the background and provisions of the bill. He has made a definite contribution in pointing out some of the inherent dangers in this bill. I appreciate very much the contribution he has made.

Mr. GURNEY. I thank the Senator.

Mr. President, in my discussions of the bill I have strongly denounced
d criticized the fact that the legislation would violate the very first
m of the first article of the Bill of Rights by empowering the Fed-
al Government to interfere with the free exercise of religion by dic-
ing almost all of the employment practices of church-supported
ucational institutions.

That is in line with the colloquy I have been having with the dis-
guished Senator from Florida. I say again that it would be difficult
imagine any practice more at odds with the idea of religious liberty
an to say that the first amendment left it open to the Federal Gov-
ment to compel church-supported schools at every level of educa-
n to capitulate the Federal Government's secular concept of "equal
ployment opportunity." If this is not true, the first amendment is
an empty pledge expressed in idle words.

n my discussions of the bill, I have strongly denounced and criti-
ed the fact that the proposed legislation is a direct assault upon the
e enterprise system. The bill brings within its orbit every employer
ing eight or more employees and every labor union having eight or
re members. I assume that that would take in every labor organiza-
n in the country. It would be a mighty small one if it did not have
many as eight members. Thus, the small businessman, already
rburdened, would encounter new regulations, investigations, hear-
s, and appeals far beyond his time, his energy, or his finances. If the
becomes law—and I certainly hope that the Senate will reject the
—many of the most cherished benefits which organized labor has
ined in the last four decades would no longer become matters of
ht, but would automatically become matters of administrative grace
e doled out by EEOC bureaucrats as rewards for good behavior
vithheld as punishment when any union does not comply with their
hands.

have had the privilege of discussing the bill on several occasions
he Senate has been considering it. The only purpose of extending
ate on the bill is to allow the people affected—the people of the
ntry—to be alerted to the dangers of the pending proposed legis-
on. The Senate can act very slowly at times; it can act with great
d at other times. The purpose of this discussion is not to seek to
suade any Senator to the position of the junior Senator from Ala-
a, because if he persuaded every Senator to support the position
he junior Senator from Alabama, he would not be able to defeat
bill outright. But he does believe that by an extended discussion
he bill, its dangers will become apparent to enough of the constitu-
of Senators who have voted against cloture and of Senators who
e not voted against cloture that the bill should not be allowed to
s.

n the two instances when the Senate has voted on the question of
ther debate on the measure should be choked off, the votes have
decided in the negative. So apparently a sufficient number of Sen-
s feel that the principle of providing due process of law for persons
ered by the bill is so important that we who oppose the bill will
llowed to have our day on this subject.

gain, I commend the distinguished majority leader for not allow-
the Calendar of the Senate to become clogged by other measures.

He has set up a two-track system by which on one track we will have this item of legislation subject to extended debate, and are going to have the other track for important legislation that needs to be attended to by the servants of the people in the Senate.

Mr. President, looking at the Calendar of the Senate, this Congress has been in session now for 13 months, and there are only 21 items of business on the calendar. That is a great record, Mr. President—only 21 pieces of legislation on the Calendar of the U.S. Senate. And one of those measures is the companion measure to S. 2515—H.R. 1746. So actually there are, in effect, only 20 measures on the Calendar of the U.S. Senate.

I point that out, Mr. President, to show that our discussion of this matter has not held up the consideration of any important business pending before the Senate. Mr. President, the strike legislation, the legislation that would bring to an end, and I hope provide a permanent solution to this problem, the west coast dock strike, is, at 2 o'clock, by unanimous consent of the Senate, being placed on track 2, if you might call it that, for consideration by the Senate. At 2 o'clock we go over to the second track and take up the so-called west coast dock legislation. So, Mr. President, the Nation's business is not being held up by this discussion.

One collateral benefit I might suggest—perhaps it is not a benefit; but I choose to call it a benefit—that we obtain from extended discussion of this bill and the amendments that are pending is that it enables some of our Members who are seeking higher office, if there be such, to come and go as they see fit. When they have been alerted that there is a cloture vote coming up, we will see them coming in, every single one of them, to vote for cloture. Every single one of the Members of this body seeking another office manages to drift in when the cloture vote comes up.

So, Mr. President—and I say it possibly is not of benefit; possibly it is of detriment—these Members are enabled to go their way and miss the votes. But the bad part of it, Mr. President, is that we are deprived of their presence and the contribution they could make on this legislation. We know how they are going to vote, because we see it time after time. But if we did have a series of votes, possibly some of them would come in and favor this body with their presence.

Mr. President, this bill should not be allowed to pass. It should not be allowed to come to a vote until it has been fully explained, not only to this body but to others, and I am assuming that the absent Senators will read my remarks in the Congressional Record. Not having been here to receive the benefits of my remarks, I feel sure they are going to peruse the Congressional Record and benefit thereby.

Mr. President, with only 20 pieces of legislation pending before the Senate, I say that this bill might be discussed for a considerable additional length of time—long enough, I hope, that the majority leader in his wisdom will lay it aside so that we can get back to the one-track system.

Mr. President, I like the two-track system. It allows those of us who want to [illegible] to do so without impeding any business in the Senate or delaying the enactment of any bill that [illegible] to become law.

It is to be hoped that the people of the country will become alerted to dangers of this bill. It is to be hoped that they would not like to see provisions of the EEOC bill made applicable to any person who ploys as many as eight. It is to be hoped that they would not like to the provisions of the act made applicable to every one of the 8,000,- employees of States, counties, and cities, and agencies of those local vernments.

It is to be hoped that they would not like to see the EEOC provisions de applicable to every educational institution in the country, every iversity, every college, every private school, every church-sup- rted school. It is to be hoped they would not like to see the pattern- l-practice suits, whose enforcement or prosecution now rests with Justice Department, transferred to the EEOC.

But above all, Mr. President, it is to be hoped that the people of s Nation would not like to see this tremendous power lodged in an ncy that receives complaints, prosecutes complaints, decides com- ints, and then enforces orders that it makes.

Mr. President, here is our opportunity to take a stand against mush- ming or expanding Federal bureaucracy. Here is an opportunity us to stop further encroachment by the Federal Government on local institutions and on the everyday lives of our people. Here is an ortunity for us to prevent a Federal bureau from doubling in size reaching out for more and more power.

t has been my observation, as a citizen and a Member of this body, every Federal agency or bureau that is created seems to have an erent quality or condition that makes it want to enlarge its size, ive greater compensation, obtain more power, and reach out for ater jurisdiction; and I guess Federal bureaucrats are not to be ored too much for that. I guess everyone wants a little bit more portance, and I guess the EEOC would rather have 2,000 employ- than just a thousand. They would rather have jurisdiction over y person who is gainfully employed in this country, rather than a er number. So these things are understandable.

ut, Mr. President, just because this agency or Commission wants to ble its size, wants to reach out for more power, does not mean that United States Senate has to yield to the demand. So, Mr. President, pe that Senators will stand firm against efforts to stop this debate, that Senators will reach the conclusion that this matter should be aside so that the undivided attention of the Senate could be de- d to the 20 other items now appearing on the Senate Calendar, gh I say that is a very small number. We read in the newspapers t several thousand bills being introduced in Congress; but we have only 20 subject to consideration by the Senate on being called

r. President, I was pleased when the majority leader stated that at lock today he was going to set this matter aside temporarily in r that we could take up the legislation to end the west coast dock e. I have a number of other matters that I would like to call to ttention of the Senate, but I see other Senators on the floor who o doubt anxious to speak on this bill, and it is the intention of the r Senator from Alabama, in a moment, to suggest the absence of orum in order that another Senator might be able to speak.

So, Mr. President, with the assurance of the junior Senator from Alabama that he will return to the Senate floor to add to his remarks with respect to this measure, at this time I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Stevenson). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. JAVITS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will state the pending business.

The legislative clerk read as follows:

A bill (S. 2515) to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER. The pending question is on agreeing to amendment No. 813 of the Senator from North Carolina.

Mr. ERVIN. Mr. President, on my amendment I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WILLIAMS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read the amendment.

(A copy of 813, an amendment to S. 2515, may be found on p. 879.)

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. WILLIAMS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 1 minute.

Mr. WILLIAMS. Mr. President, I think the amendments that have been offered speak for themselves. The bill would reduce the coverage of employers to those with eight employees and of unions to those with eight members. This would advance it to 15.

Mr. JAVITS. Mr. President, would the Senator from New Jersey yield me 1 minute?

Mr. WILLIAMS. I yield 1 minute to the Senator from New York.

Mr. JAVITS. Mr. President, this amendment is obviously our effort to meet deeply held views of Senators who are for this legislation who have concern about individual details. So, in order to endeavor to meet their views and after consultation with a considerable number of

nators and others interested in the legislation, the Senator from New rsey (Mr. Williams) and I concluded that the way to contribute to ying to get a law instead of a debate is to make this demonstration of iat the committee has done. We have done it. We hope very much at the Secretary will approve of it.

Mr. Ervin. Mr. President, I hope the Senate will reject the substitute r the Allen-Ervin amendment and support the Allen-Ervin amend-ent.

If we reduce the coverage of the number of employees essential to erage below 25, we are going to interfere with the success of virtually ery small businessman in the United States, because when we get ow the coverage of 25, we run into the situation where most of the ployment is done on the basis of friends of the employers. The busi-ssman wants members of his own church. He wants members of his n race. He wants people of the same national origin.

We are fast becoming the most law-ridden nation on earth. When we uce the number below 25, we are taking away some of the most rished liberties of Americans.

There are the most intimate relations between the small businessmen l various of his employees. We are entitled to let the man invest capital, his skills, and his talents in a business instead of having Government tell him whom he shall hire, whom he shall promote, whom he shall discharge in order to make his business a success. have been informed that the most discriminatory organization in erica is the EEOC. They employ people of the minority races, the st powerful of the minority races. They will not employ people of majority race or of the other minority races.

f we want to put an end to the worst discrimination in America, let go into the offices of the EEOC and look and see how they practice rimination.

et us leave some freedom for the American people. Let us let the ple put their talents and their resources in small business and de-mine for themselves whom they shall hire to make their business a ess instead of a failure.

say that if we reduce the coverage below 25, the result is going to ne of two things. Either we are not going to have enforcement of law because of the inadequacy of employees on the part of this dis-inatory agency or they will have to increase their employees to an extent that we will have a multitude of people going abroad his land like oak locusts to eat up the sustenance of our people.

therefore, ask that the Senate reject the substitute and then pro-to agree to the amendment which would leave the coverage where w is, at 25.

r. Williams. I yield back the remainder of my time.

r. Ervin. I yield back the remainder of my time.

he Presiding Officer. All time is yielded back.

r. Ervin. Mr. President, I suggest the absence of a quorum.

he Presiding Officer. The clerk will call the roll.

he assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the Williams' amendment to the Ervin amendment (No. 813). The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. Anderson), the Senator from Indiana (Mr. Hartke), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Massachusetts (Mr. Kennedy), the Senator from Washington (Mr. Magnuson), the Senator from Montana (Mr. Metcalf), the Senator from Maine (Mr. Muskie), and the Senator from California (Mr. Tunney) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. McGee), and the Senator from Nevada (Mr. Cannon) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Humphrey), and the Senators from Washington (Mr. Jackson and Mr. Magnuson) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. Allott), the Senator from Oklahoma (Mr. Bellmon), the Senator from Michigan (Mr. Griffin), the Senator from Ohio (Mr. Saxbe), and the Senator from Alaska (Mr. Stevens) are necessarily absent.

The Senator from Texas (Mr. Tower) is absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 56, nays, 26, as follows:

[No. 39 Leg.]

YEAS—56

Aiken	Gravel	Pearson
Bayh	Harris	Pell
Beall	Hart	Percy
Bentsen	Hatfield	Proxmire
Bible	Hughes	Randolph
Boggs	Inouye	Ribicoff
Brooke	Javits	Roth
Burdick	Jordan, Idaho	Schweiker
Byrd, W. Va.	Mansfield	Scott
Case	Mathias	Smith
Chiles	McGovern	Spong
Church	McIntyre	Stafford
Cook	Miller	Stevenson
Cotton	Mondale	Symington
Cranston	Montoya	Taft
Dole	Moss	Weicker
Dominick	Nelson	Williams
Eagleton	Packwood	Young
Fong	Pastore	

NAYS—26

en	Ellender	Hruska
ker	Ervin	Jordan, N.C.
nnett	Fannin	Long
ock	Fulbright	McClellan
ckley	Gambrell	Sparkman
rd, Va.	Goldwater	Stennis
pper	Gurney	Talmadge
rtis	Hansen	Thurmond
stland	Hollings	

NOT VOTING—18

ott	Humphrey	Mundt
derson	Jackson	Muskie
lmon	Kennedy	Saxbe
nnon	Magnuson	Stevens
ffin	McGee	Tower
rtke	Metcalf	Tunney

So Mr. Williams' amendments to Mr. Ervin's amendment (No. 813) were agreed to.

The Presiding Officer. The question now is on agreeing to the amendment of the Senator from North Carolina (Mr. Ervin). On this question, by previous order, the yeas and nays have been ordered, and the clerk will please call the roll.

The legislative clerk called the roll.

Mr. Byrd of West Virginia. I announce that the Senator from New Mexico (Mr. Anderson), the Senator from Indiana (Mr. Hartke), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Massachuetts (Mr. Kennedy), the Senator from Washington (Mr. Magnuson), the Senator from Montana (Mr. Metcalf), the Senator from Maine (Mr. Muskie), and the Senator from California (Mr. Tunney) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. McGee), and the Senator from Nevada (Mr. Cannon) are absent on official business.

I further announce that, if present and voting, the Senators from Washington (Mr. Magnuson and Mr. Jackson), and the Senator from Minnesota (Mr. Humphrey) would each vote "yea."

Mr. Scott. I announce that the Senator from Colorado (Mr. Allott), the Senator from Oklahoma (Mr. Bellmon), the Senator from Michigan (Mr. Griffin), the Senator from Ohio (Mr. Saxbe), and the Senator from Alaska (Mr. Stevens) are necessarily absent.

The Senator from Texas (Mr. Tower) is absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting, the Senator from Texas (Mr. Tower) would vote "yea."

The result was announced—yeas 81, nays 1, as follows:

[No. 40 Leg.]

YEAS—81

Aiken	Ellender	Montoya
Allen	Ervin	Moss
Baker	Fannin	Nelson
Bayh	Fong	Packwood
Beall	Fulbright	Pastore
Bennett	Gambrell	Pearson
Bentsen	Goldwater	Pell
Bible	Gravel	Percy
Boggs	Gurney	Proxmire
Brock	Hansen	Randolph
Brooke	Hart	Ribicoff
Buckley	Hatfield	Roth
Burdick	Hollings	Schweiker
Byrd, Va.	Hruska	Scott
Byrd, W. Va.	Hughes	Smith
Case	Inouye	Sparkman
Chiles	Javits	Spong
Church	Jordan, N.C.	Stafford
Cook	Jordan, Idaho	Stennis
Cooper	Long	Stevenson
Cotton	Mansfield	Symington
Cranston	Mathias	Taft
Curtis	McClellan	Talmadge
Dole	McGovern	Thurmond
Dominick	McIntyre	Weicker
Eagleton	Miller	Williams
Eastland	Mondale	Young

NAYS—1

Harris

NOT VOTING—18

Allott	Humphrey	Mundt
Anderson	Jackson	Muskie
Bellmon	Kennedy	Saxbe
Cannon	Magnuson	Stevens
Griffin	McGee	Tower
Hartke	Metcalf	Tunney

So Mr. Ervin's amendment, as amended, was agreed to.

Mr. JAVITS. I move to reconsider the vote by which the amendment was agreed to.

Mr. WILLIAMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS subsequently said: Mr. President, to correct an error which was found by the assistant legislative clerk, I ask unanimous consent that on the amendment which was adopted, following the amendment of the Senator from New Jersey (Mr. Williams) and myself, of the Senator from North Carolina (Mr. Ervin), No. 813, that the material in line 7 be stricken.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. We will call this matter to the attention of the Senator from North Carolina (Mr. Ervin) specifically, and if there is any problem, I will, of course, undo the amendment.

* * * * * * *

he Senate continued with consideration of the bill (S. 2515) to her promote equal employment opportunities for American kers.

AMENDMENT NO. 877

Ir. Byrd of West Virginia. Mr. President, I ask that the distinshed Senator from Nebraska (Mr. Hruska) be recognized for the pose of calling up an amendment and making it the pending ques-

he Presiding Officer. Without objection it is so ordered.
ir. Hruska. Mr. President, I offer an amendment and ask unanis consent that the reading of the amendment be dispensed with iis time.
he Presiding Officer. Without objection, it is so ordered.
ir. Hruska. Mr. President, one of the more glaring defects of S. is that it permits a multiplicity of actions to be instituted against pondent before a number of separate and distinct forums for the alleged offense. A little later in my remarks I shall give a specific nple of the unfairness and the burdens and harassment involved is regard.
addition to the unfairness, burden, and expense visited upon a ndent, there is the factor that such a multiplicity will have the table and unfortunate effect of tending to inhibit respondent entering into any voluntary settlement or conciliation agree-. This is so because any such voluntary agreement or conciliation not eliminate the potential liability in actions brought in any of ther available forums.
correct the defect described, the amendment which I have intro-d on this subject would provide that with certain named excep-, a charge filed with the Commission shall be the exclusive remedy ny person claiming to be aggrieved by an unlawful employment ice.
e amendment would have the tendency also to remove the possi- that an individual can utilize the potential for litigating two ore of the multiple actions as to a single alleged offense now avail-under the bill as written, but based upon nonmeritorious claims, a view of "blackmailing" the respondent into settlements.

MULTIPLICITY OF SEPARATE ACTIONS INVOLVING THE SAME ALLEGED OFFENSE

. President, the best way to illustrate the severe inequity perpetu-by S. 2515 in this regard is to provide a typical example of a incident of alleged employment discrimination which could re-n the virtual bankruptcy of a small employer or labor organiza-required to defend itself before a multiplicity of forums.
sume a situation where, for example, a black female employee is d a pay raise and/or a promotion to a better position which she es has resulted from her employer's bias against blacks and/or es. Let us also suppose that her job is covered by a collective bar-ng agreement. After going to her union and presenting her evi-, the union files a grievance on her behalf, but after investigating

her claim, the union refuses to insist on arbitration under the uni contract because of its belief that the company's action was justifi and not based upon unlawful considerations. Under S. 2515 as pre ently written, the employee could institute the following proceeding against the employer and her union:

First, she could file a charge against her employer and union wi the State fair employment practices agency where her employer a union do business. Since most of these agencies possess subpoena pow ers, the respondent's books and records will probably be subpoena and they will be called upon to produce evidence concerning the e ployment actions taken with respect to the allegations of her charge. I the meantime, she could also file an identical charge with the Co mission which, under S. 2515, would only be required to withho investigation of her charge for a period of 60 days from the date t charge was filed with the State agency. Once this 60-day perio elapsed, the Commission would be authorized to commence its ow investigation and, like the State agency, could also demand the pr duction of records and evidence from the company and union to d termine whether or not the charge had merit. Moreover, even if t State subsequently dismissed the charge or even settled it, this wou not preclude the Commission from accepting the State's findings conclusions; but the Commission could, instead, issue its own co plaint against either or both of the respondents.

Second. In the event the Commission dismisses her charge, she cou still institute a suit under Title VII alleging that her rights under Ti VII had been violated. She could do the same thing in the event th the Commission failed to issue its own complaint within 180 da after filing her charge with the Commission. She could also institu suit even if the respondent has entered into a settlement agreeme which is acceptable to the Commission since, under the provisions S. 2515, the aggrieved party can veto any such settlement by simp refusing to become a signator to it.

Third. While at the same time pursuing her charge before the Sta commission and the Federal Commission and/or Federal court und Title VII, she could additionally file a charge with the National Lab Relations Board. Under recent Board and court rulings, the Boa would not only have jurisdiction to investigate a claim based upon t union's refusal to demand arbitration (*Miranda Fuel Co.*, 1962, LRRM 1585) but would also have jurisdiction to determine wheth the employer violated the Taft-Hartley Act by adhering to a "poli and practice of invidious discrimination on account of race."

In the event the Board found merit to her charge, it would also iss a complaint and would not be precluded from doing so merely beca an identical complaint was outstanding before the Commissio whether State or Federal—or before a Federal court in a Title V action.

Fourth. The employee could, in addition, and while the foregoi proceedings were pending, file a complaint in Federal or State co under section 301 of the National Labor Relations Act based upon union's alleged breach of its duty of fair representation in the h dling of her grievance and upon the employer's alleged contract in denying her a promotion (*Vaca* v. *Sipes*, U.S. Sup. Ct., 196 LRRM 2369).

ifth. In addition to concurrently pursuing each of the foregoing
edies, the employee could completely bypass both the EEOC and
NLRB and file a complaint in Federal court under the provisions
he Civil Rights Act of 1866 against both the employer and union.
ddition, she could also file a complaint with the Labor Department
nst her employer in the event she believed she was receiving less
than that being received by male employees performing compa-
e work.

xth. Concurrently with the foregoing, the Attorney General could
be pursuing "a pattern and practice" investigation against the em-
er and union either on its own initiative or as a result of a referral
the Commission. At the same time, in the event the employer
party to a Government contract exceeding $50,000, the OFCC
l be conducting its own investigation on its own initiative or, as a
t of a complaint by the employee, to determine whether the em-
er or union's action violated their commitments under the appro-
e executive order.

is Senator questions the fairness of permitting liability to be im-
l upon a respondent in a multitude of different proceedings. The
hat under S. 2515 an individual is permitted to institute a multi-
y of suits will inevitably inhibit respondents from entering into
voluntary settlements, because any settlement effectuated before
orum will not eliminate the potential liability in actions brought
e any of the other available forums.

is to correct the foregoing defect in S. 2515 that my amendment
to is directed. It provides that, with the exception of actions
filed by the Attorney General pursuant to the authority granted
tion 707; second, arising out of the provisions of the Equal Pay
f 1963; or third, brought before State agencies, a charge filed with
ommission shall be the exclusive remedy of any person claiming to
grieved by an unlawful employment practice.

is amendment will thereby prevent an individual from subjecting
ondent to the time-consuming and financial burdens incident to
ding against a number of separate actions before a number of
ate and distinct forums. The amendment also removes the possi-
that an individual can utilize the potential for litigating inherent
2515 as a means to blackmail respondents into monetary settle-
s based upon nonmeritorious claims.

opy of the amendment accomplishing this salutory objective is
ed hereto, and I ask unanimous consent that its text be printed
Record.

re being no objection, the amendment, No. 877, was ordered to be
d in the Record.

copy of Amendment 877 to S. 2515 may be found on p. 1382.)

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 1972
Ordered to be printed

AMENDMENT

Proposed by Mr. HRUSKA to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: After subsection 4 (e), of page 38, line 6, the following new subsection (f) is added; subsection (f) of S. 2515 and all succeeding subsections are redesignated as appropriate:

(f) Except as provided in subsection (b) through (e), (n), and (q) of this section, section 707 of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–6), as amended, and the Equal Pay Act of 1963 (29 U.S.C. 206(d) (1)), a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization.

Amdt. No. 877

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. WILLIAMS (for himself and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: On page 38, line 7, strike out through line 18 on page 47 and insert in lieu thereof the following:

(f) (1) In the case of a respondent not a government, governmental agency, or political subdivision, if the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission, which determination shall not be reviewable in any court, the Commission shall so notify the General Counsel. The General Counsel may initiate a formal hearing before the Commission by issuing and serving upon the re-

Amdt. No. 878

spondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based.

The General Counsel, if he issues a complaint, shall also file the complaint with the United States district court for the district in which the unlawful employment practice in question is alleged to have occurred or in which the respondent resides or transacts business. Except as hereinafter provided, all further pleadings shall be filed with the Commission.

The district court shall have jurisdiction during the Commission proceedings upon motion of any party to the Commission's proceedings to review, at its discretion, any action of the Commission which involves a controlling question of law, if it finds that such review would materially advance the ultimate termination of the litigation.

After the Commission has filed its findings and recommendations with the court as provided in subsection 706(h), the court shall have jurisdiction to order the elimination of unlawful employment practices and to require such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title, except that (1) backpay liability shall not exceed that which accrues from a date

more than two years prior to the filing of a charge with the Commission and (2) interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such action may further require the respondent to make reports from time to time showing the extent to which it has complied with the court's order.

(2) In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission, which determination shall not be reviewable in any court, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in such civil action. The provisions of section 706 (q) through (w), as applicable, shall govern civil actions brought hereunder. Related proceedings may be consolidated for hearing. Any officer or employee of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

(g) The Commission, upon receipt of the General

Counsel's complaint, shall issue to all parties a notice of a hearing before it or a member or agent thereof appointed in accordance with section 556 of title 5, United States Code, relating to hearing examiners, at a place therein fixed not less than five days after service of the complaint upon the respondent.

A respondent shall have the right to file an answer to the complaint against him with the Commission and, with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person or persons aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant other persons a right to intervene or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall be conducted in conformity with the rules of evidence applicable in the district court of the United States under the Rules of Civil Procedure for the district courts of the United States, and under rules of procedure that conform insofar as possible with the Federal Rules of Court Procedure for the district courts of the United States. Any officer or employee of the Commission who filed a charge in any case shall

not participate in a hearing on any complaint arising out of such charge, except as a witness.

(h) If the Commission finds by a preponderance of the evidence that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice, the Commission shall file its findings of fact and recommendations concerning appropriate relief with the United States district court having jurisdiction of the case. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall file its findings of fact with the clerk of the court and shall dismiss the complaint. Copies of such findings and recommendations shall be served by the Commission upon the parties.

(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission or, after the filing of a complaint, the General Counsel upon approval of the Commission and the respondent for the elimination of the alleged unlawful employment practice and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or recommendation by it. An agreement approved by the Commission shall be enforceable under subsections (l)

through (n) and the provisions of those subsections shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

(j) Findings of fact and recommendations concerning appropriate relief made under subsection (h) or (i) of this section shall be determined by a preponderance of the evidence on the record as a whole. Sections 554, 555, 556, and 557 of title 5 of the United States Code shall apply to such proceedings.

(k) (1) Any party aggrieved by a recommendation of the Commission or by the dismissal of a complaint by the Commission may file in the United States district court having jurisdiction of the case sixty days after the receipt of such findings and recommendations a written motion proposing new findings and recommendations or seeking such other relief as may be appropriate under this title. A copy of such motion shall be forthwith transmitted by the clerk of the court to the Commission and to any other party to the proceeding before the Commission, and thereupon the General Counsel shall file in the court the record in the proceeding in the same manner as provided in section 2112 of title 28, United States Code. The court shall have power to grant to the moving party or any other party, including the Commission, such temporary relief or restraining order as it deems just and proper; and to make and enter upon

the pleadings, testimony, and proceedings set forth in such record a decree granting or denying, in whole or in part, appropriate relief. Any party to the proceeding before the Commission shall be permitted to intervene in the court.

(2) No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. On the basis of such modified or new findings the Commission may modify

its recommendations concerning appropriate relief. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the court of appeals as provided in section 1291 of title 28, United States Code. Motion filed under this subsection shall be heard expeditiously.

(l) The General Counsel, upon the recommendation of the Commission, may move in the United States district court having jurisdiction of the case for the immediate consideration of, and the entry of a decree to carry out, the Commission's recommendations concerning appropriate relief, and for appropriate temporary relief or restraining order, by filing in such court a written motion seeking the appropriate relief. The General Counsel shall file in court with his motion the record in the proceeding in the same manner as provided in section 2112 of title 28, United States Code. Subsection (k) of this section shall apply to proceedings upon motions made by the General Counsel under this subsection.

(m) If no motion for review, as provided in subsection (k) is filed within sixty days after service of the Commission's recommendations, the Commission's findings of fact and recommendation concerning appropriate relief shall be conclusive in connection with any motion for enforcement

which is filed by the General Counsel under subsection (l). The district court in which such motion for an enforcement order is filed shall forthwith enter a decree enforcing the recommendations of the Commission and shall transmit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Commission.

(n) If within ninety days after service of the Commission's recommendations, no motion for review has been filed as provided in subsection (k), and the General Counsel has not sought an enforcement of the Commission's recommendations as provided in subsection (l), any person entitled to relief under the Commission's recommendations may move for a decree enforcing the recommendations in the United States district court having jurisdiction of the case. The provisions of subsection (m) shall apply to such motion for enforcement.

(o) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by attorneys appointed by the Commission.

(p) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes

on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding, the General Counsel, upon the recommendation of the Commision shall, after he issues a complaint, bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, or until the filing of a petition under subsection (k), (l), (m), or (n) of this section, as the case may be, in the United States district court in which he filed the complaint pursuant to subsection (f). Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection.

[From the Congressional Record—Senate, Feb. 9, 1972]

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

ne ACTING PRESIDENT pro tempore. Under previous order, the r lays before the Senate the unfinished business, which will be d.

ne assistant legislative clerk read as follows:

ill (S. 2515) to further promote equal employment opportunities for Ameri- vorkers.

e Senate proceeded to consider the bill.

r. BYRD of West Virginia. Mr. President, I suggest the absence quorum.

e ACTING PRESIDENT pro tempore. The clerk will call the roll.

e second assistant legislative clerk proceeded to call the roll.

. BYRD of West Virginia. Mr. President, I ask unanimous consent he order for the quorum call be rescinded.

e ACTING PRESIDENT pro tempore. Without objection it is so ed.

pending question is on agreeing to the amendment offered by the guished Senator from Nebraska (Mr. Hruska). Time for debate ited to 2 hours, to be equally divided between the proponent of mendment and the manager of the bill.

o yields time?

. BYRD of West Virginia. Mr. President, I ask unanimous consent here may now be a quorum call, within the time being charged st either side.

ACTING PRESIDENT pro tempore. Without objection it is so ed.

clerk will call the roll.

legislative clerk proceeded to call the roll.

. ALLEN. Mr. President, I ask unanimous consent that the order quorum call be rescinded.

PRESIDING OFFICER (Mr. Hughes). Without objection, it is so ed.

. ALLEN. Mr. President, acting for the distinguished Senator from ska (Mr. Hruska), I yield myself 6 minutes.

PRESIDING OFFICER. The Senator from Alabama is recognized inutes.

. ALLEN. Mr. President, I favor the amendment offered by the guished Senator from Nebraska (Mr. Hruska); but I will not nt on it, in order that he may make the opening statement for his lment.

ever, I do wish to comment on an article published in the New Times this morning, which I ask unanimous consent to have d in the Record.

e being no objection, the article was ordered to be printed in the d, as follows:

Senate Liberals Yield In Dispute Over Job Rights

(By David E. Rosenbaum)

Washington, February 8.—Unable to break a Southern filibuster, liberal Senators gave up today on their fight to give the Equal Employment Opportunity Commission the power to order employers and unions to stop discrimination in jobs.

Senators Jacob K. Javits, Republican of New York, and Harrison A. Williams Jr., Democrat of New Jersey, offered a compromise proposal today, along the lines favored by President Nixon, in an effort to obtain action on legislation that has been before the Senate since it convened Jan. 18.

Rather than authorize the Commission to issue "cease and desist" orders against companies and unions that it found to be discriminating, the Javits-Williams proposal would merely allow the Commission to go into Federal court to prove discrimination and ask the court to prohibit it.

COULD CERTIFY DISCRIMINATION

The Nixon Administration has recommended all along that the Commission be given the authority to institute court suits, and the House approved a measure to this effect last year.

The Javits-Williams plan would give the Commission's findings additional weight in court proceedings, however, by empowering the Commission to hold hearings on cases of alleged job discrimination and to present certification of discrimination to the court, much as a bankruptcy referee presents his findings to a court.

According to Senator Javits, the courts could be expected to uphold the Commission's findings most of the time under this procedure, since most of the evidence would already have been heard by the time cases reached a judge.

DOMINICK IS OPPOSED

Senator Peter H. Dominick, Republican of Colorado, who has been the principal spokesman for the Administration in the battle over giving enforcement power to the Commission, said that he would oppose the Javits-Williams plan.

Senator Dominick, whose amendment to allow the Commission to go into Federal court instead of issuing cease-and-desist orders was rejected two weeks ago by 2 votes, plans to offer his amendment again as a substitute for the Javits-Williams proposal.

A vote on these measures is unlikely to come before next week.

The Commission was created by the Civil Rights Act of 1964. It was empowered to hold hearings and to try to obtain voluntary conciliation from employers who discriminate but was given no means to enforce its findings.

Senator Javits acknowledged that he was "giving away a lot" by his compromise but said that there was no other way to get any bill past the Southern filibuster.

He said he believed that with his proposal he could obtain the necessary two-thirds majority vote needed to cut off the debate. Two attempts to halt the filibuster have failed.

In another concession to the Southerners, the Senate agreed, 56 to 26, today to a compromise on the size of companies and unions that fall under the commission's jurisdiction.

At present, a company must have at least 25 employees and a union of at least 25 members before the commission has jurisdiction. The pending legislation would have lowered the ceilings to eight. The Senate agreed to lower it to 15 next year.

Mr. Allen. Mr. President, the article states that Senate liberals yielded in the dispute over job rights, indicating that the distinguished Senator from New York (Mr. Javits) and the distinguished Senator from New Jersey (Mr. Williams) plan to offer an amendment which they state is yielding in the matter of cease and desist.

On yesterday, the distinguished Senator from New York (Mr. Javits) did state that they were going to get rid of the expression "cease and desist."

ell, Mr. President, just as a rose by any other name would smell
eet, so "cease and desist" by any other name would be just as bad.
submit that the amendment to be offered by the distinguished
tor from New York (Mr. Javits) and the distinguished Senator
New Jersey (Mr. Williams) will still have cease and desist in the
f their amendment is adopted, even though the words might be
ng. It would permit the Commission, as provided in the bill and
committee amendment, to receive the complaints, file the charges,
the determination, and then they would certify to the district
the fact of discrimination and all the district court would do
l be to serve as a cat's paw or a rubber stamp for the action of the
nission.

us, Mr. President, this is certainly no compromise and I would
o serve notice now that it will not solve the question of whether
ill should be allowed to come to a vote. It will not remove the
ions of those of us who object to this Commission's being judge,
nd prosecutor, as that element will still be in the bill.

President, I call on all Senators who have been voting to allow
ebate to continue, not to be taken in by this strategy by which
roponents of this measure say that they are yielding on this
oint.

re is no yielding. We all know that this is an old game and an
ractice by which proponents of a measure which is in sharp
e will indicate they have made a great concession in order to
ome of the opposition, or to lessen some of the opposition to the
hereby allowing the guard of those Senators opposing a bill to
ered.

edict that, if this amendment is adopted and the bill, as amended,
sed, those saying they are making a great concession in order to
is bill passed will make great claim and will take great self-
ction from having passed the bill without any material change.

s, Mr. President, I hope that those who have been opposing the
f cease and desist will see in the Javits-Williams proposed com-
se the pernicious cease-and-desist provisions still there in actu-
f not in actual words.

President, I serve notice that this amendment is not satisfactory.
not end the debate. I hope that other Senators will not lower
uard and allow the amendment, which, I understand, is to be
ted to the Senate on Monday next by the distinguished Senator
New York (Mr. Javits) and the distinguished Senator from New
(Mr. Williams), to be agreed to.

ill not remove opposition to the bill.

ill not remove cease and desist from the bill.

President, I yield back the remainder of my time.

PRESIDING OFFICER. Who yields time?

HRUSKA. Mr. President, I yield myself 10 minutes.

PRESIDING OFFICER. The Senator from Nebraska is recognized
minutes.

HRUSKA. The pending amendment has for its purpose the elim-
of the possibility of a multiplicity of actions when an employee
els that he or she is aggrieved commences proceedings.

of the more glaring defects of S. 2515 is that it would permit a
licity of actions to be instituted against a respondent before a
r of separate and distinct forums for the same alleged offense.

The present situation is quite a hodge-podge. As a matter of fact, is not to the interests of the employee, nor of the employer, nor of t public that this persist as a condition. It is a disservice to the employ because of the lack of expeditiousness which should be a very i portant element in any provision for dealing with a complaint on basis of discrimination or unfairness in employment practices. It is disservice to the employer not only on the question of expeditiousn but also because of the burdens forced on a respondent who is ca upon to defend the same case in numerous forums. And it is a d service to the public which should be entitled to quick, clear, and c tain resolutions of these questions.

Because of the number of remedies now available and those provid by this bill, there would be imposed unfairness, a great burden, a expense upon a respondent because simultaneously he could have—a there have been such instances—three or four proceedings before many different forums pending at the same time. Each of them has power of subpena. Each of them has the power to gather informat from the employer's records and to ask for abstracts of different inf mation, causing a heavy demand on his manpower, on his time, and his resources. The result is often a disruption within his own busine in addition to the attorney's fees and costs involved.

This whole situation reflects badly upon the effort to induce a r spondent to enter into a conciliation proceeding with a view of rea ing an agreement either with the State agency or with the EEOC with the employee himself or herself. Because of this situation we f that the benefits of the procedures that are provided are dissipated a large degree.

Now, to correct these defects, the amendment at hand would prov that with certain named exceptions a charge filed with the Commiss shall be an exclusive remedy for any person claiming to be aggrie by a particular unlawful practice.

The amendment would remove from the scene the possibility t an individual employee can utilize the possibility of litigating two more of the multiple actions as to a single offense, as it is now ava able, whether they are based on a meritorious or a nonmeritori factual situation. Without such a provision there could conceivably a presenting of several actions with the effect of blackmail on one perhaps on all of them on the basis of nuisance value. That is no good arrangement in a matter of this kind.

Mr. President, I should like to outline what can be done under present situation in a particular case, because by doing so we can the necessity for eliminating multiplicity to which reference has be made.

Suppose in the event of a black female employee, there is a denial either a promotion or pay raise and there is an allegation made that is because of her color or because of her sex. The first thing she can is to complain to the union that it is a violation of the collective b gaining agreement. The union will file or can file a grievance in h behalf. If the union decides that it is not meritorious, it is disallow

Then, of course, the employee may file charges against the union employer with the State fair employment practice agency that pro ably has the power of subpena and can call for records, correspond papers, and so forth.

ientical charges can simultaneously be filed with the EEOC, and
'ommission holds the complaint in abeyance for 60 days following
iling of the complaint with the State agency. However, with the
ration of the 60 days, the EEOC can move in with a similar de-
l for records and documents.

ren after the State agency dismisses the complaints, the EEOC
nove in and file a complaint against either or both respondents—
is, the union or the employer, or both. If the EEOC dismisses the
plaint, or if it takes no action within 6 months, then the respondent
file suit under Title VII.

ıd even if the respondent and the employer have entered into an
ement with the EEOC, she can still file suit. That is because of the
ision in the pending bill that the employee is not bound by such
ments unless he or she actually signs the conciliation agreement.
we would have two avenues down which the parties are traveling,
lel in character, with no terminal facility.

er that would happen and while these charges are pending before
ate commission and the Federal Commission, the employee could
onally file a charge with the National Labor Relations Board.
ler recent Board and court rulings, the Board would not only
jurisdiction to investigate a claim based on a union's refusal to
ıd arbitration, but it would also have jurisdiction to determine
er the employer violated the Taft-Hartley Act by adhering to
ıey and practice of invidious discrimination on account of race."
he event the Board found merit to her charge, it would also issue
plaint and would not be precluded from doing so merely because
ıtical complaint was outstanding before the Commission—
er State or Federal—or before a Federal court in a Title VII

we would have a third parallel road that would be traveled by
arties involved, possibly at the same time.

n, the employee could in addition to and while the foregoing
dings were pending, file a complaint in Federal or State court
section 301 of the National Labor Relations Act based upon
ion's alleged breach of its duty of fair representation in the han-
of her grievance and upon the employer's alleged contract
in denying her a promotion or employment, or whatever the
ıappened to be.

ddition to concurrently pursuing each of these foregoing reme-
ıe employee could completely bypass both the EEOC and the
and file a complaint in Federal court under the provisions of
il Rights Act of 1866 against both the employer and the union.
lition, she could file a complaint with the Labor Department
her employers in the event she believed she was receiving less
an was being received by male employees performing like or
able work. Of course, that would be under the Equal Pay Act
3.

urrently with all of the foregoing, Mr. President, the Attor-
neral could also be pursuing a "pattern and practice" investi-
against the employer and union, either on its own initiative
ıe result of a referral from the Commission. And, at the same
the event the employer is a party to a Government contract
ng $50,000, the Office of Federal Contract Compliance could

be conducting its own investigation on its own initiative, or as a r
sult of a complaint by the employee, to determine whether the e
ployer's or union's action violated their commitments under the appr
priate executive order.

The Presiding Officer (Mr. Hughes). The time of the Senat
has expired.

Mr. Allen. Mr. President, I yield the Senator from Nebraska
additional minutes.

The Presiding Officer. The Senator from Nebraska is recogniz
for 5 additional minutes.

Mr. Hruska. Mr. President, when one considers this vast sco
this vast spectrum, of all the proceedings, the collateral proceedi
and the independent proceedings in half a dozen forums that co
be conducted simultaneously on the same alleged offense, then,
course, one's sense of fairness is challenged. It simply is not fair. It
not fair to the employee who is entitled to an expeditious handling.
is not fair to the employer who is entitled to a place where he c
litigate a claim and have it over with, rather than waiting for
days, and then another 60 days, and the 60 days becoming 6 month
and simultaneously other arrangements having a similar timeta
in other litigations on the same alleged violation of breach of the la

Mr. President, it is to correct these foregoing defects and to boil it
down to sensible and adequate proceedings that we would have t
amendment.

The amendment would simply say that the multiplicity of s
would be dealt with in the following fashion: When a proceedi
would be filed under section 706 of Title VII, then that remedy wo
be exclusive. The employee, he or she, could not go to any of the ot
and additional channels to which reference has been made and co
mence proceedings there simultaneously. There would be certain exc
tions to this procedure, certainly as to section 707 of the Civil Rig
Act, the so-called pattern and practice suits instituted by the A
torney General, inasmuch as they partake of the nature of a cl
action. That class action could proceed notwithstanding the pende
of an employee's individual suit in a proceeding under section 7

A second exception would be the Equal Pay Act of 1963. That sho
be allowed to go along on its own and within the purview of that act
1963 to assure that an employee would not be discriminated aga
on the basis of receiving less pay than is being received by a m
member of the organization for the same or equal quality of wo

Then, there would be a further exception and that would be p
ceedings in a State agency. Those proceedings could continue n
withstanding the pendency of an employee's action under section 7
of Title VII. It seems to me and others that this is only fair.

This is not something that is discriminatory against the emplo
but it bars the employee from exploiting a situation which all
for the type of multiplicity of actions, and confusing and cha
conditions that prevail when a large number of forums are availa
and affirms that many of them are used simultaneously all for
improper except to visit harassment, harshness, and unnecessary
pense on all concerned.

Therefore, I hope that this body will consider the equities and
circumstances and agree to the amendment so that we may do a
with this situation in its burdensome and unfair aspects.

r. President, I yield the floor.

ıe Presiding Officer. Who yields time?

'. Byrd of West Virginia. Mr. President, I suggest the absence quorum, and I ask unanimous consent that the time be equally ged against both sides.

e Presiding Officer. Without objection, it is so ordered. The will call the roll.

e legislative clerk proceeded to call the roll.

'. Javits. Mr. President, I ask unanimous consent that the order ıe quorum call be rescinded.

e Presiding Officer. Without objection, it is so ordered.

'. Javits. I yield myself 5 minutes in opposition to the amend-

. President, the amendment which has been proposed by the or from Nebraska involves an issue in which the Department of 'e stands directly opposed to the position taken by the Senator. I l like to refer, in that regard, to a hearing before the Committee ibor and Public Welfare held October 4, 1971, in which we had stimony of David Norman, an Assistant Attorney General, stat-ıe Department's position.

'fer the Senate precisely to pages 162 and 163 of the hearings l, where Mr. Norman deals with the issue which has been brought the Senator from Nebraska, with an exception or two which I indicate, which do not interfere with the argument I shall make. amendment which the Senator from Nebraska seeks to insert his measure is a sentence included in the bill as passed by the body in a somewhat more restricted form; that is, as to the single-f the remedy which is available to a complainant. The restriction ms of its form was as follows: In the House bill, there is no ex-n made for individual suits if the Commission decided not to self, and there is no exception made for the so-called Equal Pay elating to equal pay as between men and women. These excep-are contained in the amendment before us, but they do not affect gument made against the substance of the amendment by the tment of Justice, and referring to the House bill that I have escribed, this is what the Department's representative, Mr. Nor-said with reference to the House bill provision that I have just bed beginning at page 162 of the hearings:

on 3(b) of H.R. 1746 provides that charges filed with the EEOC and law-ought, either by EEOC or by private individuals pursuant to Title VII e the exclusive remedy of any person claiming to be aggrieved by an un-employment practice of an employer, employment agency, or labor orga-n." This could be interpreted as eliminating the use of provisions of federal er than Title VII in the attack on employment discrimination.

ıld be happy to work with the Committee staff in clarifying the language instances.

ontinues, as shown at the top of page 163:

n, although we favor the granting of judicial enforcement authority to we are concerned that at this point in time there be no elimination of the remedies which have achieved some success in the effort to end em-t discrimination. In the field of civil rights, the Congress has regularly that there be a variety of enforcement devices to insure that all available s are brought to bear on problems of discrimination. For example, hous-rimination may be the subject of suit by the Attorney General, a private the party affected, or a conciliation effort by the Department of Housing

and Urban Development. Again, in the field of education, remedies for ... crimination are available to private persons, the Attorney General and the ... partment of Health, Education, and Welfare.

At this juncture, when we are all agreed that some improvement in the ... forcement of Title VII is needed, it would be, in our judgment, unwise to dimi... in any way the variety of enforcement means available to deal with discrimina... in employment. The problem is widespread and we suggest that all avail... resources should be used in the effort to correct it.

That is the entire quotation, Mr. President, showing the opposit... of the Department of Justice to this type of provision. It is in t... House bill, as I say, in an even more restricted form.

With the attitude of the Senate toward this legislation, we opp... including it in the Senate bill.

What is allowed by the present legal situation? For one, Mr. Pr... dent, it permits a range of actions under the National Labor Relati... Act and the Railway Labor Act and before the National Labor Re... tions Board where an unfair practice can be charged by a wor... against discrimination in a union or even by an applicant to joi... union. We consider this opportunity to test out these questions in t... forum as an extremely important one, and obviously the Attor... General does as well.

It would permit, for example, the decertification of a union for e... gaging in discrimination which is contrary to the provisions of Ti... VII of the Civil Rights Act of 1964.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. I yield myself 3 additional minutes.

One other aspect of the matter which is cut off is the possibility ... using civil rights acts long antedating the Civil Rights Act of 196... a given situation which might fall, because of the statute of lim... tions or other provisions, in the interstices of the Civil Rights Act ... 1964. This is rather infrequent, but it is a valuable protection. T... Attorney General feels that it is desirable to maintain it, and we ag... with him. The idea is to enforce the law and not let people drop ... tween two stools where they are actually violating the law.

Therefore, we believe that this enforcement should not be hobb... in this way. It is bad enough that we have such very long backl... and that it takes long enough to get a case considered. We should ... cut off the range of remedies which are available.

The only argument that is used—and I now read from Sena... Hruska's memorandum which has been distributed to all Senators ... this:

> The purpose of the amendment is to avoid the potential situation where ... respondent is faced with the requirement to defend multiple actions arising ... a single offense. Such multiplicity of suits could result in undue burdens ... gathering of evidence and trial expenses as well as harassment and even ... of blackmail.

Mr. President, drawing on our experience with the longest enfor... ment of civil rights, which is our experience in the State of N... York, which goes back to 1945, we may have many other complai... but under these statutes we certainly have had no complaint ... harassment which business feared 26 years ago but, in its expe... since that time, is not valid.

Furthermore, there is the real capability in this situation of dea... with the question on the basis of res judicata. In other words, ... there is a litigation—a litigation started by the Commission, a liti...

started by the Attorney General, or a litigation started by the
idual the remedy has been chosen and can be followed through
no relitigation of the same issues in a different forum would be
itted.

balance, in view of the fact that the mover of this amendment
up for us the possibility that there could be abuse, let us remem-
hat this matter has been standing for the past 7 years; and I am
ware of a case—perhaps the Senator from Nebraska can point
ases to us—in which there has been claim of abuse. I am not
e that this is a major problem.

all we would be doing, balancing what is sought to be avoided
what would be cut off, would be very limited in a way which
ttorney General of the United States opposes for the remedies
are available in unjust discrimination cases.

all those reasons, so far as I am concerned—and I believe it is
titude of Senator Williams also—we are compelled to oppose
mendment.

PRESIDING OFFICER. Who yields time?

HRUSKA. I yield myself 3 minutes.

President, the testimony of David Norman on behalf of the
tment of Justice, to which reference has been made, is directed
y unyielding language in the House bill which is not at issue
pending amendment. Three aspects are spelled out in the pend-
mendment which were not in the language considered by Mr.
an, in that part of his testimony which was just read by the
or from New York.

re is an exclusion in that pending amendment as to pattern and
e suits. There is an exception as to the Equal Pay Act of 1963.
is an exception for proceedings before State agencies. Any
dings before State agencies could proceed, and this exclusion
not affect those three classes.

hat Mr. Norman was testifying on something totally different.
l say in his testimony, on page 162:

ill be happy to work with the committee staff in clarifying the language
instances.

had some doubts in his mind as to how far the availability of
ctions would go.

fact is that the amendment would not cut off class suits, be-
he amendment is directed to an individual. The language of the
amendment is that except as provided elsewhere, a charge
reunder shall be the exclusive remedy of any person claiming
ggrieved by an unlawful employment practice of an employer,
ment agency, or labor organization. Mr. David Norman was
ed with the cutting off of the class action, and he said he would
ing to work with the committee to develop language which
larify the situation in that regard.

the contention of the Senator that the language of the pending
ment does not cut off that class action. It would be a remedy
ing to individuals only. Federal action on behalf of citizens
not be curtailed. It would not pertain to class actions that
ffect a class. That removes it from the inhibitions of the amend-
e are now considering.

I have every sympathy for varied approaches to enforcing o employment rights as against discrimination. But the point of t amendment is, let us get them in one proceeding and not go to many as a half dozen different forums and try simultaneously to c fuse the proceedings and to make them more expensive, in terms money as well as in terms of time and personnel.

Furthermore, it would be much more expeditious to do it this w and that would be something in which every employee would interested.

Mr. President, the Justice Department in Mr. David Norma testimony, was objecting to the possible narrow interpretation t could attach to the House approved language. The amendment t has been proposed by this Senator takes into consideration the obj tions to the wording in H.R. 1746. It is much more narrow than t House provision and provides for certain exceptions not mentioned the House bill.

It is a refinement over H.R. 1746 which takes into account the pr lems found therein. I believe the pending amendment should approved.

The amendment is not designed to eliminate remedies for unfair treated employees, but only to provide that they be litigated in c rather than a multitude of forums.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. I yield back the remainder of my time if I have taken the 5 minutes.

Mr. JAVITS. Mr. President, with Senator Hruska's approval, I ag suggest the absence of a quorum, with the time to be charged agai both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the r

Mr. MANSFIELD. Mr. President, I ask unanimous consent that t order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 25 bill to further promote equal employment opportunities for Amer workers.

Mr. HRUSKA. Mr. President, I ask for the yeas and nays on t amendment.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quor

The PRESIDING OFFICER. Under the same conditions?

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered. T clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, the purpose of this bill is to cor certain deficiencies in Title VII and strengthen the national po against employment discrimination. It is not our purpose to rep existing civil rights laws.

e amendment which has been offered by the Senator from Ne-
ka would make Title VII and the Equal Pay Act the only Federal
dy available in cases of employment discrimination. It would
ely weaken our overall effort to combat the presence of employ-
discrimination.

e existence of extensive employment discrimination is a well-
lished fact. Testimony before our committee has shown the per-
e nature of this problem. The burgeoning workload at the EEOC
ell as the increasing number of employment discrimination cases
ir Federal courts, further reinforces the fact that employment
imination is far from eliminated. There exists, therefore, an
e need for a concentrated effort to eliminate the presence of this
nal blight.

r present effort to strengthen the EEOC through S. 2515 is a
r step toward this goal. However, our goal cannot be achieved
pealing other laws already on the statute books.

originally passed in 1964, Title VII provided an administrative
dure before implementing the individual's right to sue directly
irt under the constitutional guarantees against discrimination.
15 corrects many of the shortcomings of that original 1964 act,
is an improvement which is premised on the continued existence
itality of other remedies for employment discrimination.

strengthening the administrative remedy, Mr. President, we
l not also eliminate preexisting rights which the Constitution
his body have accorded to aggrieved individuals.

paramount national interest embodied in the elimination of
yment discrimination is both an expression of congressional in-
nd judicial interpretation. While we have generally denounced
yment discrimination, the courts, which have been in a better
on to view the devastation which this type of discrimination
s upon our social framework, have been even more adamant.
eed only read the recent decision by Mr. Chief Justice Burger in
s against Duke Power Co., to see the concern that the courts
In describing the scope of the act the Court stated:

Act proscribes not only overt discrimination but also practices that are
form but discriminatory in operation.

ordingly, the courts have repeatedly proposed a multifaceted
ach to employment discrimination, to bring to bear the full force
law on this problem.

law against employment discrimination did not begin with
VII and the EEOC, nor is it intended to end with it. The right
ividuals to bring suits in Federal courts to redress individual
discrimination, including employment discrimination was first
ed by the Civil Rights Acts of 1866 and 1871, 42 U.S.C. sections
1983). It was recently stated by the Supreme Court in the case
es v. *Mayer*, that these acts provide fundamental constitutional
ntees. In any case, the courts have specifically held that Title VII
e Civil Rights Acts of 1866 and 1871 are not mutually exclusive,
ust be read together to provide alternative means to redress
dual grievances.

President, the amendment of the S[illegible] from Nebraska will
the first major piece of civil rights legislation in this Nation's
. We cannot do that.

In addition, the effect of this measure would be to repeal the validity of a longstanding legal doctrine that labor organizations under the Railway Labor Act and under the Labor Management Relations Act have a duty to fairly represent all employees in a collective bargaining unit. Cases to reinforce such a duty may conceivably not be reached in Title VII. The adoption of this amendment, therefore, might have the effect of depriving these workers of a most important legal remedy.

Furthermore, Mr. President, this amendment can be read to bar enforcement of the Government contract compliance program at least in part. I cannot believe that the Senate would do that after all the votes we have taken in the past 2 or 3 years to continue that program in full force and effect.

Mr. President, I believe that to make Title VII the exclusive remedy for employment discrimination would be inconsistent with our entire legislative history of the Civil Rights Act. It would jeopardize the degree and scope of remedies available to the workers of our country.

To lock the aggrieved person into the administrative remedy would narrow rather than strengthen our civil rights enforcement effort. While I do not believe that the individual claimant should be allowed to litigate his claim to completion in one forum, and then if dissatisfied, go to another forum to try again, I do feel that where one form of relief proves unresponsive or impractical, or where the claimant has a particular preference to bring his claim in a forum other than that which is most commonly used for claims of his kind, he should have that right. This is especially true where the legal issues under other laws may not fall within the scope of Title VII or where the employee, employer, or labor organization does not fall within the jurisdictional confines of Title VII. These situations do exist, and I am sure that it is unnecessary to spell them out at this point.

The peculiarly damaging nature of employment discrimination is such that the individual, who is frequently forced to face a large and powerful employer, should be accorded every protection that the law has in its purview, and that the person should not be forced to seek his remedy in only one place.

For all these reasons, Mr. President, I urge the rejection of the amendment.

I point out to Senators the testimony that was presented before the committee on behalf of the Department of Justice. The Assistant Attorney General, Mr. Norman, said this, speaking for the administration:

> In sum, although we favor the granting of judicial enforcement authority to EEOC, we are concerned that at this point in time there be no elimination of any of the remedies which have achieved some success in the effort to end employment discrimination. In the field of civil rights, the Congress has regularly assured that there be a variety of enforcement devices to insure that all available resources are brought to bear on problems of discrimination. For example, housing discrimination may be the subject of suit by the Attorney General, a private suit by the party affected, or a conciliation effort by the Department of Housing and Urban Development. Again, in the field of education, remedies for discrimination are available to private persons, the Attorney General and the Department of Health, Education, and Welfare.
>
> At this juncture, when we are all agreed that some improvement in the enforcement of Title VII is needed, it would be, in our judgment, unwise to diminish in any way the variety of enforcement means available to deal with discrimination in employment. The problem is widespread and we suggest that all available resources should be used in the effort to correct it.

my judgment. Mr. President, it could not be put more forcefully more precisely.

e are dealing with a problem in this country that needs all avail- resources to wipe from our land the terrible condition in which man being can be and is discriminated against because of nothing he had anything to do with—a discrimination that is based on color, religion, sex, or national origin. All available resources ld be available to that individual. I say it. I am sure a majority say it. I say that all the Members of Congress say it. Our differ- is in how we reach it. One way to reach it is not to strip from that idual his rights that have been established, going back to the Civil Rights Laws of 1866. We say it most forcefully. The admin- ion has said it, through its Department of Justice and its Assist- ttorney General, Mr. Norman.

. Hruska. Mr. President, how much time remains to the respec- sides?

e Presiding Officer. Four minutes remain before all time ex- The Senator from Nebraska has 1 minute, and the Senator from Jersey has 3 minutes.

. Williams. Mr. President, I suggest the absence of a quorum, time.

Presiding Officer. There is not enough time for a quorum call.

Williams. Mr. President, a parliamentary inquiry.

Presiding Officer. The Senator will state it.

Williams. When there is not enough time for a quorum call to quested, how much time is required under controlled time, under les, to request the call of the roll?

Presiding Officer. It would take approximately 15 minutes quorum call.

he Senator will yield back his time, he can request a quorum nder his own right, which would occupy roughly 15 minutes.

Williams. I yield back the remainder of my time.

Presiding Officer. Does the Senator from Nebraska yield back mainder of his time?

Hruska. I do.

Presiding Officer. All time has been yielded back.

Williams. Mr. President, I suggest the absence of a quorum.

Presiding Officer. The clerk will call the roll.

legislative clerk proceeded to call the roll.

Williams. Mr. President, I ask unanimous consent that the for the quorum be rescinded.

Presiding Officer (Mr. Chiles). Without objection, it is so d.

time on the amendment has now expired.

question is on agreeing to Amendment No. 877, offered by the r from Nebraska (Mr. Hruska).

this question the yeas and nays have been ordered, and the will call the roll.

gislative clerk called the roll.

Gambrell (after having voted in the affirmative). On this vote a pair with the distinguished Senator from Maine (Mr. Mus- f he were present and voting, he would vote "nay"; if I were rty to vote, I would vote "yea." I withdraw my vote.

Byrd of West Virginia. I announce that the Senator from

New Mexico (Mr. Anderson), the Senator from Indiana (Mr. Hartke), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Massachusetts (Mr. Kennedy), the Senator from Washington (Mr. Magnuson), the Senator from South Dakota (Mr. McGovern), the Senator from Montana (Mr. Metcalf), the Senator from Maine (Mr. Muskie), the Senator from Connecticut (Mr. Ribicoff), the Senator from Virginia (Mr. Spong), the Senator from California (Mr. Tunney), the Senator from New Mexico (Mr. Montoya), and the Senator from Oklahoma (Mr. Harris) are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon) and the Senator from Wyoming (Mr. McGee) are absent on official business.

I also announce that the Senator from Idaho (Mr. Church) is absent because of illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Humphrey), the Senators from Washington (Mr. Jackson and Mr. Magnuson), the Senator from California (Mr. Tunney), the Senator from Connecticut (Mr. Ribicoff), and the Senator from South Dakota (Mr. McGovern) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. Allott), the Senator from Oklahoma (Mr. Bellmon), the Senator from Utah (Mr. Bennett), the Senator from Tennessee (Mr. Brock), the Senator from Massachusetts (Mr. Brooke), the Senator from Hawaii (Mr. Fong), the Senator from Arizona (Mr. Goldwater), the Senator from Florida (Mr. Gurney), the Senators from Oregon (Mr. Hatfield and Mr. Packwood), the Senator from Iowa (Mr. Miller), the Senator from Illinois (Mr. Percy), and the Senator from Ohio (Mr. Saxbe) are necessarily absent.

The Senator from Kentucky (Mr. Cooper) and the Senator from Texas (Mr. Tower) are absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

On this vote, the Senator from Florida (Mr. Gurney) is paired with the Senator from Massachusetts (Mr. Brooke). If present and voting, the Senator from Florida would vote "yea" and the Senator from Massachusetts would vote "nay".

On this vote, the Senator from Texas (Mr. Tower) is paired with the Senator from Oregon (Mr. Hatfield). If present and voting, the Senator from Texas would vote "yea" and the Senator from Oregon would vote "nay."

The result was announced—yeas 33, nays 33, as follows:

[No. 41 Leg.]

YEAS—33

Aiken	Dole	Jordan, Idaho
Allen	Dominick	Long
Baker	Eastland	McClellan
Bentsen	Ellender	Randolph
Bible	Ervin	Roth
Buckley	Fannin	Smith
Byrd, Va.	Griffin	Sparkman
Byrd, W. Va.	Hansen	Stennis
Chiles	Hollings	Talmadge
Cotton	Hruska	Thurmond
Curtis	Jordan, N.C.	Young

NAYS—33

l	Hughes	Pell
l	Inouye	Proxmire
gs	Javits	Schweiker
lick	Mansfield	Scott
	Mathias	Stafford
	McIntyre	Stevens
ston	Mondale	Stevenson
eton	Moss	Symington
right	Nelson	Taft
el	Pastore	Weicker
	Pearson	Williams

SENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

orell, for.

NOT VOTING—33

	Gurney	Miller
rson	Harris	Montoya
on	Hartke	Mundt
tt	Hatfield	Muskie
	Humphrey	Packwood
e	Jackson	Percy
n	Kennedy	Ribicoff
h	Magnuson	Saxbe
r	McGee	Spong
	McGovern	Tower
ater	Metcalf	Tunney

Mr. Hruska's amendment (No. 877) was rejected.

* * * * * *

e Senate continued with the consideration of the bill (S. 2515) a
o further promote equal employment opportunities for American
ers.

AMENDMENT NO. 878

. Javits. Mr. President, I call up an amendment and ask that it
ported.

e Presiding Officer. The clerk will report the amendment.

e legislative clerk read the amendment.

copy of amendment 878 to S. 2515 may be found on p. 1383.)

. Pastore. Mr. President, may we now have order so that we
ear the Senator.

e Presiding Officer. The Senate will be in order. Senators will
heir seats.

. Javits. Mr. President, on this measure which I have called up,
enator from New Jersey (Mr. Williams) is really the one who
l have called it up. I ask unanimous consent that the Senator
New Jersey may appear in the Record as the sponsor of the
lment and I as a cosponsor. I had to act quickly because we
d at the moment to be in a vacuum.

e Presiding Officer. Without objection, it is so ordered.

Javits. Mr. President, this amendment has been called up for
f us. It represents the present committee position on the bill. In
words, will or will not the enforcement be according to the plan
ed in this compromise, which is what it is, or will it be some-
else. If the compromise is rejected, then we will revert to the
ions of the bill, to wit, the cease-and-desist provision.

Mr. ERVIN. Mr. President, will the Senator from New York yield

Mr. JAVITS. Not yet. If the compromise is sustained, then there w be a new plan which I described yesterday. If, on the other hand, t Senator from Colorado decides to substitute his plan, according to i printed amendment, and he should prevail, that will be the way t bill will stand.

I believe, Mr. President, that it is time to bring this matter to conclusion. I feel deeply concerned in conscience about quickie vot on a matter as critical as this. It is no one's fault. It is just life a events.

I would hope very much that the Senate will act with responsibili in respect for our leader, whom we all love and respect, the Senat from Montana (Mr. Mansfield), and that we could fix a time th would give Members a moderate notice—it does not have to be long- so that Senators can present their case and vote.

I am sure that the Senator from Colorado will present his propos as a substitute for the proposal we have laid before the Senate a that this issue will be decided with celerity. Then I believe we w have a clear and fair shot as to whether we can have cloture or no whether this Senate is going to be run by a minority or by t majority.

That will have reconciled about all the points of view that can reconciled, among those who are for some bill. With respect to tho against any bill to change the powers of the EEOC, and I respect the and that is their privilege, I do not believe, as the managers of t bill, that the Senator from New Jersey and I can do anything abo that kind of opinion, but to those who want a bill, we are trying step forward, to offer a plan that is feasible and makes sense.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PASTORE. I understand this modification actually gives t court the original authority to issue orders.

Mr. JAVITS. It does. It is an open covenant, openly arrived at. W are up against two problems: First, the difficulty of the Commissi having no power to conclude these cases, and the second is court co gestion. We give up that power of the Commission to issue cease-an desist orders, which is important, but we retain the ability to get ov the matter of court congestion because we give the Commission t ability to hear the case and make its recommendation and findings the court.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. JAVITS. I would be happy to yield to the Senator from Al bama, but I yield first to the Senator from North Carolina, if wishes.

Mr. ERVIN. Which amendment did the Senator call up?

Mr. JAVITS. Number 878.

Mr. ERVIN. I thank the Senator.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. ALLEN. The Senator identified the amendment as a compro amendment. Does the Senator allude to the "compromise" as bein compromise between the distinguished Senator from New York and t distinguished Senator from New Jersey? Who compromised amendment?

r. JAVITS. I think the Senator from New Jersey will speak for self, but I believe we have presented what we consider to be, tly and together, a compromise of the point of view heretofore esented on the floor by the Senator from Colorado (Mr. Domi-) in presenting the succession of amendments that he has ented.

r. ALLEN. But both of you are already for the present bill, or the mittee substitute. I wonder where the area of compromise is.

r. JAVITS. I said before I did not believe that this was any com-nise with those against any EEOC bill of any meaning. So with espect, I do not know what the Senator's position finally will be, with all respect, it is my impression that that is the Senator's ion. I know it and I respect it, as I said before.

r. PASTORE. Mr. President, will the Senator yield?

r. JAVITS. I yield.

r. PASTORE. Is it correct for the Senator from Rhode Island to his is a compromise stemming from action that has already been n by the Senate? The amendment of the Senator from Colorado rejected, and the compromise is between that and the filibuster we been experiencing. What we are trying to do is to go half way e can break up the filibuster. As the Senator from Montana ght out the other day this filibuster has been going on since this n began.

ant to say at this point that it is not the absence of various Sena-hat has caused the trouble; it is the fact that we have not been o vote. The other day we recessed at 3 o'clock. I do not know whose that was. However, the fact remains we have had a quorum here f we had not had the delays we would have disposed of this ng ago.

ant to compliment the Senator from New York and the Senator New Jersey because on their own initiative, realizing the frustra-that beset us, they have gone half way by moving original juris-n to the court to issue the order. I do not know how far reasonable an go unles it is desired and demanded that the winners declare elves losers and the losers declare themselves winners.

JAVITS. I thank the Senator.

HRUSKA. Mr. President, will the Senator yield?

JAVITS. I yield.

HRUSKA. I would like to ask the Senator to clarify the term promise." To me it has the connotation of agreement. Is there ment between the views of the Senator from Colorado and the or from New Jersey and the Senator from New York on this ? Or would it be more accurate to say the Senator from Colorado proposal and here is a different proposal? I do not want to quarrel semantics but so far as the choice of words, "compromise" would o connote agreement between sides and perhaps that is not en-applicable.

JAVITS. I might say to my friend that I am a lawyer, too, and een for many years. I have proposed many compromises uni-ly.

HRUSKA. A compromise proposal, but "compromise" has a dif-connotation.

JAVITS. It takes two to be deceived.

HRUSKA. Correct.

Mr. JAVITS. I am sure nobody is deceived by my using the word "compromise" or believing the Senator from Colorado (Mr. Dominick) agreed. Yesterday he told the press he did not agree and it was widely published this morning.

I still say that the Senator from New Jersey and I proposed a compromise, which will be a compromise. I think the Senator from Rhode Island described it very accurately. It is what it does.

I shall be pleased to speak to that compromise during the course of this afternoon, beginning now.

If the majority leader wishes me to yield to him, I would like to do so.

Mr. MANSFIELD. I would like the floor in my own right, if the Senator will yield to me.

Mr. JAVITS. Of course. I yield the floor.

Mr. MANSFIELD. Mr. President, the vote showed 33 Senators for and 33 Senators against the Hruska amendment, with one pair. I am sure that the Senate knows enough about elementary arithmetic to know the difference between 100 and 67.

It is my understanding that the vote on the pending amendment will not occur until Tuesday next. That is 6 days away; another week wasted. I do not know what the Senate intends to do about facing up to its responsibility. I do not know how often they are going to count who is here and who is not here.

All I want to say is you have a majority of the Senate here today and we are going to be in session all afternoon, whether we like it or not, because we are waiting to see what the House is going to do on the dock strike legislation which passed the Senate yesterday.

I do not intend to get down on my knees to this body because as a Senator from the State of Montana I am just as important as any other Senator in this body, just as important; but as majority leader, you have the joint leadership, including the minority leader, at your feet and at your disposal. We cannot force you if you do not want to face your responsibilities but you are doing a distinct disservice to the Senate and to the people whom you have the honor to represent. May I say as I said yesterday, that no one forced any of the 100 Members of this body to become a Senator. We became Senators because we wanted to; we asked our people to vote for us and they sent us back here to represent them.

Sometimes I wonder just how much of a conscience this body has. Sometimes I wonder how they can delay, how they can postpone, how individual Senators can think of themselves foremost and the Senate secondarily.

We all happen to be lucky that we are elected to the Senate of the United States. There are thousands of people back home in our respective States who are smarter than we are, have more ability than we have, could do a better job than we do, but they have not had the breaks and the circumstances have not flexed to allow them to become Members of this body.

We are given a pretty good salary. We receive a goodly number of fringe benefits. And all we are asked to do is to come in to look after the interests of the people of our States, to expedite legislation, and appropriate debate.

And what do we do? We stall. We find excuses. Somebody is not here or somebody has to be there. We need our troops or we might lose

ll, this country and this Senate are supposed to run on a majority
The Senate is supposed to function when a quorum is present.
quorum is present. What this Senate is degenerating into—and I
e word advisedly—is a 3-day a-week body. We are all becoming
ers of the Tuesday to Thursday club, inclusive. And I think we
arking by our own actions here the apathy and the malaise which
fecting this Republic today.
We cannot attend to our duties, how do we expect the people of
ation to attend to theirs? What kind of an example do we furnish
What sort of inspiration?
his were an industry, we would pay a price for not being here, and
lid not produce we would be fired.
I do not know what to do, frankly, because the power is not, and
has been, in the hands of the minority or the majority leaders.
ower is in the hands of each Senator singly and the Senate collec-
And if you will not face up to your responsibilities, there is
g—not a thing—that the leadership can do to force you.
as far as I am concerned, all I am interested in is getting the
priation bills out of the way, and I would suggest to my col-
s, both those who are present and those who are absent, that we
the rest of this business—authorizing legislation or continuing
ion needing new authorizations—and maybe in so doing we
doing the country a favor. Maybe we will save a lot of money
lot of strain. But, as far as I am concerned, I do not intend to
y more sleep, as I have this past month, over the conduct of this
which is supposed to be made up of mature people, people who
rcise sound and sober judgment, but people who are lacking,
opinion, in the attributes which should be the hallmark of this
nd which should contribute to the morale and to the welfare of
public.

PASTORE. Mr. President, will the Senator yield?

MANSFIELD. I yield

PASTORE. First of all, I do not wish to quarrel with the majority
for the simple reason that I agree with everything that he
n the second place, I make no apologies for myself, for the
simple reason that the senior Senator from Rhode Island has
re every day since the time that this session opened, with the
on of one afternoon. It was an afternoon when I had to fly
le Island to attend the ordination of the new bishop of Provi-
nd even then I flew back here immediately without attending
ial reception in the Bishop's honor. So I do not need to make
ology for absence from this floor. What I want to suggest to
ority leader is that his admonition, which is quite strong, in my
opinion, should have been made some time ago. For I remember
o well that when the Senator from Colorado brought up his
ent, he brought it up on a Thursday. Then because he had
his troops and he did not have the votes, the word was spread
the floor of the Senate that there would be no vote until Mon-
d a concession was made by the leadership to vote on that
. That was the time when the leadership of the Senate should
od its ground and said, "You cannot do this. Your amendment
ng. Stay here and talk about your amendment until we vote

We are caught in this unfortunate situation because there is a ma of strategy going on on the floor and a lot of maneuvering as to wh amendment is going to come up and at what time in order to defe what the Senate has already achieved.

Naturally, the Senator from New York is very apprehensive th this strategy will emasculate the bill, so he has called up his amen ment and said, "I will talk on this amendment until the Senator fro Colorado brings up his amendment." But the minute he sits down, motion is going to be made to lay his amendment on the table, just s sure as God made little green apples. That is the strategy that we ar faced with.

The question is, Do you want an equal employment opportunities bi or do you want to defeat an equal employment opportunities bill? Th is the question before the Senate and those of us who are interested having a good bill have every right to use every parliamentary proc dure to see that the American people are not cheated out of the e pression of the will of the majority. That is the question that is pen ing here. If they are going to abandon this to the minority maneuv and let it become a tool for parliamentary strategy, the senior Senat from Rhode Island, as long as he has a breath in his body, will n stand for it.

I could agree that it may be about time that a lot of these candidat for the Presidency of the United States should return to the Sena but we have gone through that experience before. One of the great Presidents of the United States was John F. Kennedy, and I rememb that if he had not gone around shaking all the bushes of this countr we might not have had him as President, and the people of th country would have been cheated of the fine leadership he gave us f 3 years. He was absent from the Senate because he felt he was on vital mission for the American peop'e no less than for himself.

The people we are talking about are running for the Presidency the United States, and what is wrong with that? What is wrong wi that? And because they are out on their high mission, because they a doing what they feel they must do in their hearts, minds, and co sciences, they are absent. Maybe they ought to be here, but I do not b the idea that it is abominable that they are not. I think that is pret strong language to apply in the Senate.

Last Monday or Tuesday—I do not remember which day it was—w quit the session at 3 o'clock in the afternoon. Three o'clock in the afte noon. Why, with this bill pending? That is our fault, and let us g down to the genesis of the problem.

Another thing, too: We tried cloture twice, and we did not qu make it. We did not quite make it. Do you know why? Because t cloture rule is written for the rule of the minority, and that is th reason why we did not make it. The majority of the Senate voted f cloture, but we will not get cloture.

Now, what did the Senator from New York do? What is this ho rible thing he did?

He brought up, on his own initiative, a unilateral compro knowing full well that unless he compromises he cannot get a vote the bill is dead, and everybody in this body knows it. The bill is d with the provision as it stands now, and I dare say that even if it g to conference, it might be knocked out. So realizing the practi

ion, being realistic as they are, the Senator from New York and enator from New Jersey did what?

ey stood up and said, "All right, you have lamented the fact up w that we are giving the agency the power of cease and desist, is a judicial power, and you do not like it." So all right, the ors from New York and New Jersey say we will amend the dment on our own initiative, even though we have won the first l. On our own initiative, we will amend the amendment and give urt that original jurisdiction.

w awful is that man from New York? Do Senators think he is to stand there and let somebody put in a sneak motion to lay table, and crucify the bill this afternoon? Mr. President, he is orth his salt, he is not worth a nickel to the people of New York, permits that. And that is all I have to say.

MANSFIELD. Mr. President, may I say this is the first I have about the possibility of a motion to table, although of course, always in order.

nd, as far as the Senate adjourning at 3 o'clock last Tuesday erned, there was absolutely nothing to do in this body at that nd if we had stayed here, there would have been nothing but votes. That is what confronted the leadership.

uld hope that these factors would be kept in mind, and may I my distinguished friend from Rhode Island, a man for whom I reat affection and whom I admire tremendously, that there are ve Members of the 33 absent today who are running for the nomi- for the Presidency of the United States; so I would say they een unfairly singled out in the overall picture, and I would like ord to be clear in that respect.

w yield to the distinguished senior Senator from Maine.

SMITH. Mr. President, it had been my intention to make a ent in the Senate today on the subject now being discussed, the of absenteeism. But the distinguished majority leader has so illy and so ably expressed my views on this subject that I ask nous consent that my statement be printed in the Record at this nd I advise the Senate that a copy of the statement is on each r's desk, and I would urge each Senator to consider cosponsoring t resolution.

PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR MARGARET CHASE SMITH

resident: The very able, distinguished and dedicated Majority Leader y made a very strong personal appeal on this Floor against absenteeism. ther things he said:

ve almost completed a month of labor, and produced nothing—not even a . . . I would make a personal plea to every member of this body to not eadership to delay on . . . any legislation this year . . . I would hope that e would face up to its responsibilities; that each Senator would act with . so that we can do the job which the people are paying us to do. . . . ngle Member of this body sought this position, and with the position ity, a responsibility, which means not only facing up to the schedule in of conventions and elections, but also facing up to attendance on the the Senate. *The record of this body over the past month is, to put it hominable.* . . . there will be no sufferance, no exceptions made as far enator is concerned regarding votes or a date certain on legislation. . . . ajority Leader's patience on abominable absenteeism is at an end— ime was when I made my statement two months ago on December 20,

1971 and stated I would introduce a constitutional amendment to curb absente-ism. I am attaching my statement of December 20, 1971 at the conclusion of m remarks.

I introduced that legislation on January 31, 1972. I now reintroduce it with very minor clarifying change and I am pleased to introduce it on behalf of m self and Senators Anderson, Bennett, Cook, Hatfield, Moss, Randolph, Staffor and Thurmond.

Not only is the Majority Leader's patience at an end—but so is the patience the American people for I have received thousands of letters from people throug out the nation—from every state in the union, except Alaska (and Sena Stevens tells me that many Alaskans have voiced their support of my an absenteeism constitutional amendment to him) expressing very solid support my proposal and the hope that their Senators and Representatives will support Their only basic criticism is that the required attendance should be substantial higher than the 60 percent I propose.

In view of this widespread national support to curb absenteeism, I again invi the members of this body to join me in the sponsorship of this proposal.

STATEMENT OF SENATOR MARGARET CHASE SMITH (DECEMBER 20, 1971)

The United States Senate is in trouble. It is because growing numbers of i members no longer regard it as a high institution for dedicated and honora service but rather only as a means to an end.

It has become a mere springboard to those who would use it—even abuse it for their selfish interests, whether such interests be commercializing their po tion and title with the acquisition of high-price lecture fees or running f President.

I have no criticism of presidential aspirations as long as those president aspirations do not result in dereliction of Senate duties in representation state and national constituencies. After all, having been a presidential candida in 1964, who am I to criticize presidential ambitions? Yet, I never missed a Se ate roll call vote while I was running for President.

A greater cause of Senate debilitation comes from the Senate "moonlighter who regard the Senate as strictly secondary to their money-making activities being offered high-paid lecture fees simply because they are Senators. As the R publican dean of the Senate recently said, "Being paid $2,500 for $50 speeche Presidential aspirants should realize that if they succeed to the White House t high paid "moonlighting" days are over.

Too many Senators have chronic absences because they are on the lecture to piling up annual lecture incomes that even exceed their Senate salaries—so times even doubling their Senate salaries. Their absences not only openly reta and postpone the progress of Senate business because of the difficulty of gett the necessary quorum present to do business—but as well, behind the scen unduly delay the Senate schedule. Because repeatedly they go to the Majori Leader or the Minority Leader and beg them to call off a vote scheduled for certain day simply because they can't be there as they are making a high pa lecture hundreds of miles from Washington.

So the Senate procrastinates for the convenience of "the Moonlighters". A what happens on the Senate Floor, to a lesser degree, happens behind the scen in the Senate committees.

In addition to the chronic Senate absentees of presidential candidates a "moonlighters" on the high-paid lecture fee circuits, there are those Senato who are bent upon squeezing out every bit of Senate paid world travel and en tainment they can while they are a Senator. They put this pleasurable wo travel ahead of the official duty to which they were elected. And they, too, ca the Majority Leader and the Minority Leader to hold off the votes until th return from their world junketing at taxpayers' expense.

So when you put the several presidential candidate absentee Senators, m many "moonlighting" absentee Senators, and the chronic world junketing ab sentee Senators together, you inescapably come up with a sizable number of only absentee Senators but as well Senators requesting the Senate to procras nate on its official business and regular schedule in order to accommodate th personal conveniences.

The accommodation of their personal interests and conveniences is at the ha price of detriment to the public interest and the national interest. Not only t

frustrates and discourages those Senators who are dedicated to the Senate institution and who stay in Washington on the job to do a job instead of *hold* a job.

is 1971 Congress ended in a sad state of affairs. No wonder the American e is so fed up with Congress. No wonder so many conscientious members eir frustration left before the end of the session in their disgust over the nal and petty differences on conference reports.

the holder of the all-time consecutive roll call voting record (2,941 until ed by surgery in September 1968). I suppose that I have rightly been ac- of having too much of a fetish in this regard. On the basis of the many n promises for earlier adjournment. I repeatedly rescheduled times for al examinations, therapy and treatment.

as I went through day after day of early morning-to-late-evening sessions vember and December resulting from the procrastination caused by the can- absentee Senators, the "moonlighting" absentee Senators, and the world- ting absentee Senators - and the petty and selfish bickering of uncom- sing members of the House and Senate. I finally decided to declare my own ndence and go ahead with my own physical care already postponed for two s by Senate procrastination.

s is the same pattern year after year in the Senate—the pattern of pro- nation and accommodation to those Senators who simply don't stay around heir share of their official work and duty—to legislate—who instead cam- make paid lectures, and junket around the world.

ry year we end up at the end of the year doing what we should have done first of the year and completed by the midd'e of the year. Not only that, l up in a marathon of early-morning-to-late-evening sessions that produce ly bad frames of mind, contentiousness, and petty bickering, but as well, gerous physical condition that takes its toll of us and those who work for d the resulting irritable tempers, mental and physical fatigue produce bad tion.

is the way to legislate? Is this the way to represent the people?

gress needs several reforms. The greatest attack is that made on the senior- tem. Yet, it is the senior members who stay in Washington on the job.

the greatest evil and weakness is "absenteeism". It is the breeder of stination. It is the delayer of orderly action. It is the greatest disgrace Senate.

then doesn't the Senate do something about "absenteeism" instead of wringing hands?

use the Senate is a club of prima donnas intensely self-oriented—99 Kings Queen—dedicated to their own personal accommodation.

equently, the Senate is simply incapable of disciplining its members, r it be violation of Senate rules of order and conduct, breach of national y, improper use or abuse of authority—or absenteeism. In the 23 years I een a member of the Senate, only twice has the Senate reprimanded a r.

use of the Senate's incapability for self-discipline on the problem of absen- and because of the serious responsibility of Senators to honor their obliga- staying on the job to which they were elected instead of being absent ighting", campaigning or junketing, next month I shall introduce in the a constitutional amendment requiring that a Senator be present and vot- record roll call votes at least 60 percent of the time or automatically ex- rom the Senate.

did I select 60 percent? Because it is the same three-fifths majority that and moderates have proposed many years for stopping Senate filibusters of the present requirement of a two-thirds majority.

60 percent requirement is relatively low. After all, usually 70 percent is l for passing or getting a low D in school.

t is anything but restrictive on the absentee campaigners, "moonlight- d junketeers!

n the year 1971, the number of voting days was only 116, or at a rate of n one out of every three days.

required rate of only 60 percent, this would mean that the requirement e to refrain from absenteeism on roll call votes on only 73 out of the 365 he year—to be present and voting on only one out of five days.

s that is not a hardship on the "moonlighters", the "junketeers", and the ners -to let them "moonlight", junket, campaign or be absent from te four out of every five days for whatever reason they might have!

I am not unaware of the probable resistance in the Senate to this self-disciplining constitutional amendment.

I will need the help of the news media to inform the American public ... then the help of the American public to let the Senators know that they want this specific reform against "absenteeism."

MARGARET CHASE SMITH,
U.S. Senator

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana still has the floor.

Mr. MANSFIELD. Mr. President, I have had my say. It has not been easy to say what I have said, but I wanted the Senate to know that I think a lot more of the institution than I do of any individual Senator. To me, this body is my home, and what it stands for is my ideal. I do not want to see the Senate denigrated, and I am sorry that events have reached such a stage, in this most tumultuous year with so many contentious legislation confronting us, and with so little to mark as an accomplishment at this time.

I only wish to point out, before I yield the floor—because I assume that the Senator from New York wishes to obtain the floor—that it would be my hope, in view of the fact that we very likely will not be able to vote on the Javits amendment or the proposed Dominick amendment to the amendment today, that it would be possible to reach an agreement this afternoon to which both Senators as well as the Senator from New Jersey, the chairman of the committee, would agree, by means of which a vote on the Javits amendment and the Dominick amendment could be arrived at a time certain on Tuesday next, because I understand that that, in effect, could be considered D-day as far as these two legislative proposals are concerned.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. MANSFIELD. Yes, indeed.

Mr. JAVITS. I need not protest my respect for the Senator from Montana, he knows that. And the fact that notwithstanding Senator Pastore's sage advice, I yielded the floor because the majority leader wanted it for himself, no matter what the risk in strategic terms, should certainly demonstrate that I am not asleep and I knew what it meant, that someone else could be recognized.

Mr. President, we do have—and I speak really in a very personal sense; like the Senator from Montana, I have the Senate very close to my heart—a profoundly difficult situation which has divided the Nation for more than 100 years, and men feel very deeply about it. We have been through it before. I have been here myself since 1947 and have slept in my office all night and have endured all kinds of hardships in this fight. So I sympathize completely.

The Senator knows that I would like to get unanimous consent to wind this thing up immediately. The Senate knows that; it would be silly for me to protest any such thing. But with the deep feelings and emotions which have obtained, I say to my colleagues frankly it is almost beyond me that circa 1971, there should be any idea that if we do not pass this bill, we are going to kill off civil rights in employment or some other area. It is much too late for that.

Still, there are influences and feelings in this country that seem to think that we could do it. It seems out of the question to me, but there it is, and we have to live with it.

people like Senator Williams and many others I could name, in-
ing the Senator from Rhode Island (Mr. Pastore), did not keep
alive, these issues, precisely because they are so exacerbated by
lifferences, would go down the drain.

I ask Senators to bear with us who have to wage this fight be-
the Lord put us here to wage it. I do not ask the Senator from
le Island to temper what he said, nor the intensity of his remarks,
beg him to understand us, that we do feel seized of a sense of mis-
which is an essential element of the ultimate freedom of our
try according to our lights. As Senator Pastore has said so elo-
tly, as long as we have breath, we, too, wish to do all we can, with
ey to our colleagues—and the Senator has never found me lack-
n that—to protect the things in which we believe.

. MANSFIELD. Mr. President, I appreciate the Senator's remarks
he temperateness of the tone in which they were given. May I
to his attention that I believe in the measure which is before us.
hat I want to see it passed. But it appears to me that, because of
elay in facing up to the issue, we have perhaps somewhat dam-
its chances of passage, which in the beginning were so much
ter than they are at the present time.

that is beside the point. I did raise the question of the possibility
arrangement for a time limitation for Tuesday next, and at this
I yield to the distinguished Senator from Colorado (Mr. Domi-
to see what his response is.

. DOMINICK. I thank the Senator from Montana.

President, I arrived a little bit after the discussion had started,
in the middle of the impassioned address of the Senator from
e Island, which I was able to hear although Mr. Pastore did not
microphone.

nounced to the Senate yesterday that, as far as I was concerned,
ld have voted on my amendment yesterday afternoon. I was told
Senator from New York and the Senator from New Jersey that
lid not think that was such a good idea. They had talked with me
about introducing a different form of their own position, with
derstanding that such an amendment could be debated and that
ver I wanted to submit a substitute for it I would.

ir amendment was submitted late last night. It is perfectly
ent that it is impossible to get a vote on any of these issues unless
ors agree to it, or unless they have spoken their final piece. I
aid before that as far as I was concerned, I was willing to submit
bstitute amendment and vote on it at any time anyone wants to.
far as the proposed amendment of the Senator from New York
e Senator from New Jersey is concerned, it does not meet any
objections that I have raised, and I remain in total opposition to
onstitutes cease and desist without using the words, and that,
as I am concerned, is no offer of compromise at all.

e use the court enforcement procedure—which, heaven knows,
integral part of our whole system—we can get a bill, I believe.
wise many friends and opponents of mine have indicated other-
at we are not going to get a bill. I, quite frankly share their
ent of the situation. The Senator from Montana ought to know
feel about it and how a great many others feel about it, whether
I feel that way.

I am willing to vote on my own amendment, but if we do not g anywhere with that, then I will probably be forced to try to search another compromise. I have made two compromises to date, one which was not satisfactory to either side. That probably means tha was a fair compromise, since it was not agreed to by either side.

My second compromise, amendment No. 871 provides for expedi hearings and determinations. It provides for a Supreme Court rev of a three-judge court decision in the very courts that have gi the minorities their advances in almost every civil rights case we h had. I do not understand why people continue to vote against it, they do. So all I can do is to continue my fight; because I am not go to settle for an agency enforcement if I can avoid it. A procedure wh incorporates in one body the functions of investigation, judge, ju and enforcer. It does not guarantee the respondent adequate process rights and threatens to frustrate the aggrieved's rights w administrative snarls.

Mr. MANSFIELD. Would the Senator from Colorado consider following proposal? I make it, because I understand that what he proposes will be as an amendment to the amendment offered by distinguished Senator from New York.

Mr. JAVITS. It is really the Senator from New Jersey.

Mr. MANSFIELD. And the distinguished Senator from New Jersey a joint proposal.

Would the Senator from Colorado consider a time limitation on amendment or substitute, if it would be possible to arrive at a ti certain, to vote on the Williams-Javits amendment now pending, the interest of the Senate?

Mr. DOMINICK. I would be happy to agree on a limitation of time my amendment and an agreed time to vote on my amendment. I am in charge of those who oppose the Javits amendment. I have talked a number of others who have said that they would not agree on a t certain for the Javits amendment. I am caught in that kind of bi We can vote on my amendment. If it is agreed to, I presume we can ahead and vote on it. If it fails—and I do not know whether it w fail or not—then I suspect that a number of amendments will offered to the Javits amendment.

Mr. MANSFIELD. Let me take a chance.

Mr. President, on my own, I ask unanimous consent to make t unanimous consent request. I ask unanimous consent that a vote the Dominick amendment, which I understand will be offered as amendment or as a substitute to the Williams-Javits amendment, oc at the hour of 3 o'clock on Tuesday next, 6 days hence.

Mr. JAVITS. Mr. President, reserving the right to object, does Senator intend to add to that a vote on the Javits proposal?

Mr. MANSFIELD. Yes. I would ask that immediately after the on the Dominick amendment or substitute, whichever it happens be, a vote occur on the Williams-Javits amendment as amended or not amended.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Reserving the right to object, Mr. President, as I understand the request of the distinguished majority leader, it is that a time be set on the vote on the Dominick amendment, and then, what

Javits-Williams amendment is amended by the Dominick amend-
t or not, a time for voting on the Javits amendment would be set.
hat correct?

r. MANSFIELD. Immediately.

r. ALLEN. It is the judgment of the junior Senator from Alabama
we ought to take the steps one at a time and that we should not
off the right to offer other amendments to the Javits amendment.
sibly some would not agree to the Dominick amendment but might
t to perfect the Javits-Williams amendment.
s to this so-called compromise amendment, it seems to the junior
ator from Alabama that, while the distinguished Senator from
York said there are those who object to the words "cease and
st" and that they were going to get "cease and desist" out of the
ndment, they got the words out of the amendment but they do
ave the meaning out; because cease and desist is still there, and
is just another way of stating what is already in the bill.
the junior Senator from Alabama would be delighted to agree
ime for voting on the Dominick amendment, even if that time is
0 minutes from now, and then we will proceed as each amend-
comes up. I think that would be the way to handle it.

r. MANSFIELD. In the interests of the best procedure for the Senate,
with the indulgence of the distinguished Senators from New York,
Jersey, and Colorado, would the Senate consider, in addition to
revious unanimous-consent request, that, instead of the vote oc-
ng on the Williams-Javits amendment, whether amended or not
diately, pending the disposition of the Dominick amendment,
be a half-hour limitation on all other amendments to the Wil-
-Javits amendment, the time to be equally divided between the
or of the amendment and the manager of the bill or whoever he
l agree to designate?

. ALLEN. Mr. President, I would be constrained to interpose the
ration of an objection to that request, for the reason that, if we
time limit on the Javits amendment, the Dominick amendment
g failed, it would just be a matter of time before a vote was
ed, and we would end up with the very same bill we have before
w, in effect; because it occurs to the junior Senator from Ala-
that the Javits-Williams amendment really makes a rubber
or a cat's-paw out of the Federal district court, rather than to
it to try these charges de novo and not merely from the record.
ring it step by step, I would certainly agree to a vote on the
nick amendment immediately.

MANSFIELD. If the Senator will yield, there would be no time
n to vote on the Williams-Javits amendment. It would appear to
nt a half hour on other amendments, equally divided, depending
the outcome of the Williams-Javits amendment, would allow
of time. Besides, even after the Williams-Javits amendment as
ded, if it is amended, was disposed of, there still would be op-
nity for the offering of other amendments.
in the hope that we could expedite the business of the Senate, I
this proposal at this time, because it would not begin to take
until 6 days hence. That is a long way off. At that time, a good
n of this session of Congress—the conventions and the election
ered—will be out of the way and irrecoverable.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. DOMINICK. I want to reiterate that I am willing to vote on my amendment today.

Mr. MANSFIELD. But there are others, I understand, who would not wish to have the vote today, because of circumstances over which they have little or no control, but which are understandable to all concerned.

Mr. DOMINICK. I would like to remind the Senator from Montana that a large group—I am not one of them—is going to the Interparliamentary Union in Canada on Wednesday next. The day after that, a number of Senators will be absent, for the reason that they did not realize that any more votes would be occurring that late in the week. I am not excusing them. I am saying that we will be constantly faced with a large number of absentees.

Mr. MANSFIELD. Well, the Senator has been a Member of this body long enough to understand that no one can foretell with any degree of accuracy, unless he uses a computer, as to who will be here and who is not here. But I wish we could get away from the policy which seems to have developed so much in recent years, this matter of counting the troops, and let a majority of the Senate decide. If absent Senators are interested enough, they will not go to Canada, they will not go here, or they will not go there. They will be in this Chamber because, after all, that is where they are supposed to be. That is where they are paid to be. That is where their responsibilities lie.

So I would hope that the distinguished Senator from Alabama would find some leniency in his heart so that we could get on with this legislation which has been so long delayed and the next part of which we cannot face for 6 days from now—almost a week.

Mr. ALLEN. Mr. President, reserving further the right to object, the junior Senator from Alabama would say that he feels sure the majority leader would say that the junior Senator from Alabama has not sought to delay the vote on a single amendment pending before the Senate. The junior Senator from Alabama is willing to vote right now on the Dominick amendment if it is offered; but he feels that it is his duty to his convictions to insist on having a look at the situation after a vote has been taken on the Dominick amendment.

That does not preclude the possibility of any agreement being reached after the vote has been had on the Dominick amendment. It might be adopted. I think that would be the best way to solve this impasse and would bring us quickly to a vote on the bill itself. That might be the best way out of this impasse, if we could agree at this time to an immediate vote on the Dominick amendment, when, as, and if offered.

Mr. MANSFIELD. Mr. President, I would make the request but I think it would be futile. I would anticipate an objection and I would not want to embarrass anyone. I will repeat my unanimous consent request and I ask unanimous consent to make this unanimous-consent request, that is, that the vote on the Dominick amendment, or a substitute thereof to the Williams-Javits amendment, occur at the hour of 2 o'clock on Tuesday afternoon next.

Mr. JAVITS. Mr. President, does that just apply to the Dominick amendment?

Mr. MANSFIELD. Yes.

Ir. JAVITS. Then I would be constrained to object again. If I may lain, the majority leader said he did not want to embarrass any-

Ir. MANSFIELD. I meant on a vote this afternoon.
r. JAVITS. I understand that. The majority leader said he would make the unanimous-consent request. I think, in all fairness, it is fair to ask for a vote on a substitute and not ask for a vote on the n amendment and put us in the position of being the bad fellows objecting, as we would be irretrievably prejudiced.
r. MANSFIELD. The Senator is aware of the fact that the Senator ı Montana tried to get that into an agreement but was unsuccess-so——
r. JAVITS. Then the Senator should not present it as a unanimous-ent request, and I say that with all respect. We should not be com-d to be the bad fellows and object, when it is a one-sided proposi-
r. MANSFIELD. Mr. President, I withdraw my request.
le PRESIDING OFFICER. The request is withdrawn.
r. JAVITS. Mr. President, I think that what has transpired here this noon is clear evidence of where we are. Feelings are deep. Con-ns are profound. We are all adults. Apparently this matter is not y shape to be resolved.
far as the distinguished Senator from New Jersey (Mr. Wil-) and I are concerned, we are ready for a vote on the basic prop-n. I really am speaking at great risk here now, but I believe that the Senate disposes of the question on this occasion, so far as we ncerned, it is ended and I would expect, in all fairness to the Sen-nd after all, this advances the proposition of the Senator from ana the furthest, that that would be so from the opposition side,
t we will be at hazard on this basic proposition on which Senators voted already twice at least. That is all right. I am perfectly ready ept that, and the results. But let us give a little notice to those re proceeding on the theory that this matter was not coming up, majority leader said, under circumstances we cannot control, and hem the opportunity to appear here, cast their vote as is their so to do, rather than to be caught by surprise, I do not want to n surprises in this situation. But I do not want to accept a one-unanimous-consent request which puts us at hazard when the side loses nothing—if it wins, fine, if it loses, it still has plenty of o go—and the bill is still nowhere.
nnot see that at all. I cannot see that that is fair in any way, so far are concerned.
GAMBRELL. Mr. President, will the distinguished Senator from York yield for the purpose of making or entering a motion to ider?
JAVITS. This Senator will not so yield, as this Senator is not ap-of the consequences of yielding for that purpose. This Senator reason whatever for any discourtesy, and will evidence none, soon as this Senator has a minute to satisfy himself as to the con-ces of that motion, then the Senator would be prepared to yield, t now.

Mr. President, as I said a minute ago, I believe that we are dead locked in a serious situation. It evidences for the country a matter, really, of the greatest importance to all Americans; that is, who runs our country.

Mr. President, since 1957, when I first came here, I have supported motions to amend rule XXII. We have had rulings, and apparently it almost seems to be established now, even without a ruling, that rule XXII is susceptible to amendment only at the beginning of a new Congress.

So far as I can remember, we have pressed that every 2 years, whenever a new Congress came into being. We have always argued that by the operation of this rule it was not a majority of the Senate which determined the actions of the Senate but two-thirds, and that by the rules of the Senate a completely nonconstitutional devolution of power to one-third of the Senate had been granted.

We have been told in successive years constantly—especially in the past 10 years—that this is no longer a civil rights struggle and that all our concerns about the filibuster's being used—that is, used as a weapon to throttle civil rights legislation—were misplaced and ill advised, that no longer was the filibuster weapon going to be used against civil rights legislation.

But, Mr. President, I am glad that I was not taken in by that. I never have been. Here is the complete validation of that fact, the power of the minority—to wit, one-third—under rule XXII, to compel—and I use that word advisedly—the majority to accept what it wants rather than what the majority has voted. That is naked and clear.

It seems to me that very long-range interests are again at stake for the United States. If this power is to be utilized nakedly—as it is—it can be utilized in any quarter. It is a fact, and the country should know it, that one-third of Senators present and voting can veto any action by this country. That could include a declaration of war. It could include appropriations for the Armed Forces. It could include any solemn engagement made by the United States, or on anything necessary to its security. That is the way we are organized.

Every once in a while, something comes along to show it in all its pristine power. That is where we are now.

Mr. DOMINICK. Mr. President, will the Senator from New York yield for a question?

Mr. JAVITS. I yield.

Mr. DOMINICK. I just want to ask the Senator whether he really feels that a majority of the Senate voted against the Court enforcement, especially when the plurality vote represented just a one-vote shift. That is not a majority of this body or anywhere else.

Mr. JAVITS. Mr. President, a majority of those present and voting have voted that way on two occasions, and whether it is a one vote shift or not, they did not impeach a President by one vote. That would be a pretty important vote. It would be the first impeachment of a President. A lot of other measures are carried by one vote.

The evidence is that 60 percent of the Senate the last time out voted for cloture. I am talking about cloture; 60 percent of the Senate voted for cloture notwithstanding the presence of cease-and-desist power in the bill.

he Senator from New Jersey (Mr. Williams) and I believe that
er those circumstances, with a majority vote, whether by one or
votes against the Dominick amendment or 60 percent of the Sen-
voting for cloture of debate with a cease-and-desist power in the
we think we certainly have more of a right to have it than the
r side has to negate it because the Senate wants this measure and
ld not be denied the opportunity to enact it by the minority.
deed, the minority leaves us in no doubt of that because it says
plainly, "Unless you give us what we want, you are not going to
a bill."
here is nothing more clear than that. There is no more naked ap-
tion of power than that. And that is what we are faced with.
ie question is whether the Senate can summon the resources to
with that situation or whether it will demonstrate itself to be
rless to deal with it.
. President, I respectfully submit—and I have great affection
esteem for the majority leader—that this proposition is much
important in the graduation of importance than the proposi-
hat we are taking more time than we should on this bill. I agree
we are taking time, but we are not taking more time than we
d.
is subject is of such importance to the future of our country as
nether a minority can compel the majority to meet its terms
y by virtue of the fact that it can prevent majority action. It
kind of thing on which grave social and political upheavals are
ounded. I do not say that it will happen now. I hope and pray
t does not.
matter what happens to the pending bill, it has the capability
ing a measure which can really be a trial to the people of this
ry and one which the people think serious enough for this par-
r bill.
ppreciate the position in which we find ourselves. However, I take
seriously at heart and am comforted by the assertion by the
or from Rhode Island (Mr. Pastore). I think he is right. He
hat a Senator would hardly be worthy of the name if he caved
his kind of a situation.

WILLIAMS. Mr. President, will the Senator yield for an observa-

JAVITS. Mr. President, I yield to the Senator from New Jersey.

WILLIAMS. Mr. President, I certainly applaud the ability of
enator from New York, who has been on the ramparts in this
and in the battle concerning the dock strike. It has wholly oc-
l his time all day and all night. He has carried the burden with
ficence.
t is my first observation. The second observation is that I would
that if I were out in the country and not a Member of the U.S.
, I would wonder what this great American body is all about.
ld say, "They have an issue. They have had a vote. They have
d the issue. Then they decide that they have to decide it again
ain and again."
s particular issue of cease-and-desist power has been voted with
gnity, not on motions but up or down three times.

JAVITS. The Senator is correct.

Mr. Williams. Mr. President, in 1970, the vote was in the neighborhood of 41 to 27 in favor of this method of enforcement on this bill.

Since we have come back, as the Senate majority leader has said, we have not done anything. We surely have not done anything finally. However, twice we have voted on this and voted in favor of cease and desist.

The Senator from New York and I have joined in an amendment to finally come to a decision. We have offered to step back and use the judiciary, which was all that we heard about during the debate.

We said that cease and desist was the effective and fair way. We are stepping back to the judiciary with this amendment. We have stepped back, and for the life of me I would think that if I were out in the country and not a Member of the Congress, I would say, "What are these men all about? In this society of ours, I thought we made up our minds in a democratic way, and that ultimately if the majority says this, this is it under the law." And that is what it is all about on this issue.

Again coming back to my opening observation, I have great applause for the Senator from New York for the way he has been carrying a substantial part of this debate.

Mr. Javits. Mr. President, I am grateful to my friend, the Senator from New Jersey. He, too, has shown enormous fortitude in the face of great difficulties in respect to this matter.

While we assess what we are doing, let us remember that from the point of view of any member of the minority in this country—and it is the minority who are affected by this measure, and especially the black minority, 11 percent of the people of the country—it all depends on whether one has a job. People like myself who live in enormous cities are so cognizant of that fact.

This is the most important of all civil rights bills. It may not appeal to someone so vividly if a small child is taken away from a good school or if a family is embarrassed by not being able to rent an apartment or buy a home. However, in the final analysis it is the man with the job who has the dignity, and it is the man with the job who can buy different things.

The deplorable conditions in the neighborhoods of many of the great cities, such as my own city of New York, are attributable very heavily to the fact that 25 or 30 percent of the males are unemployed and their families are on welfare. That is a very serious condition. There is no man in the house because the man has not had dignity and has not been able to earn a living or to get a job.

It has been said in the most colloquial way that

Mr. Dominick. Mr. President, will the Senator yield for a question?

Mr. Javits. Mr. President, I yield to the Senator from Colorado for a question.

Mr. Dominick. Mr. President, I feel just as sympathetic as does the Senator from New York for the people who have been discriminated against, as he knows.

We are faced purely with a practical enforcement issue and it seems to me in these circumstances that there is nothing so wrong with cease and desist enforcement that it should threaten the total bill. We can accept the amendment and go on with the bill. And in that way we would get a job discrimination enforcement bill. Otherwise I am really afraid that we are not going to get one.

Mr. JAVITS. Mr. President, I must make two comments with respect he statement of the Senator from Colorado.

would be a remedy long deferred by very extended court calendars are already heavily overloaded. The Senator proposes by his ndment—which he thinks is an improvement—to make it a three- e court, sitting on the nisi prius basis, which means taking evi- e. Considering the problems we have with court congestion al- y, I am appalled to think of what would happen if we provided hree judges on these trials, with a prolonged trial in a case of this acter, involving discrimination. If we were going to go that route, ve very grave doubt that what the Senator has now proposed is a regressive step rather than a progressive one.

r. DOMINICK. Mr. President, will the Senator yield further?

r. JAVITS. In a minute, if I might finish. I might say that what ave done is, we believe, a very marked effort to make the remedy ningful. The way we propose to make it meaningful is by really lying a separate court, a special master, or a referee. Really, the edure we have outlined is pretty much what special masters and ees in bankruptcy do. It serves to divert from the court a great of hearings, evidence, and so on, which is terribly time consuming would only be aggravated by the congestion on the calendar. In York, where we have such a terrible narcotics problem, we are lishing a narcotics court. We have established rent courts. In jurisdictions, not only my own, efforts have been made to deal the grave problem of court congestion in that way, by adapting ourt system to the situation.

r all those reasons I believe we are very materially effecting the ly. One other thing I say to my friend in all fairness. He has s voted for civil rights measures. He is not an anti-civil-rights n. I meant him and others when I said there is a difference be- us in method but certainly no difference in the fact that the Sena- ants to get this bill passed. The Senator joined in letting the bill ported from the committee where he could have filibustered it. Senator voted for cloture and for civil rights. I have no challenge t in any way. As a matter of fact, I said some people we cannot ile, but one of those is not the Senator from Colorado.

other thing I ask the Senator is this. He has spoken with great nce about the fact that all we have to do is go his way; that, if uld, and I do not believe we can, the bill would be passed.

s not the Senator feel that he is out there adventuring in the wild onder, too? After all, the Senator does not control those who tely oppose it; there is a hard core—even if we should get it gh. I have done my utmost as has the Senator from New Jersey k the extra mile.

really, honestly, genuinely thought we were making a material omise, a concession, in eliminating the cease-and-desist power. mber, this is the legend on the package and it is what all the civil groups have been agitating for, what the unions have been ing for—and look at the publicity this morning. Be fair to us. did the publicity say this morning? It said we had given away a leal. We did not write that; they did.

g the Senator to do that, in view of his devotion to the civil rights for so long, which I confirm, and the feeling he has that we have ed to walk down the road toward it.

Mr. DOMINICK. I appreciate the kind compliments from the Senator from New York. I know how devoted he is to civil rights and the great leadership he has exhibited. I have only one observation concerning his last comment with respect to the media. I remember yesterday when he introduced amendment No. 878. He said: "No, we have not given up on cease and desist; we have just changed it around." I replied to the media that his amendment is purely cease and desist with the words changed. The media thinks this is a great compromise which will pass. I do not think so.

I would be happy to go back to my first proposal and put the dispute in district court, but I honestly thought by bringing it in the form contained in amendment No. 871 I was expediting the court proceeding. This is the procedure utilized in other civil rights law including voting rights and public accommodations. It is an area where it might be helpful, and if it is not I would be happy to go back to my original proposal, which is the district court trial and regular appellate proceedings. I want to accommodate the Senator from New York on this matter if I can, but I cannot compromise this irreconcilable view where he wants the major work done through an Executive agency which is responsible to no one.

Mr. JAVITS. This Executive agency is responsible to the courts and the court will issue a decree.

I would feel that we were answering one big thing and that is the question of the power of the agency to brand a respondent as guilty. I do think that is a big thing.

In terms of the procedural situation respecting the courts I believe hearing the case and certifying the record is an important power and it is a compromise.

But I really feel their inability to issue an order against a respondent, which is yielded by our amendment, is a very big thing, and it is my belief—and not necessarily that of the Senator from Colorado, he rebutted that; but those who espouse the court position generally took that point of view; that is, they felt that the power which was granted by cease and desist was the power to brand the respondent as a person who had done wrong, had discriminated, that this was so potent a power they did not want the Commission in zeal to exercise it.

So I think in our way, by giving only the court power to issue such an order—I want the Senator to understand that the power to contest it before the court issues an order is a very important point for the respondent. Under a cease-and-desist power he could have made his case, then the Commission would issue a cease and-desist order, but under the way we have it now the Commission would have made its recommendation before there was a condemnation, as it were, of the respondent, and the respondent still could have his day in court in opposition to that before a judge actually rules.

I think that is a very important power. I can conceive of many cases in which it is important to get the reversal, if that is what one wishes to call it, before an order is issued, rather than after a cease and desist order is issued, considering employee relations, trade union relations, and relations with the public in terms of sales, and so on. So I think it is very important.

Mr. DOMINICK. Will the Senator yield to me for just a moment so I may comment on this matter?

Mr. JAVITS. I yield.

r. DOMINICK. I shall submit a statement later concerning my views
nendment No. 878, but in the meantime I rise to criticize what
ens under the Senator's amendment. According to amendment No.
the Commission issues findings of fact and recommendations
which the court issues its order, unless the respondent within 60
asks that the court review the record. Previous to this the parties
ot have any hearing before the court. The only new item as far
can see, is the fact that the court itself would have jurisdiction
the admissibility of single pieces of evidence as they go into the
ngs. Other than that the courts are virtually powerless because
ourt has practically no discretion insofar as entering its order
the Commission issues its recommendations.

. JAVITS. If I may reply to that, because I think it points up the
in the first place, there has been much argument by those taking
enator's position that Lord knows what rulings on the evidence,
o forth, would be made by the hearing examiners for the Com-
on; that the Commission could write a cease-and-desist order
t; but under this proposal the court is able to make interlocutory
gs on the controlling questions of law in the course of proceed-
efore the Commission. So I think that is an important concession.
other important concession is one I mentioned before. The
ndent is not branded, as it were, as a violator of the civil rights
with all that implies in public relations, and so forth, by the
ission, but the Commission's recommendations have to be dealt
by the court, and it is only the court that makes the order.
course, if a respondent is going to default, if he is not going to
r, if he is not going to contest, then a court, even on the com-
. on default could enter an order. The court is not going to have a
f there is no defense or if there is no answer; but if the respond-
going to answer and is going to contest, it seems to me we put
a much more advantageous position to do so before the court.
ddition, the court may determine that it requires more evidence,
ich case it can send it back to the Commission to get more evi-
if it desires to get more evidence.

DOMINICK. Mr. President, will the Senator yield further?

JAVITS. If I may just finish.

think the rights which are conferred in terms of the respondent
ry real and that there is not an automatic progression, the steam-
which the opponents of this idea have so strongly argued, of a
ission rolling over a respondent and coming down with a cease-
sist order. I think the Commission can be stopped by way of a
intervening in an interlocutory way while the proceedings are
on, and, second, that nothing issues by way of determination
he court has not only considered the record but the opposition
record interposed by the respondent. On those grounds, I think
ere is a real difference.

w yield to the Senator.

DOMINICK. The amendment as the Senator from New York has
it now is that the district court considers the findings of facts
ecommendations only if the recalcitrant respondent makes a
that the court do so. Otherwise the court just automatically
an order, which is the same as a cease-and-desist order—really
administrative act.

Second, if the courts do decide to review the case, the district court duplicates the examination of the Commission issued findings of fact and recommendations, and then the case goes through the whole appellate procedure.

The net effect is—that such duplicative procedure is just going to delay the enforcement beyond anything my proposal would do.

Mr. JAVITS. No, because the big delay comes from the congested court calendar.

Mr. DOMINICK. Would the Senator oppose an amendment to return findings of fact responsibilities to the court?

Mr. JAVITS. No, I would not be in favor of that, because that is where the calendars are jammed. What I have tried to do—and the Senator has brought it up—is to make the Commission a special master or referee, which the court could appoint anyhow. That is all we are doing. We are enabling the Commission to act in the same way that a referee or special master could act.

Mr. DOMINICK. Will the Senator yield for one more question?

Mr. JAVITS. I yield.

Mr. DOMINICK. The Senator just brought up an interesting point. Suppose—and I do not think we should attempt this on the floor because we do not know where it will lead us—we included in the district court procedure language giving the district court judge the right to decide whether he wanted to try it himself or appoint a hearing examiner or a special master to hear the facts?

Mr. JAVITS. The court has that right, anyway. I do not know of any of these cases which have been referred to them, but I have no doubt they can do it. As the Senator knows, it is hard to decide these matters while one is standing on his feet debating the issue, but I believe the rules of civil procedure in the Federal district courts permit the appointment of a master to take the evidence.

Mr. DOMINICK. Then, under my amendment, one could do exactly what the Senator wants to do, only the court would be appointing him.

Mr. JAVITS. Except that they do not do it.

Mr. DOMINICK. There is no reason why they should not do it.

Mr. JAVITS. Let me ask the Senator, in return, just by way of speculation—and none of us knows what this means, because we need to check back on it—but under his amendment, would he care to give the court the right to refer the issue to the Commission as a special master?

Mr. DOMINICK. No, not to the Commission.

Mr. JAVITS. There we are.

Mr. DOMINICK. Not to the Commission.

Mr. JAVITS. I do not see why not. I say that poses the issue, as I see it.

Mr. President, I now deal with the differences between the Williams-Javits amendment and the bill, and also the differences between the Williams-Javits amendment and the so-called Dominick amendment, in order that Members of the Senate may be able to quickly gather the situation.

Under the bill, the complaint is filed in the Commission. Under the amendment No. 878, the complaint is filed in the Commission and the district court.

em No. 2: Under the bill, there are no interlocutory appeals to questions of law which might arise—so that the normal rules of edure would apply which say that there will be no interlocutory als or motions except in cases of clear illegality or unconstitulity, in which case an application for injunction would lie.
nder the amendment, interlocutory court rulings are permitted on rolling questions of law.
his is one of the things I have cited to the Senator from Colorado Dominick) as being a very important point which changes antively the provisions of the bill.
e third item is that cease-and-desist orders are issued by the OC under the bill, and the EEOC must petition for enforcement e order in the court of appeals and the review of the findings is ie basis of the so-called substantial evidence test.
der our amendment as now submitted, there is no cease-and-desist issued. I have pointed that out. A cease-and-desist order would sue, and the respondent's case is not terminated by the Commisout he still has the opportunity to test out the Commission's findf facts and recommendations as far as the court is concerned, so he review, also under the substantial evidence test, comes before der is issued.
at is very important, for this reason: Enforcement is a matter of tion, and a respondent might very well be bound by the subal evidence test in terms of a finding of fact, to wit, that he did not discriminate in employment. But as to enforcement in terms kpay or anything of that character, I think there will be a very pportunity for the intercession of the court in those situations. ce I think, Mr. President, there, too, the way we have drafted nendment becomes a very critical aspect of the concession which ve made and the compromise which we have offered.
last item, which I think bears repetition in terms of this comn, is that the rules of evidence applicable in district courts apply EEOC hearings. That is provided by the bill now. Under our lment, not only the rules of evidence, but the rules of civil procewhich are applicable in the district courts, will be applicable to EOC procedures.
ems to me, Mr. President, that under all of these circumstances, making a very sincere and a very precise offer of compromise ally literal sense.
eneral, the amendment makes substantial concessions. Also, I like to approach this from the point of view of the quality and of adjudication, which are so important, and are substantially ed by giving the district courts a closer supervisory role over the ission proceedings than the courts of appeal have under the bill, sense that they can act in an interlocutory way while the prog is going on, and there is nothing operative until the court y issues the order.
, as I have pointed out, the question of remedy becomes very a matter of consideration by the court, and there the court is nd by the substantial evidence rule. That is only to back up the s of fact.
think we have taken a really great step toward what has been led for in leaving the freedom the courts have in shaping a

decree—and they always do have that—to the court, as to what will be the remedy, what will be the recovery of wages, or rehiring, or whatever other remedy might be employed. And the courts have been rather inventive in terms of remedies in order to deal with situations of unlawful discrimination.

So it seems to me, Mr. President, that the combination of aspects of the case which we have offered becomes the critical element in this situation.

The situation which has brought on this whole bill is also of critical importance to the Senate in its consideration aside from these procedural matters to which we have constantly referred. Why are we here and what brought us here? Why has the power which the Commission has had and has exercised for some years been found inadequate? Why has there been such a great campaign abroad in the land respecting the necessity for strengthening this bill until it has become one of the most urgent aspects of reform in this country?

The reason is, Mr. President—and our committee report deals with that critical question—that while some progress has been made toward bettering the economic position of the Nation's minority population, which is the avowed goal of social and economic equality, it is still far from a reality.

For example, we find that the median family income for Negroes in 1970 was $6,279, while the median family income for whites during the same period was $10,236. There is support for this statement in the statistics of the Census Bureau, which show that blacks are concentrated in lower paying, less prestigious positions, and are largely prevented from advancing to the higher paid and more prestigious positions. Blacks constitute about 10 percent of the labor force, and yet they have only 3 percent of the jobs in the high-paying professional, technical, and managerial spots.

It is estimated, for example, that in those industries which have the highest earnings capabilities—and they are listed, according to the Bureau of Labor Statistics, as printing and publishing, chemicals, primary metals, fabricated metals, nonelectrical machinery, transportation equipment, air transportation, and instruments manufacture—blacks, instead of having 3 percent, the figure I mentioned before, are down to 1 percent of those in the professional and managerial positions in these, the best-paying industries.

On the other hand, when you look down at the bottom of the scale in the lowest-paying laboring and service worker categories, you find that blacks account for roughly a quarter of all the jobs.

These figures show up again in respect to unemployment. The unemployment rate for blacks, especially for black teenagers, has been absolutely appalling. For example, the figures, here again available for 1970, show that while 4 percent of white males were unemployed and the unemployment rate for all whites was in the area of 5.5 percent to 6 percent, about twice that percentage of all blacks were unemployed, and even in the managerial and professional positions, the area with the lowest unemployment rate, black unemployment was roughly one-third higher than white unemployment.

Then when we compare these statistics—because they, too, are a minority sought to be reached by this measure—with the statistics of Spanish-speaking Americans, we do not have nearly as complete data

gh there are 7.5 million persons in the United States in that cate-
, but we find that their family income is even less than that of
s for close to a comparable year, 1969 as against 1970; and we
also a higher incidence of the worst kind of poverty, with roughly
seventh of those families having incomes of less than $3,000 a year,
again also we find a fairly heavy concentration of those families
ne lowest paying occupations, with only a quarter of them in
e collar jobs. That compares with over 40 percent for the general
age in white collar jobs in the United States, and with an over-
ming proportion, almost 60 percent of the males who speak
ish in blue collar occupations.

en as to the unemployment rate: The last year for which we have
es, which is 1969 again, bears out the evidences—and the courts
held in discrimination cases that the ultimate facts can be used
dence. The evidences of discrimination include, for example, the
hat the unemployment rate for the Spanish-speaking Americans
erally estimated at twice the national average.

o, as this measure deals with the question of discrimination on
round of sex, we have a situation which is no less serious so far as
ng women are concerned. The disparate treatment of women has
shown in studies which have been undertaken by the Women's
u.

MANSFIELD. Mr. President, will the Senator yield for a request,
ut losing his right to the floor?

JAVITS. I yield.

* * * * * *

Senate continued with the consideration of the bill (S. 2515)
o further promote equal employment opportunities for American
rs.

JAVITS. Mr. President, may I suggest to the Senator from
ia, who has been waiting, that I have no desire but to express the
st courtesy to him. But I do not wish to prejudice any rights
e, considering the existing situation. I say this publicly, because
no other way of speaking to the Senator. If he would be kind
to confer with Senator Williams, I would endeavor, based
is talking with Senator Williams, to work out his time problem,
ther that he is anxious to get away, and I am keeping him here.

GAMBRELL. I appreciate the courtesy of the Senator. I certainly
wish to prejudice his right to the floor. I simply wish to enter
on, which I understand I must enter in person. I would not prej-
he Senator's rights to the floor.

JAVITS. I do not understand what rights it would prejudice, and
he Senator to speak with the Senator from New Jersey.

GAMBRELL. I will do that.

JAVITS. Mr. President, to continue, this bill also affects sex dis-
ation in employment, and the situation for working women in
ntry is very serious. They, too, are being seriously discriminated
. I might say—raising my voice a notch—that I hope the
of the country will realize what they have at stake in this bill.
is a great deal of talk about the liberation of women, and they
in many ways; and in my judgment they are entirely justified
y of the objectives they espouse. Here is the whole tremendous
f job discrimination as it affects 30 million employed women

in the Nation. They have the power and effect of backing up the desi of the majority leader to get this bill done. If 30 million women reall got agitated about the fact that here is a bill on the floor which affects them and is threatened with extinction, it would count. I hope very much that they will listen and will manifest their strength where it really would count tremendously—on this bill.

As I have said, there are approximately 30 million employed women in the country. That is close to 40 percent of the work force, and it has gone up tremendously. It has increased by approximately three-quarters since the end of World War II, about 1947, until the last recorded figure which came a few years ago. In the same period, the increase of men in the work force has been only about one-fifth of that. So this is a tremendously burgeoning area. Notwithstanding the tremendous place of women in the world of work, their rate of advancement has been much slower in terms of high positions and all the other activities they carry on.

For example, the figures still remain very low with respect to their income. The last time for which we have figures, the salary, for example, for women scientists was about one-third less than it is for men. Women earned, in terms of factory employment, only about two-thirds of what a male would make.

Also, it is very significant that most women earned less than roughly $5,000 a year the last time we had figures, which is a few years ago, in 1968, while only 3 percent of the women earned more than $10,000 a year, and 28 percent of the men, or roughly 10 times as many, earned more than $10,000 a year.

So here is an area of very great discrimination, correlated, because they do have similar characteristics to discrimination on grounds of color and faith, and really involving vast numbers of people—indeed numbers as vast as the total of the minorities, who are always thought of in terms of discrimination. So women have a very critical role and I hope they will begin to play it.

It is very interesting to me that in the amendment which the distinguished Senator from Nebraska proposed today, on which we had a very close vote—as close as you can possibly make it—the exception was made of suits under the Equal Pay Act. That is an act intended to protect the pay of women, and it indicates a consideration of the problems which are brought on in terms of women, by the recognition that they had to be exempted from the operation of the amendment which the Senator proposed.

Mr. President, I repeat that women should interest themselves in this bill instead of thinking—as most do, I am sure—that it is something which does not directly concern them. It would make a great difference in the way this bill is being regarded here. You have women and minorities. You have a majority of the workers of the country when you add the two, and even eliminate the duplication—or at least half or close to half of the workers of the country—who would have a direct interest in a bill against discrimination in employment such as the one before the Senate. I regret that, seemingly, that has not been recognized or embraced as a critical, important element in what is here sought to be legislated.

Similarly—I think it is very important—the effect upon the total economy of the country of passing a measure such as this has been

rially overlooked by employers. As employers are sellers of goods
of services, I see a critical importance to them in terms of their
ets to have a more prosperous economy. Some years ago, when
s engaged in the civil rights struggle, there were large figures
n were quoted as to the potential of the American economy if we
nated employment discrimination both in hiring and in upgrad-
orkers. As I recall the figures, they were originally developed by
a Culp Hobby when she was in the Cabinet of President Eisen-
r. As I recall it, at that time, at those prices—under today's
s—but materially increased by perhaps as much as 25 percent,
ad calculated the economic loss at $30 billion a year from failure
grade the minorities appropriately as they should be upgraded
spect both of having jobs and supervisory positions.
s is a critical matter as we approach the totality of the point
making here, because the $30 billion multiplied by, say, in round
s, one-third would make a total of $40 billion which would mean
ulge in the Federal income tax "take," as most of the families
ould be dealt with in that way come out of the lowest income
ts, or may pay no tax at all—many being welfare clients on a
rge scale.
what is involved here is critically important and very extensive.
ther aspect of the matter which I think is also significant is the
ning need of the American economic system for what are called
si-professionals.
y memory is correct, and I think it certainly is correct on the
of magnitude of jobs which are expert or quasi-professional in
ter, right now they are something in the area of 15 percent of
al working force. I have seen many estimates that this will move
round numbers, to 25 percent before 1980. If that happens and it
d to happen, I think almost the casual observer can see how it
ening almost under our eyes, there is a vast problem in training
faces all American business, because discrimination is discrim-
not only in jobs, but also in the training that leads to jobs. So
again have an opportunity for major utilization of this meas-
e we give it some teeth.
brings me to the point which we have made constantly in
to this agency, moving now from the general to the highly
. Let us remember that the agency has a very limited power
ow, and that that power is essentially the power of conciliation
t is about all. People do not like to be considered discrimina-
hat is about as far as the Commission can go. Everything else
s on the individual, once we get by the prestige of the agency
an agency of the United States. That is, the individual who is
inated against, to be able to sue, unless there is a pattern and
of the Attorney General to sue—and that is by no means the
ng case. The result has been a relative ineffectiveness on the
the Commission. Worse than ineffectiveness, that ineffective-
been pyramided and proliferated by the buildup of a backlog
s the Commission is concerned. That backlog is staggering, pre-
ecause it found itself without any real power. So that it is
ineffective and cases pile up and there is no place for them to
nto the courts—and that is expensive and slow. So they pile up
up and pile up.

When we dealt with this bill, our deep efforts in respect of the bi were to cut down the workload, which was intolerable, which simply arms the opponents of this legislation with more arguments and a co stant number of arguments against the fact that we have piled up an pyramided a vast number of cases. So the cases pile up, because th Commission has no power. Then it is argued that the Commission valueless, because the cases are piling up. One feeds upon the other.

Now the facts show, Mr. President, that since its inception, th Commission has received 81,000 charges. Of this number, the Com mission has been able to achieve totally, or even partially, conciliation in less than half. This means that in a significant number of case the aggrieved individual was not able to achieve any satisfactor settlement of his claim through the Commission and was forced eithe to give up his claim or, if he found the necessary money and time, t pursue it through the Federal courts.

Now this becomes a very real problem because it piles up and pile up and piles up. For example, in fiscal 1970, 14,129 charges were file with the EEOC. In fiscal 1971, the number increased to 22,920 charges The Commission is now estimating that 32,000 charges will be file this year alone.

Obviously, all we are doing is feeding the opponents of the Commis sion with arguments by simply denying to the Commission the oppor tunity to cut down its tremendous workload through effective enforce ment power. They have no effective enforcement power. They are simply unable to progress in cutting down their workload. So it will grow and grow and grow and build up and arm those who are inter ested in knocking down the Commission with more ammunition to knock it down, precisely because they profit in that way from denial to the Commission of the opportunity to cut down its workload.

So, Mr. President, I believe that we have a situation which is, as I say, proliferating upon itself and is simply building up and building up the bad picture which we have, so far as the Commission is concerned.

These comments, Mr. President, I thought were a necessary back ground with respect to the reasons why we actually reported out the bill and why it is not fair to say, "Well, you have got a Commission and the Commission is functioning. We give it some money and a staff. What are you hollering about?"

We point out that, on that basis, we have got a complete breakdown in the Commission's possibilities for cutting down its workload or carrying on any of its business.

Mr. MANSFIELD. Mr. President, will the distinguished Senator from New York yield, without losing his right to the floor?

Mr. JAVITS. I am happy to yield to the Senator from Montana.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I am about to propound a unanimous-consent request.

Mr. President, I ask unanimous consent that the distinguished Senator from New York (Mr. Javits) may yield to the distinguished Senator from Georgia (Mr. Gambrell) for the sole purpose of permitting Senator Gambrell to enter a motion to reconsider the vote by which the Hruska amendment was rejected earlier today; and that

ropose that the Gambrell motion be put to the Senate Tuesday at 1 p.m. and that a vote occur thereon at 2 p.m., with the time for eration thereon to be equally controlled and divided by the tor from Georgia (Mr. Gambrell) and the Senator from New y (Mr. Williams); and further that upon the making of the on by the Senator from Georgia (Mr. Gambrell) the floor revert e Senator from New York (Mr. Javits) without his right to the having been prejudiced.

. ALLEN. Mr. President, reserving the right to object—and I shall bject—does this mean that the distinguished Senator from New is going to occupy the floor from now until Tuesday and that oor will be returned to him on Tuesday?

. MANSFIELD. This is just for the purpose of making the request.

. ALLEN. The Senator is not going to be discussing this amend- of his until Tuesday, I trust.

. MANSFIELD. No, it applies with respect to the agreement.

. GAMBRELL. Mr. President, reserving the right to object, I have greed to this request, and I do not think the record should suggest have.

MANSFIELD. The Senator has not agreed. It was without his ledge.

GAMBRELL. Mr. President, I did not propose this request, and not want to agree to it without a consultation with the Senator Nebraska (Mr. Hruska).

as my understanding that I was going to make a motion, with derstanding that it not be voted on this afternoon. So, I object.

MANSFIELD. Mr. President, I withdraw the request.

MANSFIELD subsequently said: Mr. President, I renew the unani- consent request which I made, and I understand that it now has ith the approval of the main parties concerned.

JAVITS. Mr. President, that is quite satisfactory with me. There point, however, that I wish to be clear on. That is that we may o table. We would not be cut off from that right.

MANSFIELD. It would be on the motion to reconsider.

JAVITS. That is right. However, I want to make sure that we are ecluded from moving to table that motion at the end of the time led for its discussion. In other words, we could move to table the vote on the motion to reconsider was had.

HRUSKA. Mr. President, if the Senator would yield, if it would sense of this unanimous-consent agreement that a motion to table not occur before 2 p.m., that would be agreeable with us.

JAVITS. I understand. It would be at the end of the time for

HRUSKA. Yes. A motion to table would then be in order, and passage of that motion, we would then vote on the motion to der.

PRESIDING OFFICER. Is there objection? The Chair hears none, s so ordered.

GAMBRELL. Mr. President, under the agreement just made, I at ne enter the motion to reconsider the vote by which the Hruska ment was rejected.

JAVITS. Mr. President, I yield for that purpose.

PRESIDING OFFICER. The motion is entered.

Mr. JAVITS. Mr. President, I must apologize to the Senator fro Georgia (Mr. Gambrell). He will realize now, I think, that I was no being arbitrary.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515 a bill to further promote equal employment opportunities for Amer ican workers.

Mr. JAVITS. Mr. President, we felt, because of the plethora of case and the inability to have any way in which those cases could be dis posed of by virtue of the constant building up of a backlog in th absence of any ability to curtail the number of cases through the powe of the Commission to decide, that we were in an impossible situatio Hence, Mr. President, there was the granting of the cease-and-desis power to the Commission which the committee voted for and reporte in the bill.

Let us really analyze what this means. What is the cease-and-desi power which is granted to the Commission in the bill? We have hear so many comments about the fact that this is a case of the Commissio being a prosecutor, a judge, and a jury all in one. We have heard th there is no accountability to anyone and that this is an absolutely aut cratic procedure.

Mr. President, with all respect to those who have made the a sertions, they are simply belied by the fact that, in the first plac cease-and-desist orders are issued by the Federal Trade Commissio and by other agencies of the Government, including Government de partments, not even commissions. And we have had the great body o law called the Administrative Procedure Act which gives procedura due process in such agency proceedings.

Mr. President, continuing now with the reasons why we gave th cease-and-desist power and a showing as to why the cease-and-desis power is not in any way a star chamber procedure, as it has bee called, as I pointed out a minute ago, cease-and-desist power is in th hands of other Federal agencies. It is a power which other agencie have, including departments. Some 32 or 24 State commissions dea ing with equal employment opportunity also have cease-and-desis authority. Again, I would point out that the procedures and the his tory of the situation in New York, of which I am extremely proud show that we have had under our law since 1945—26 years—the ad ministration of the best antidiscrimination law in the United State with Governors, particularly the present Governor, Gov. Nelson Roc efeller, and other Governors, regardless of parties, beginning wi Gov. Tom Dewey, all of whom were absolutely devoted to this effort.

Mr. President, this therefore very materially reduces the charg which is made about the star chamber procedure. Also, Mr. Presiden the practice in respect to these matters is important to understan In the first place, the cease and desist order, although it is a finding and that is what I debated with the Senator from Colorado—it is no operative as a decree. There is really nothing that the respondent ha to do about it, though he may be unhappy with it. There is nothing has to do about it.

Mr. President, the only establishment and the only entity which ca do anything about it is the court. And in this case, on the present ha the Commission must make the case in court on the record and a case

lesist order and a decree is entered. Only then does it have opera-
provisions and only then can it be enforced by contempt, civil or
nal, whichever may be the remedy that would be justified.
. President, so that there will be no operation of the cease and
except by decree, and within 60 days, the respondent can contest
ease-and-desist order and then the matter goes through the mill in
of decision by the court, again without the cease-and-desist order
ning operative unless the court, after the contest, puts it into effect
cree.
under these circumstances, protected with full procedure and due
ss under the Administrative Procedure Act, it seems to me that
pressive action can arise or that the charge of Star Chamber pro-
ng can be made.
ope Members will read what we have debated here today so that
e one hand, those with me and the Senator from New Jersey
ling we want to jump over the long delay in courts may be
with in an appropriate fashion, and also those who hold with the
or from Colorado and feel we have not given anything up, will
he Record and our amendment with great care.
ally believe what I said in respect to the powers which are left
Commission. That is a real statement. There are real powers
the Commission, but also real powers are given up, and that real
is the greatest of all for public condemnation—the issuance of
e-and-desist order. Such an order, being entered, if it is con-
cannot be enforced; but it is a finding and an authoritative
g—and he is ordered to cease and desist. When one is dealing
ompanies that spend millions of dollars in public relations that
a very happy thought.

DOMINICK. Mr. President, is the Senator from New York about
d the floor? I would like to comment on the amendment. The
or has now talked an hour or more. I know the Senator does not
ngage in this practice but, as long as the rule exists, it might as
used. I do not intend to stop the Senator. But if no one else can
floor there will be no opposition in the Record to the amend-

JAVITS. The Senator knows I would never hold the floor as long
ave except for a reason. I was deeply disturbed by Senator
e's assertion that there might be a motion to table our amend-

WILLIAMS. Will the Senator yield?
JAVITS. Coming now, that would be most embarrassing.
DOMINICK. I had not heard a vague rumor of that until I was
the door.
JAVITS. It is the same with me.
WILLIAMS. There was a misunderstanding. There was developing
ought that there would be a motion to reconsider the Hruska
ment and there would have been a motion to reconsider that. It
hing to do with our amendment.
JAVITS. I thank the Senator. Under those circumstances, with
eling of assurance, I would be prepared to yield the floor in a
t so that the Senator from Colorado can speak.
nk the Senator from Colorado is correct. I hope he would, with-
ining himself, introduce his views in the Record in a fairly

elaborate way. No matter how many people may say we are runni it, we are not running it. Our colleagues will come here and vote y and nay whether they have heard the debate or not, and that w settle our hash in a very definite sense.

I hope the Senator will make his case as fully as he thinks he shou because we have a few days and Senators will be able to read t essential elements in the Record. I hope very much we can work o our problem and vote with reasonable promptness. I think we shou vote on the substance and then there should be adequate opportuni to amend the amendment of the Senator from New Jersey and m then, we should vote on that. I do not wish in any way to cut off tha I believe both can be accomplished with reasonableness if we are of mind to vote on two questions.

There are those who will oppose it to the end, even if the Senat from Colorado wins; and we may still have cloture, but we will over that hurdle and I am perfectly willing to engage in that ente prise and leave opportunity to amend our proposal. I hope very mu the Senator will now help us to achieve some agreement.

Mr. President, I yield the floor.

Mr. DOMINICK. Mr. President, I will not take much time on th matter but I do think it is worthwhile for the sake of the record, the Senator from New York so correctly stated, to make a stateme about the amendment which I understand is now the pending busine Is that correct?

The PRESIDING OFFICER. The pending business is amendment N 878.

Mr. DOMINICK. I thank the Presiding Officer.

Mr. President, I had hoped when we initially talked about the po sibility of working something out that the Senator from New Jers and the Senator from New York, in trying to formulate an acceptab proposal would come up with something that was rather meaning fully different from the original cease-and-desist proposal.

I have read over amendment 878 with considerable care. For th benefit of those who may read the Record or who may be listening would like to outline what happens under the amendment. First a co plaint is filed and then the Commission determines whether it ca secure voluntary compliance. Mr. President, the Commission has di cretion to judge acceptability. If they do determine that the co pliance agreement is not acceptable, that determination is not revie able in any court.

In other words a compromise agreement is attempted to be worke out but then the Commission can say, No, that is not satisfactory t us. It might be satisfactory to both sides but not the Commission. Th the Commission determination forces further Commission invol ment under succeeding sections.

That, I understand, is in the original bill. So there has been no i provement along that line.

Following that, then the Commission notifies the General Coun The General Counsel has the discretion to initiate a formal hear before the Commission by issuing and serving upon the respond a complaint stating the facts upon which the allegation of the unla ful employment practice is based.

the General Counsel issues a complaint, he then files it with the
ed States district court for the district in which the unlawful em-
ment practice is supposed to have occurred. But except as the
dment thereafter provides, all further pleadings shall be filed
the Commission.
the only thing there is in the court, unless questions of evidence
come up, is the original complaint. So the court has no knowledge
at is going on except to review questions on controlling issues of
if the court finds that such review would materially advance the
ate determination of the litigation.
this point, all that is before the court is the complaint, so it is
to have to have a hearing to determine whether it will ultimately
ce the termination of the litigation. This compounds the litiga-
process.
n, as I read the proposal, the Commission files its findings and
mendations with the court. That recommendation, incidentally,
les findings that unlawful employment practices exist and what-
ffirmative action may be required for reinstatement or hiring of
yees, with or without backpay, limited only by a 2-year limita-

next procedural step as contained in subsection (k), provides
ny party who thinks he has been aggrieved by the recommenda-
f the Commission may then file in the district court, within 60
a written motion requesting the entry of new findings and new
mendations; in other words, a relitigation of the issues. A copy
motion is given to the Commission and to all other parties, and
e General Counsel files in the court for the first time the record
proceedings. Up until that time the court does not have the fog-
lea of what has been going on, or on what basis the recommenda-
were made, or on what basis the recommendations should be
.
court then has power to grant any temporary relief, if it wants
after receiving the testimony and proceedings set forth in the
, it can issue a decree.
ther words, what we have proposed here is two trials instead of
e have one trial before the Commission, upon which it bases its
gs of fact and recommendations, and then if the aggrieved party
ot like the Commission recommendations, it can move for another
fore the district court.
e have the same bogged-down procedure that was emphasized
h by the Senator from New York—only in this case we dupli-
. It originates before the Commission, which already has a
of over 32,000 cases, and, with expanded original jurisdiction,
ve many more than that. It will probably take 2 or 3 years
a party can get to the Commission for a hearing. Then a party
to the court and have a new trial on the record and proceedings
he court.

ILLIAMS. Mr. President, will the Senator yield?

OMINICK. I yield.

ILLIAMS. I did not hear the full statement, but in the last state-
e Senator is saying there is a full trial before the district court.

Mr. DOMINICK. Only on the record that has been produced by t Commission. In other words, the court does not give a full hearing, b based upon the record of the pleadings and everything else, it has determine what relief it is going to give.

Mr. WILLIAMS. It makes a judgment and enters an order, or decid not to, on the record that has been sent up to it from the Commissio Is that correct?

Mr. DOMINICK. I quote from the amendment:

> The court shall have power to make and enter upon the pleadings, testimo and proceedings set forth in such record——

Mr. WILLIAMS. That is based on the record made.

Mr. DOMINICK. Granting or denying, in whole or in part, appr priate relief: and that occurs only when the aggrieved party makes motion for reconsideration. Otherwise- and this is the point I wa to make -those recommendations go into effect as a matter of cours There is no other review by the court whatsoever.

So the court, in effect, is forced to treat a ministerial action as court decree without having any idea what was in the record or wh the facts were or what the testimony was before the Commission. Th is where no objection is raised.

On the other hand, if an objection is made and the record is file the party can go through the court and the court can do what it wan to.

The interesting thing is that the proponents, believing that th were doing something constructive—and I really believe they we trying to do something—have compounded the worst problems of bo issues. They have compounded the problem of trying a case initial before a commission which has filed the complaint, and which has do the investigation, and then the amendment, say, OK, this is what w need, we need to do this by cease-and-desist order in order to get arou the court system, which is badly backlogged; but then they go throu the court system, ultimately, anyway. This really does not make mu sense to me.

I could go on and on, and probably will later on, to point out so of the other problems, as I see them, in this amendment; but this is t real nub of the situation.

I cannot, for the life of me, understand why the proponents of t bill are taking such an adamant position on the particular point cease and desist. They have already agreed in committee that, in t case of Federal employees, after proceeding through their agen remedies, they can go through the Attorney General into the Fede court system or to the Civil Service Commission Board of Appeals a Reviews, at their option. The proponents have already agreed th State, county, and local government employees, instead of relying cease and desist orders before the Commission, could go to the Att ney General, who would decide whether or not he is going to file, a action on the employees' behalf. In pattern and practice suits, th agreed to either leave enforcement of grievances with the Attorn General for a period of 2 years, with some concurrent jurisdiction the EEOC, contingent upon subsequent reorganization provisions, o leave it entirely in the hands of the Attorney General, which then go into the district courts.

der what conceivable type of logic can the proponents of cease-desist orders say it is best to go to the court system for the Federal oyees, and best to go there for the State and local government oyees, and it is probably best to go there in practice and pattern edure; but in the case of private employees, we are going to force to agency determinations.

annot understand how, under any conceivable logic, they arrive at result.

night add here that in the amendment the Senator from New y and the Senator from New York have proposed there is pro- for court procedure when they want immediate relief. Parties get injunctions or temporary restraining orders. They have to the court to get that.

at is already in the present bill. So on every single thing, except ns of private employees, cease-and-desist proponents say, "Let the court system, which is the typical forum of relief for ities throughout this country; but in the case of private em- es you cannot do that."

HRUSKA. Mr. President, will the Senator yield?

DOMINICK. I am happy to yield to the Senator from Nebraska.

HRUSKA. It was with interest that this Senator listened to the ay between the Senator from New York and the Senator from ado with reference to who should receive the evidence, in the lace, and of course the proposal of the Senator from New York he Senator from New Jersey puts that in the hands of the trial ner designated by the Commission and working within the w of the Commission's activities.

I recall it, the Senator from Colorado suggested that perhaps al examiner could be in the person of a referee appointed by art. Further, the Senator from New York asked if it would be ht to have the testimony procedure reversed, and if the Senator Colorado would agree to the trial examiner of the Commission the evidence.

Senator from Colorado had said, "No, I would not agree to whereupon Senator Javits responded:

this negative answer warrants a negative answer on my part as to the appointed by the court.

question of the Senator from Colorado is this: Is there a differ- a proceeding of this kind between evidence being taken by a xaminer appointed by one of the parties to the lawsuit -to wit, mmission—and the receiving of evidence by a referee appointed mpartial, life-tenured judicial officer?

DOMINICK. It seems to me that there is an enormous difference; e latter preserves the impartiality of the court, the jurisdiction court, and the integrity of the referees and examiners who have ained in that field. But if we assign it to the Commission, which ally what the Senator from New York was suggesting, all we ng is compounding the thing they are trying to put in their ment; namely, that the Commission is going to prosecute, inves- and hear the case, and then say to the court, "OK, these are ommendations, which have the substantial force of evidence; force them."

Mr. HRUSKA. The Senator from Colorado has been a student for long time of the history and the social and political structure of Amer ica. Does he know of any procedure in which one of the parties to t controversy is allowed to take evidence and make recommendatio and findings of fact, on which there is only limited appeal? I kno of none.

Mr. DOMINICK. I can think of none in the private sector. I unde stand that with some variations the NLRB, which is in desperate tro ble, has this type of procedure; and I also understand that perha the Federal Trade Commission has similar procedures, and it is als the subject of some opposition by a large number of people.

Mr. HRUSKA. Yes.

Mr. DOMINICK. I personally think it is wrong no matter where yo do it.

Mr. HRUSKA. But, in those instances, the NLRB and the FTC po sess the power to make a determination. They have that power.

Mr. DOMINICK. That is correct.

Mr. HRUSKA. And then there is the appeal to the courts.

Mr. DOMINICK. That is correct.

Mr. HRUSKA. There is an appeal to the courts; that is not the situ tion here.

Mr. DOMINICK. No, that is correct. This would vary that procedur and vary it rather adversely and substantially.

Mr. SPARKMAN. Mr. President, will the Senator yield for a unan mous-consent request?

Mr. DOMINICK. I wish to make such a request myself, and then I sha yield the floor.

I ask unanimous consent at this point that the speech, which was ve brief, which I made in support of amendment No. 871, be inserte in the Record at this time as I intend to offer a version of 871 as substitute for amendment No. 878. It provides an expedited court e forcement procedure before a three-judge court with direct appe to the Supreme Court, or, if it is not in the national interest to have three-judge court, to put it in the district court on an expedited pr cedure. Following which, I ask unanimous consent to include in t Record a brief statement which I have here, commenting adversely o the amendment which is presently pending; namely, the William Javits amendment.

There being no objection, the statements were ordered to be printe in the Record, as follows:

Mr. DOMINICK. Mr. President, I send to the desk for printing and fut consideration, an amendment to S. 2515, the "Equal Employment Opportunit Enforcement Act of 1971."

The amendment offers probably the best opportunity to resolve a deadl existing since January 25 when my court enforcement amendment was v voted on. Since that time the deadlock has solidified through three reconsi tion votes and two cloture votes. During this period I have exhausted t reasonable sources and suggestions in seeking a fair compromise. In the co of such a search, I have carefully considered numerous compromises informa and formally. I introduced amendment number 856 in an effort to resolve deadlock. Unfortunately, all efforts have gone for naught and the nati employees and potential employees remain largely devoid of enforceable empl ment rights.

amendment contains essentially the same court enforcement procedures
earlier amendment. I remain firm in my resolve not to desert 45 of my
es who faithfully supported the court enforcement procedure and not
promise my principles concerning the superiority of court enforcement.
ite voluminous rhetoric to the contrary, my convictions that U.S. district
nforcement provides employees and potential employees with the fairest,
fective redress of their grievances, remain unshaken.
most rational argument against court enforcement is the potential delay
ed by backlogged federal courts. I acknowledge this problem and remedy
incorporating in this amendment priority language from the same
Rights Act of 1964 that created the Commission. Pursuant to
e contained in Title I (Voting Rights), Title II (Public Accom-
ns) and Section 707 ("Pattern or Practice") and included in this
ent, unfair employment practice suits will be accorded priorities in hear-
determination before federal court judges. Upon certification that the
of "general public interest", the case would be assigned for hearing and
ent determination "at the earliest practicable date" before a three judge
ith appeal to the Supreme Court. In the event the petitioner doesn't certify
as being of general public interest, it would be assigned to a district
lge for an expedited hearing.
newly incorporated language cures the primary defect in the court en-
nt procedure. The final result would be machinery in which the respond-
e process rights will be protected by an experienced, impartial judge
n stare decisis while the alleged aggrieved is guaranteed an expedited
before a federal forum which has in the past exhibited great compassion
rity rights.
nendment contains several cosmetic differences from the original amend-
well as one substantial change which reduces the time period within
ne commission many file a civil action against the respondent from 180
150 days from the time the commission first issues its informal charge.
portance of this amendment should not be underestimated. As it repre-
last best offer it signals, insofar as I am concerned, the final effort to
he court enforcement cease and desist issue and presents a strong step
salvaging the entire bill. Previous opponents of court enforcement would
dvised to consider the resonableness of this amendment versus the very
pect of no equal employment opportunity enforcement law at all—a most
ate and unnecessary consequence.
tent with my previous efforts on behalf of employment discrimination
ent, I shall continue to keep an open mind concerning suggested com-
embodying substantial court enforcement machinery. I have exhausted
rces so the future of the bill now lies in the hands of the cease and de-
onents.
resident, I am sorely disappointed to discover that the heralded EEOC
nt offered by my distinguished colleagues, Mr. Williams and Mr. Javits,
ntially less than what the media characterized as a compromise. The
nt. Amendment #878, is certainly a hollow offer of compromise to those
senators and myself who have fought long and hard for the principle of
partiality in the enforcement of job discrimination. The amendment
even greater deception on the previous supporters of cease and desist.
ng to create a cease and desist mechanism without using the pernicious
e amendment interjects one additional level of review into the procedure
nusual level at that. Under S. 2515, Commission issued cease and desist
uld be subject to petitions of review brought within 60 days of the order
to Sec. 4 (k) or enforcement petitions brought after 60 days by the Com-
ursuant to Sec. 4 (k) and (m) or by the aggrieved after 90 days pur-
Sec. 4 (m), all in the United States Court of Appeals. Amendment 878
that the findings of fact and "recommendations" entered by the Com-
hall be considered by the United States District Courts if appropriate
re made within similar time periods.
recalcitrant respondent can drag the aggrieved through a review
panded by the highly unusual and time consuming U.S. District Court
his procedure flies in the face of critics of my district court enforce-

ment amendment who were upset by unconscionable delays caused by fede court backlogs.

Whereas the Javits-Williams amendment serves to exacerbate the probl of federal district court backlogs, amendment #871 introduced by the dis guished Senator from South Carolina, Mr. Hollings, and myself, preserves benefits of court enforcement while alleviating the federal district court back problem by providing for expedited hearings and determinations similar the procedures contained in other civil rights law, including voting rights a public accommodations.

Despite media coverage to the contrary, Amendment #788 retains Commiss cease and desist powers under the coy pseudonym of "recommendations". It relabeling without substance. Courts have no more authority or discretio deciding the merits of a "recommendation" than they did with a cease desist order. Both are given the force and effect of law unless upon appeal respondent can prove that they are not supported by a substantiality of evidence.

The result with both is identical—a commission determination that, unl not supported by a scintilla of the evidence, can't be upset.

The Javits-Williams amendment does throw some rather skimpy bones the court enforcement proponents but I emphasize that they are indeed skim The amendment does give the District Courts jurisdiction to enter interlocu orders during the Commission hearing, but only if such order involves a "co trolling question of law" and if it will "materially advance the ultimate ter nation of the litigation"—both litigious qualifications at best.

Whereas S. 2515 provides that the federal rules of evidence shall apply "i far as practicable," amendment 787 states that proceedings be conducted conformity with the rules of evidence and that the rules of procedure ap "insofar as possible" -a judge factor which practically speaking will prob make inapplicable the most important federal rules of procedure those pretrial discovery. Adequate pretrial discovery safeguards respondents fr the probability of entering hearings inadequately prepared to defend themsel against Commission charges.

Not only is Amendment 787 a woefully inadequate vehicle for compro to court enforcement proponents, it also jeopardizes the rights of the aggri with a longer appeals process. I respectfully advise the cease and desist p ponents to seriously consider not only the advantages of my amendment vis-a-vis amendment 878 but also the advantages of present cease and de language contained in S. 2515 with amendment 878. I am certain that in latter instances you will find S. 2515 preferable. Amendment 878 should pr unacceptable to everyone. I urge my colleagues once again to vote for the fai most expeditious job discrimination enforcement procedure—my substi amendment to amendment 878. It offers the best hope of resolving the pres deadlock.

Mr. Dominick. Mr. President, I sincerely hope that somehow other we can get a vote on my amendment, be it today, be it Mond or be it Tuesday. I say that because of the fact that the substi which we have ready for the Javits-Williams amendment, beca of the rules of procedure in the Senate, require a few changes whic we were successful in substituting my amendment, would again m that we would have to put perfecting amendments in later.

What I am saying in general is that it is a very complex proced It would be far easier if we could just have a simple vote on amendment, and just let it go that way. But in order to do that guess we are going to have to get Senator Williams and Senator Ja to put theirs aside, and I do not believe they are going to do it. I sh continue to work with them, but I doubt that I shall be successful.

I yield the floor.

* * * * * * *

Senate continued with the consideration of the bill (S. 2515) to further promote equal employment opportunities for Americorkers.

HRUSKA. Mr. President, in due time this body will consider an lment numbered 834, which has to do with the continuance of the t practices and procedures of the Department of Justice in patr procedure discrimination cases. The amendment takes the f deleting from the pending bill section 5.

PRESENT LAW IN "PATTERN OR PRACTICE" CASES

ently, the Attorney has authority—under section 707 of Title ivil Rights Act—to bring suit in "pattern or practice" cases—n which a person or group engages in a "pattern or practice" of nce to full employment rights as conferred by the Civil Rights

ls are to three-judge courts if the Attorney General certifies the be of "general public interest," with appeal to Supreme Court. t such certification, trial is to a district judge.

HOW SECTION 5 OF BILL CHANGES THIS

section seeks to abolish judicial determination and enforcement tern or practice" suits, and would replace it by administrative y the EEOC, which would apply the "cease and desist" powers suits as are granted in section 706 in the present bill or any te which is adopted after this point by the Senate as an amendthe present bill.

lopt section 5 would be to abandon and abolish judicial enforce- "pattern or practice" suits. The Attorney General's authority suits would be abolished—except for previously filed cases. ould continue unabated for 2 years, at the end of which time mission would be substituted a party plaintiff instead of the y General. Thereafter, all such cases would be converted into trative proceedings, not judicial.

TURE AND IMPORTANCE OF "PATTERN OR PRACTICE" CASES

lawsuits typically involve large employers or labor unions. umbers of employees are involved. Sometimes in the later f this type of litigation, company-wide suits are brought, to all of its branches, plants, or divisions. Industry-wide actions n undertaken, involving an industry with all affiliated unions. nple, one suit embraced 17 gambling casinos and hotels on the Las Vegas, and five unions, constituting the 20,000-man resort in the locality.

er proceeding covered hiring and referral practices in the alifornia-based movie industry.

onal and sensitive situations often are involved. The relief s frequently unpopular with defendants and with some parts mmunity involved. Very complex, difficult questions of law, remedy are inherent in such cases. Also involved are enforceceedings subsequent to the entry of judgment or decree. These ay of supplementary relief or for contempt of court.

Such lawsuits partake of the character of class actions.

They have a two-fold mission: first, to get a decision and disposit of the case itself; and, second, to have that decision serve as a precede for situations with similar facts and circumstances.

Judicial enforcement is highly superior and more advantageo than administrative enforcement.

PRESENT PROCEDURES FOR SUCH CASES WERE CHOSEN ADVISEDLY— THEY SHOULD BE RETAINED

To abandon judicial enforcement of "pattern or practice" suits favor of administrative cease-and-desist powers would constitute substantial erosion of Federal enforcement efforts in the field of eq employment opportunity.

COURT ENFORCEMENT IS SUPERIOR, MORE EFFECTIVE, AND EXPEDITIOUS

First. The respect and confidence accorded Federal courts are a s stantial and valued asset in the field of employment discriminat cases.

Second. The Federal courts have achieved much experience in p tern or practice cases in all aspects of civil rights cases: employme voting, housing, education, public accommodations.

Third. Court decisions are helpful in precedents in similar or lated cases. They are well recognized and highly regarded as in pretation and application of the law.

Fourth. Such decisions are useful in conciliation efforts, beca they clearly spell out the law as it is applied.

Fifth. Court decisions promulgate the law as the courts apply in a broad reliable fashion through the court decision reporting s ices. Thus employees, employers, and all concerned are infor currently and promptly of their rights and responsibilities.

Sixth. Enforcement proceedings after decree may be necessary supplemental relief or for order of contempt. Such subsequent p ceedings are handled with much greater advantage by the judge w entered the decree in the first place. A judge who enters an order w be determined that it is properly enforced. The Department of J tice—Civil Rights Division—knows this. The courts know it. And defendant knows it. That is why the Department does not have to back to the Court very often in order to secure compliance. But cases where they do so, the relief is quick and effective.

Seventh. Under administrative enforcement with cease-and-de authority, the agency which hears the evidence and formulates order, would not be responsible for enforcing it. The experience of other agency—NLRB—which has dealt with employment oppo nities and with respect to which factfinding and remedy formula function are separate from the enforcement function has not b either happy or effective. Recalcitrant defendants have been able resist full compliance more successfully than if they had been d with directly in a Federal district court.

Eighth. Court enforcement is more expeditious. The testimony re shows that experience of the Justice Department in the last 2 y was that a court order was usually obtained in less than a year from time the suit was filed.

Civil Rights Division has been successful in securing expedi-
handling and disposition of such cases. Most Federal courts have
ersuaded to advance such cases on their dockets, and have brought
ut for early hearing. Therefore, statistics showing mean elapsed
etween filing and disposition of all kinds of civil cases in vari-
deral district courts provided very little guidance in determining
ng it takes to bring Title VII cases to judgment .
he contrary, it will be the administrative proceedings under
nd-desist authority in which inordinate delay will be encoun-
f section 5 is enacted into law. The estimates are, according to
nt Attorney General David Norman—page 127 Senate hear-
hat if the EEOC undertakes pattern or practice cases, it would
ething like 3 years before pattern and practice authority would
e transferred to EEOC no matter whether it was by cease and
r by litigation, that is there would be a 3-year interval before
ould be any substantial number of enforceable orders under the
nacted into law with section 5 remaining in it.
is point in the history of developing law and progress in com-
discrimination in employment, the Nation simply cannot afford
interim or vacuum.
a period would be a setback and a detriment not only for the
but even a longer time in which recovery would be encountered.

THREE EXAMPLES

National Labor Relations Board in 1964 ordered that two segre-
ngshoreman locals in Texas be merged. In 1966, that order was
l by the court of appeals, and the Supreme Court denied review.
1969, when the Department of Justice commenced a Title VII
against all of the segregated Texas locals of the International
oremen Associations, the two locals referred to were still totally
ted. No effectiveness had been given to the court order that had
proved by the circuit court and the Supreme Court.
suit by the Department of Justice against five trade unions in
included a union that had been ordered by the NLRB to stop
nation in favor of union members in referral. Although the
d been entered before the Department filed suit, the order was
owed until the court in the Department's lawsuit ordered com-
nder Title VII.
the years, the NLRB entered a series of orders against a major
manufacturer in directing it to stop discriminating against
es because of their union activities. After these orders became
ble as a result of decisions of the U.S. court of appeals, the
leemed it necessary to file motions for contempt. The court of
not being equipped to conduct evidentiary hearings, directed
evidence with respect to these motions be heard by a Federal
judge, who was then to make findings and transmit them to the
appeals for the latter to make final determination on the mo-
contempt.
ubmitted, Mr. President, that a procedure such as this denies
relief and expends manpower unnecessarily. In reality, any
ment proceedings were to be heard by the district judge from
urt the order first came.

IT IS ESTIMATED THAT 3 YEARS WOULD ELAPSE BEFORE EEOC CAN OBT
SUBSTANTIAL NUMBERS OF ENFORCEABLE ORDERS

The procedures set forth in the bill for the processing of charges complex and lengthy. Under that procedure, it is unlikely that substantial number of enforceable orders could be produced in than 3 years. As David L. Norman, Assistant Attorney General of Civil Rights Division, testified before the Senate Labor Committee

The administrative system intended to replace the judicial enfo ment now conducted by the Attorney General could not begin to fu tion effectively for some considerable period of time, and probabl would be at least 3 years before enforcement orders could be p duced in any substantial number.

The reason for the length of time is not difficult to perceive. Un section 706(b) of the bill a charge is filed with EEOC. Normally i filed informally, in the form of a hand written letter. The charge t has to be made in formal notarized form and the Commission m serve notice of the charge and make an investigation thereof, sect 706(b), page 34 of the bill. At present I am advised that the back of charges is such that investigations are made more than a year af the charge is filed.

Even before EEOC may commence an investigation in a Stat locality which has a fair employment practice law, it must defer for days to the State agency before commencing investigation.

After the investgation is commenced, EEOC must interview the tim of discrimination, look at the personnel record of the corporat and obtain statements from persons who have knowledge of the fa At present, it takes well over a year and a half from the tim charge is filed until a reasonable cause determination is made. U the bill, section 706(b), page 35, the Commission has 120 days to m a reasonable cause determination, and that 120 days starts after the day deferral to State or local authorities.

Once a reasonable cause determination is made, the Commissio obliged to attempt conciliation by conference, conciliation, and p suasion, section 706(b), page 35. No time limit is set forth in the as to how long the conciliation efforts should or would be expecte take. A minimum of 3 months could be expected if the conciliat efforts are to be more than perfunctory.

If conciliation fails, the bill contemplates that the Commission s an administrative complaint upon the respondent and go to hearin section 706(f). The respondent then has the right to file an answ section 706(g). Testimony is then to be taken, under oath, and tr scribed before a hearing examiner. Such proceedings are to be in cordance with the rules of evidence of the district courts.

Even assuming the best of good faith efforts by both the Gen Counsel for the Commission and counsel for the respondents, the t from administrative complaint to the administrative hearing wou at least 6 months, with an additional 3 months for decision by hearing examiner.

Following the procedure followed by the NLRB and most of administrative agencies, either side would then have the righ appeal from the decision of the hearing examiner to the Commis

ally this entails not only transcription of the record, but the of briefs by both parties and oral argument, and the writing of sion by the Commission. An absolute minimum time for this al appeal procedure would be 3 months, from the date of the g examiner's decision to the date of the Commission's decision; months would be a much more realistic estimate. But even this n of the Commission is not enforceable in court. The losing s then have 60 days within which to challenge the decision of the ission in the appropriate court of appeals. Before this court, the s then have the opportunity to have the record made and printed erwise reproduced, briefs must be written and oral argument The court of appeals must then write its decision. Only after rt of appeals decision is entered is there an order enforceable tempt. Experience of other administrative agencies indicates e time from the date of the Commission's decision to the date ourt of appeals decision is normally well in excess of a year.

ummary then, the following is a minimum table for the ing of charges:

rral to State agency, 60 days—2 months.

stigation to reasonable cause decision, 120 days—4 months.

onable cause to fail conciliation, 3 months.

inistrative complaint to hearing before hearing examiner, 6

ing to decision of hearing examiner, 3 months.

sion of hearing examiner to decision of Commission, 3 months.

sion by the Commission through to decision of the court of , 12 months.

, the minimum period of time from the filing of the charge to sion can be expected to be 33 months; and since those are mini- mes, we can expect that there will be a 3-year interval before ill be any substantial number of enforceable orders.

ial enforcement should be retained in pattern or practice cases.

on 5 does not involve a transfer of pattern or practice cases en- nt. It is total abandonment of judicial enforcement of such

rcement is more effective and expeditious in the courts under 707 than it would be under EEOC cease-and-desist powers of 706.

Department of Justice—Employment Section of Civil Rights n—is better equipped. It possesses long-standing expertise, has able record in court, and follow-up proceedings by way of com- with court order is more certain and satisfactory.

BETTER EQUIPPED

1954 it has been handling litigation in courts on all phases of hts: voting, education, housing, public accommodations, and ment resulting in a broad experience in pattern or practice suits. s very significant by way of developing a "know how" on the the many resources in the Department of Justice available to loyment section.

resources are numerous and important. They are largely not able because they are integral working parts of an entire di- Civil Rights—and of the department itself.

So that when the pending bill provides that the resources, record unused appropriations, and so forth, be transferred from the Civil Rights Division, the employment section, to the Commission, there will be precious little that will be affected by that transfer. Certainly, the investigatory powers and capabilities of the FBI will not be transferred, nor of the U.S. attorneys, nor of the U.S. marshals; and I can go right down the line with a long list of these resources which will not be available—unfortunately, in some ways—to the Commission.

First, such resources include: 36 attorneys in the employment section—with an enviable record of securing favorable court decrees or orders in every case brought by them.

Second. Appeals Unit of Civil Rights Division, three attorneys.

Third, Assistant Attorney General for Civil Rights Division; two deputy assistant attorneys general.

Fourth, U.S. district attorneys—plus 1,200 assistant attorneys located in 93 judicial districts, plus the branch offices within the districts.

Fifth, U.S. Marshal's Service: 1,400 operational persons—marshals and deputies—385 administrative people—364 persons on hourly wage.

Sixth, FBI agents and staff. It should be noted again that these resources are not transferable. Each is an integral part of a division or department. Each devotes a portion of their time to Title VII matters—not only in employment areas, but in education, voting public accommodations, housing, and related civil rights subjects.

To convert judicial enforcement to cease-and-desist procedures under section 706, would require a long period of time to acquire staff, procedures, and organization before EEOC could start functioning. The estimate of an interim of at least 3 years was testified to, before any EEOC would be able to obtain substantial numbers of enforceable orders under its section 706 cease-and-desist proceedings.

FAVORABLE COURT RECORD, UNDER SEC. 707 PATTERN OR PRACTICES SU

In October 1969, the Civil Rights Division was reorganized on a subject matter basis, rather than the previous geographic basis.

The newly created employment section became responsible for all Title VII enforcement and related activities under direction of the Assistant Attorney General and Attorney General.

Its record at reducing trial time of cases has been remarkable. Prior to July 1, 1969, 47 "pattern or practice" cases had been filed, but only 18 had been tried or settled by that date. Of the 57 such cases filed prior to January 1, 1971, all but seven had been settled or brought to hearings on the merits; and the Government prevailed in each of them.

The section's experience in the last 2 years has been that it usually obtains an effective, enforceable court order in less than a year from the time suit is filed.

EQUAL EMPLOYMENT OPPORTUNITIES COMMISSION FAVORS PRESENT JUDICIAL PROCEDURES FOR PATTERN OR PRACTICE CASES (SEC. 707, TITLE VII

William Brown, Chairman of the Commission, testified before the Senate Labor and Public Welfare Committee. At page 58 of the hearings, he spoke on the subject of transfer of powers to the Commis-

e very outset, he said:

el that such a transfer would not, at this time, be in the best interests of the ission and would not promote the most effective administration of Title VII.

pointed out, among other things, that 30,000 complaints will be during this fiscal year and that there is an estimate of 45,000 com- ts that will be filed in the coming fiscal year. He outlined many reasons why the transfer to the Commission would be inadvisable ould constitute, as he put it, an erosion of the enforcement powers tle VII of the Civil Rights Act.

pointed out that to subject pattern or practice suits to adminis- e remedies would be to cast them into the same role and class as ther complaint submitted to the Commission; that is, any com- t, individual in character, or one which does not partake of the e and scope of "pattern or practice" suits.

er all, there is a reason for a separate section (707) in Title o deal with pattern or practice suits. The reason is still valid and . Its essence is that such a situation embraces a much larger pro- n than an ordinary case or complaint.

pattern or practice suit typically involves large employers or unions. Also difficult legal questions which are diligently can- and urged by opposing sides. They are cases which are large, ex, and far-reaching.

ir importance goes beyond the issues of the instant case. It goes application of that case to subsequent lesser Title VII actions. decision serves as a precedent for like or similar situations, and be arrived at, and promulgated or disseminated, in appropriate n. The publication of official court decisions makes such available wide; not only as to the original case and judgment or decree, o as to supplementary proceedings which may be called for in se- enforcement and compliance. The capacity now resident in the ey General to go directly to the courts with such a case is le for maximum effectiveness.

as upon the foregoing considerations and others that Com- n Chairman William Brown III based his testimony, which n part:

S. 2515 as presently written, the power of the Attorney General to bring or practice suits, once transferred, becomes subject to the administrative s proposed in Section 4 of the Bill. This, in effect, minimizes the effective- he pattern or practice suits since they would become no different than any mplaint submitted to the Commission.

effectiveness of pattern or practice litigation is the result of the ability ustice Department to bring these large, far-reaching, and often very com- ts directly in courts. The importance of these suits has largely been the s which have resulted and which have set the precedents for subsequent itle VII actions.

lify this powerful and effective means whereby the courts can interpret ify the provisions of Title VII, while at the same time establishing new precedents applicable to other courts and administrative agencies alike, ot, in my judgment serve to promote the most effective administration of nployment. Page 58, Hearings.

as asked by the committee chairman in hearings as to whether mmission would have the competency and will to handle all the matter involved in S. 2515 as written, including the self- ng cease-and-desist orders embraced in the broadened respon- of the bill, the transfer of functions of the Office of Contract

Compliance, the transfer of the Civil Service Commission juris tion over Federal employees, the transfer of the pattern and prac provisions of the Department of Justice, and so forth. Here is answer (page 74, hearings):

Mr. Brown. Mr. Chairman, I certainly feel that the commission has the petency to handle these matters.

I would question at this time whether it has the ability in terms of resour that is, financial resources—or in terms of people.

I would be very much against the transfer, as I have indicated in my prep text, of the Office of Federal Contract Compliance responsibility at this ti

I would be against the transfer of Attorney General's right in Title V this time and also the responsibility of the Civil Service Commission to EEOC.

Still later in his testimony on this point, Commission Chair Brown stated:

One of the problems, as I have mentioned is the overwhelming backl cases and I should point out to the committee that this is true, notwithstan the fact that in the past fiscal year we have increased our ability to turn decisions at something like three times the rate of the previous year.

We have doubled the number of conciliations and predecision settle over the prior year but the number of cases coming into the Commissio continued to escalate at a very alarming rate and, as I have indicated ne current estimates for the fiscal 1972 are now over some 30,000 individual plaints coming in as opposed to the original estimate which was made last of 19,000 compliants being sent into the Commission.

As a matter of fact, in the budget which was submitted for fiscal year 197 anticipate some 45,000 new incoming charges of discrimination in fiscal year and I am told by some of my staff that may be a low estimate.

So, taking those figures into consideration—plus the fact that in some ca question the advisability of putting some of the provisions in this Commiss as it relates to the Office of Federal Contract Compliance—my position wou that I am not in favor of those transfers.

In summary, it can be said that Commission Chairman Brown posed section 5 of the bill to transfer the Attorney General's power the EEOC, on two broad grounds: The effectiveness of pattern practice suits would be minimized and impaired; and second, the o whelming burden of cases and their monumental backlog with inc ing volume of complaints for processing would make it most diff and inadvisable to handle additional duties such as those embrace the transfer in question.

There is still another reason why an erosion of enforcement of would occur if section 5 is enacted.

Enactment of section 5 of the bill would place all "pattern or p tice" cases under the cease-and-desist authority contained in sectio of the Civil Rights Act as amended. Such cease and-desist author complaint oriented. It was so devised and written to handle indivi cases with dispatch, with as little formality as possible, and so f So this fiscal year they will have some 32,000 complaints filed wit Commission. Next fiscal year they expect 45,000.

But pattern or practice authority is not a complaint ori authority.

The nature of pattern and practice authority is to investigate information that may come to attention that suggests patterns of crimination in a large company which may have many plants, divis or branches; or in a large labor union, or group of unions, or affiliates, with thousands of members and jobs involved; or in a tire industry, with many companies and unions. There the necessity

determine complex and difficult questions of law, fact, and rem-
to render a decision or decree; and be prepared to engage in
subsequent proceedings as necessary to insure full compliance.
ips by supplementary relief, or maybe by way of contempt of
orders.

h imposing, far-reaching, and extended proceedings would be
difficult if not impossible for an administrative body to handle as
igator, prosecutor, and judge. If it could be done at all, it would
for a long time that it could start producing substantial num-
f cases, and then not very effectively and not very well.
se latter points have already been covered in my remarks as to
me involved—3 years at least—according to testimony in the
l.

President, in summarizing, I might say that the judicial en-
ment provided in section 707 as pesently effected should be re-
. These practices have worked well. The attorneys assigned to the
have been backed by the substantial prestige of the Department
stice and all the resources of that Department. These resources
e existent talent possessed by the FBI, the U.S. marshals, the
s unit of the department of the U.S. attorneys located, together
leputy attorneys, in all the 89 districts of the Federal district

re is a highly effective law enforcement operation under this
ement under Title VII. It is submitted that this record fully
its continuation of that operation, whether the Commission
n enforcement power or not and whether such power that they
en will be judicial or administrative. That record is very signal.
g other things, it was pointed out that in the last year and a half
of the dozen or so cases which were tried and disposed of—con-
, as they call it—11 were concluded within 11 months after the
f the complaint in the court. So that, together with many other
s, would argue persuasively for the retention of section 707 as
ently exists in the law in Title VII of the Civil Rights Act. It
also argue persuasively that section V of the pending bill
be deleted in its entirety to accomplish that result.
President, I yield the floor.

QUORUM CALL

Byrd of West Virginia. Mr. President, I suggest the absence of
um.

Presiding Officer (Mr. Buckley). The clerk will call the roll.
second assistant legislative clerk proceeded to call the roll.

Byrd of West Virginia. Mr. President, I ask unanimous consent
order for the quorum call be rescinded.

Presiding Officer. Without objection, it is so ordered.

AMENDMENT NO. 858

Byrd of West Virginia. Mr. President, with the approval of the
ished manager of the bill; the distinguished author of amend-
o. 858; the distinguished Senator from New York (Mr. Javits);
distinguished Senator from Alabama (Mr. Allen), I ask
ous consent that the pending amendment by Mr. Javits and

Mr. Williams be temporarily laid aside and that amendment 858 the Senator from North Carolina (Mr. Ervin) be called up and n the pending question.

The Presiding Officer (Mr. Buckley). Is there objection to request of the Senator from West Virginia? The Chair hears no and it is so ordered.

The amendment (No. 858) of the Senator from North Caro (Mr. Ervin) will be stated.

The assistant legislative clerk read the amendment.

(A copy of Amendment 858 to S. 2515 may be found on p. 1336.

UNANIMOUS-CONSENT AGREEMENT

Mr. Byrd of West Virginia. Mr. President, I ask unanimous con that, on Monday next, after the two leaders have been recognized u the standing order, there be a period for the transaction of rou morning business not to exceed 30 minutes, with statem therein limited to 3 minutes; at the conclusion of which the Chair before the Senate the unfinished business.

The Presiding Officer. Without objection, it is so ordered.

Mr. Byrd of West Virginia. Mr. President, I ask unanimous con further, that, on Monday next, at the time the unfinished busine laid before the Senate, time on the pending amendment, No. 85 the Senator from North Carolina (Mr. Ervin), began running, t equally divided between the distinguished author of the amendm Mr. Ervin, and the distinguished manager of the bill, Mr. Willia that at 1:30 p.m. the Senate go into executive session to proceed consideration of the treaty, Executive H; that at the conclusio the vote on the treaty the Senate return to the consideration of leg tive business; that a vote on the pending amendment, No. 85 Mr. Ervin, occur at 3 p.m.; provided further, that the time on pending amendment following a vote on the treaty continue to be u the control of and divided between the author of amendment No. and the distinguished manager of the bill; provided further, that on any amendment thereto, any debatable motion, appeal, or poi order be limited to 10 minutes, to be equally divided between the m of such and the distinguished manager of the bill, except in an insta in which the manager of the bill would favor such, and in that the time in opposition to such be under the control of the distingui minority leader or his designee; provided further, that the tim any amendment to the amendment, debatable motion, appeal, or p of order come out of the time on amendment No. 858, with the ex tion, of course, of the time on any motion to reconsider, which w be limited to 10 minutes, to be equally divided as heretofore st but, naturally, not to come out of the time on the amendment. No.

The Presiding Officer. Without objection, it is so ordered.

Mr. Byrd of West Virginia. Mr. President, there will be a ro vote on amendment No. 858 on Monday at 3 p.m. And there be a rollcall vote on the treaty, Executive H, which will occ 2 o'clock on Monday afternoon. There may be other rollcall during the day.

[From the Congressional Record—Senate, Feb. 14, 1972]

AL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

AMENDMENTS NOS. 881, 882, AND 861

der to be printed and to lie on the table.)

ERVIN (for himself and Mr. Allen) submitted three amendments ed to be proposed by them jointly to amendment No. 878 pro- to the bill (S. 2515) to further promote equal employment oppor- s for American workers.

* * * * * *

Senate continued with the consideration of the bill (S. 2515) a further promote equal employment opportunities for American s.

QUORUM CALLS

BYRD of West Virginia. Mr. President, I suggest the absence of im.

PRESIDING OFFICER. The clerk will call the roll.

second assistant legislative clerk proceeded to call the roll.

BYRD of West Virginia. Mr. President, I ask unanimous consent e order for the quorum call be rescinded.

PRESIDING OFFICER (Mr. Brock). Without objection, it is so d.

is under control. Who yields time?

BYRD of West Virginia. Mr. President, I suggest the absence of im and ask unanimous consent that the time be charged equally both sides.

PRESIDING OFFICER (Mr. Baker). Without objection, it is so or- nd the clerk will call the roll.

second assistant legislative clerk proceeded to call the roll.

ERVIN. Mr. President, I ask unanimous consent that the order quorum call be rescinded.

PRESIDING OFFICER (Mr. Brock). Without objection, it is so .

ERVIN. Mr. President, several years ago I stated on the floor of ate that the constant agitation about racial matters was im- our national sanity. If we needed any proof of the accuracy of tement, such proof is furnished abundantly in the pending re there is a proposal to give to five bureaucrats, who are elected dy to do anything and who are responsible to nobody on the he earth, powers greater than those that the courts and the laws nited States impose on the office of President.

r the pending bill, these five men would have virtually auto- owers to do virtually anything in the employment field. I say

virtually autocratic powers because this bill is very skillfully drawn make it impossible as nearly as human language will permit for courts to reverse any decision made by these five men.

There is an old adage which expresses the most fundamental truth on the subject of juris prudence, and that is that out of the facts all law arises.

Mr. President, if I have the power to write the verdict in a case I do not care who writes the judgment, because the judgment has to follow the verdict.

My distinguished friend, the Senator from New Jersey, said, while quoting a man who knew better, Professor Wigmore, that the rule requiring a preponderance of evidence in a civil case is a vague rule.

With all due respect to Dean Wigmore's spirit, I would say that is an absurdity. Every day between the time we awake until the time we seek repose in slumber, we make many decisions on the basis of the preponderance of the evidence available to us. We certainly do not make our decisions on the basis of less than the preponderance of the evidence. We weigh all of the evidence, and then the evidence which weighs most heavily in our minds and has more convincing force is the evidence we follow.

Some years ago we started setting up administrative agencies with judicial or quasi-judicial powers. And these executive agencies were very loathe to have their opinions and ruling tested in the courts. When they first started passing laws to allow them to be reviewed in the courts, these executive agencies were able to persuade the Congress of the United States to adopt what is known as the substantial evidence rule. The substantial evidence rule is embodied in the pending bill.

What is the substantial evidence rule? Substantial evidence is more evidence more than a scintilla. And it has been defined in the courts many times to be less than the preponderance of the evidence. The preponderance of the evidence is the evidence which shows that an allegation is probably true or probably false.

Yet, when I offered an amendment before the Senate of the United States to the pending bill to provide that the courts should be free in the findings of fact made by a crusading board when the evidence showed that those findings of fact were probably untrue, the Senate rejected the amendment. The amendment provided that the courts would not be bound by the findings of fact unless those findings of fact were supported by the preponderance of the evidence. That means in simple English, that the court would not be compelled to abdicate the exercise of its mental faculties and to do such violence to justice as to be bound by the findings of fact based upon the evidence which showed that that the findings of fact were probably not true.

I have said here and I reiterate that those who back the pending bill wish to make it virtually impossible for a court to reverse the findings of the Commission. The crucial thing that is involved here is that no man should be hailed before a court by a commission or be compelled to go to court to escape a judgment of the Commission if that man, that employer, has fully complied with the law and has not practiced discrimination in any respect.

Yet, under the pending bill, the Commission can hail that man into court or compel him to go to court. And that man is denied the opportunity to disprove the very thing for which he has been unjustly hailed into court or unjustly compelled to go to court.

y do I say that? I say that because the pending bill provides that
the Commission can do anything of an affirmative nature out-
f investigating, it must attempt conciliation and must attempt to
ade the employer whom they charge with discriminating to take
se of action which does not discriminate. That is a condition
lent to the right of the Commission to take any action at all or to
any findings of fact or to make any recommendations or to
a judgment which impels an employer to seek relief in this
roo proceeding which makes a mockery of justice; and yet this
ovides that although a man has not discriminated and although
mmission is trying to make him do more than the law requires,
lenied the right to prove that in the court, and he is denied the
o show that the condition precedent to any action on the part of
mmission has taken place.

provision is found on page 38 starting with line 7:

Commission determines after attempting to secure voluntary compliance
ubsection (b) that it is unable to secure from the respondent a conciliа-
eement acceptable to the Commission, which determination shall not be
ble in any court—

, mind you, Mr. President, it does not say if they shall fail to
agreement complying with the law, but an agreement which is
tory to the whims and caprices of the Commission. Then, it

determination shall not be reviewable in any court.

is just another one of the things to show that this bill is not so
oncerned with obtaining justice, but with imposing the notions
EEOC as to what policy is desirable upon a people who have not
l the law. If it had been done for any other purpose it would
id:

Commission determines that it is unable to secure from the respondent
tion agreement complying with the law—

of the whims and caprices of the Commission. That is the way
l have been phrased.

n ought to have the right in any litigation to show that the
on precedent to the right of a person to take action against him
exist.

l that this bill would give these five men more power than the
nt of the United States has because under this bill they could
any State government, any county government, any school dis-
d they could actually appoint the officials there. This is the first
it I have ever heard it advocated in the Senate that the Senate
ss a bill whose cosponsors do not know what it means. I have
y good friend from New Jersey the meaning of the provision
ference to State employees of political subdivisions of States,
re it stops. He admits there is no limitation in the bill. I asked
nguished Senator from Ohio (Mr. Taft)—I am sorry he is not
hat protection the people in State government have against the
f it told them that the Governor, whom the people of the State
ted, had been elected by them because of his race, or religion,
nal origin; and he said we had protection in the courts under
antee of the Constitution that the United States should guar-
very State a republican form of government.

Mr. President, I read all the decisions under that provision, and t courts of the United States have nothing to do with that provisi They cannot entertain any case to secure an interpretation of th provision, and they cannot entertain a case which is designed to fi whether a State has a republican form of government.

The decisions state that there is a political power which belongs Congress and Congress alone, and that, therefore, whatever Congr does must be accepted by everybody as being a republican form government within the meaning of the Constitution. So there is remedy there.

I say this is the most far-reaching bill that has been proposed to Co gress since George Washington took his first oath of office as Preside because it gives this Commission absolute power, with no review exc the sort of kangaroo proceeding imposed on the courts, which are nied the right to find according to what the evidence states is probab true.

What does it say about States? It says that a State is an employ Then, they define an employee as a person who is employed by an e ployer. That is already established on that point. Then, Mr. Preside you go to the dictionary to find out what an employer is, and it sta he is a person or concern that employs another, usually for compens tion, wages, or salary.

So under that definition the Governor of a State, although he elected by the people of the State, would be an employee of the Sta This gives the Commission jurisdiction to deny any man, whether h a Governor or a State supreme court justice or a State legislator, t office to which he has been elected by the people of his State or his d trict or county. Why do I say that? The bill states expressly tha State is an employer. It confers jurisdiction over every employer. gives them jurisdiction over every employee of a State or politi subdivision. Now, what is a State?

The court said in the celebrated case of Texas against White:

> A State, in the ordinary sense of the Constitution, is a political communit free citizens occupying a territory of defined boundaries and organized und government sanctioned and limited by a written constitution and established the consent of the governed.

In other words, it will be noted that the salient thing is that it political community of free citizens. They no longer will be free c zens if this bill passes because we will have a Federal agency that supersede them in the selection of their officials and employees. A there is not a man in the Senate whom I have been able to discover y can point to anything in this bill which subjects it to a semblance any other interpretation.

This amendment would remove from the jurisdiction of the C mission the power to determine which persons are to be employe physicians and surgeons in hospitals. Mr. President, if there is a thing which shows what absurd lengths this bill goes to, it is the po it gives the Commission to determine which persons a hospital s select to perform surgery, or which persons it shall select to be m bers of its medical staff. There never has been, according to my der tanding, a single doctor on this Commission. Its members are more competent to pass on the qualifications of surgeons and ph cians than I am to perform the functions of an archangel.

bill would make every public hospital and every private hos-
hat employed as many as 15 persons, subject to the jurisdiction
Commission.

re is one other thing that has caused this country much divi-
ss and has caused this country much consternation and much
il, and that is the fact that we now have, in addition to local
boards, which should be allowed to select principals and teach-
d superintendents, two Federal agencies which are exercising
ower—the U.S. district courts and the U.S. courts of appeals
e Supreme Court of the United States. In addition to that, we
ne Department of Health, Education, and Welfare. And this bill,
first time, would place jurisdiction over the employment of all
superintendents, all school principals, all school supervisors, all
eachers in every one of the 50 States, in the Commission. They
say who were to be hired and who were to be fired and who
e promoted and who could not be promoted. They could say,
ecause of any external act that you committed which was il-
ut we find that although you did a legal external act, you had
roper motive in your heart when you did it."

r this bill, the Commission could order school boards to hire
teachers and pay them back salaries for the time they did not
As I said the other day, they are no more competent to select
s than they are professors of anthropology.

s struck by some of the rhetorical questions asked by my friends
ther side: "What do some people think about the fact that we
pass this bill quicker than we have?" I think I can answer that.
some people in the United States are finding out that there
ast a few men who will stand up on the floor of the Senate and
r freedom for the people of America. They will fight for the
of hospital boards to select their own physicians and sur-
They will fight for the freedom of school boards to select their
chers. They will fight for the right of the small businessman to
he persons whom he thinks are most likely to make his busi-
ture a success rather than a failure.

President, the bill before us would place the employment prac-
the 50 States under the jurisdiction, as I have said of five men
not elected by anybody to do anything, and who are not
ble to anybody for anything they do, and whose actions can-
ffectively reviewed by courts of justice. I say this because the
s the courts of justice in a straitjacket and compels them to
t the decrees of the board by accepting their findings of fact,
ough the evidence may show that those findings of fact are
not true. So this bill would give five men on that Commis-
re power than the President of the United States possesses.

PRESIDING OFFICER. The time of the Senator has expired.

ILLIAMS. Mr. President, I yield myself 5 minutes.

mendment offered by the distinguished Senator from North
would exempt from the coverage of the law, as it would be
ill passes, all hospitals, public and private, in the hiring of
ns and surgeons, and in doing so it would be saying affirma-
at hospitals, in their selection of physicians and surgeons, can
nate against a person because of his race, color, religion, sex,
nal origin.

This amendment, I suggest to my colleagues of the Senate, i from new cloth. It is different from the other amendments we had. It goes to some fundamental principles. When we were ta about the preponderance of evidence when we were talking abo tending coverage to State and local governments, that was one th but we cannot exempt hospitals, in the selection of physicians surgeons, from the dictates of the Constitution and the basic against discrimination. I think that we would be stepping back years, and I am most strongly opposed to this amendment.

The amendment would mean that a physician, fully qualified accredited by appropriate State and national authorities, coul denied employment with a hospital simply on the basis of race, religion, sex, or national origin and be unable to appeal to the E Employment Opportunity Commission for relief. There is no log this proposed amendment. It is not based on any showing of need is contrary to the present law and policy of this Nation with re to equal employment opportunities.

We have seen, during the course of debate on S. 2515, that mi ties and women have been, and continue to be, denied access to h level and professional job categories. The medical profession, I re offers no exception to this pattern of discrimination.

The 1971 American Medical Association publication, Relative on the Profile of Medical Practices, shows that only 2.2 percent of Nation's 334,000 physicians are black.

The Bureau of Labor Statistics reports that only 7 percent of al physicians in this country are women.

There are, of course, many factors which contribute to underut tion and discrimination in the medical profession, such as the enrollment of minorities and women in medical schools.

However, the availability of employment opportunities for mi ties and women is a key factor. A substantial number of the physi considered employed by public and private hospitals are interns residents. Intern and resident programs are essential elements physician's medical education, and are the basis for training i various specialized fields of medicine.

Statistics collected by the Department of Health, Educatio Welfare show a very serious underrepresentation of minor Among interns and residents employed by reporting hospitals, 1,047, or 2.2 percent, were black. Although the number of black creased over the 1966 total—860 out of 34,188 were black—the pr tion of blacks declined from the 1966 proportion of 3.5 percent.

I might point out that in the State of North Carolina in 1969, o out of 883—0.5 percent—interns and residents were black. In Ala only 3 out of 384—0.8 percent—were black.

Further, a significant proportion of physicians in this Natio considered "hospital based." According to statistics compiled b American Medical Association, some 31 percent of the over 319,0 fee doctors in this country work out of hospitals rather than p offices.

We must assure that access to these positions in hospitals is on ability, rather than on arbitrary and capricious qualifications as race, color, religion, sex, or national origin.

se figures, I believe, dramatically show why it is important to employment of physicians by private and public hospitals the jurisdiction of EEOC.

ddition, the amendment by the distinguished Senator from Carolina is wholly in conflict with the general need recognized h public and private groups for more female and minority s.

American Medical Association and the Department of Health, ion, and Welfare have established a goal to increase the num- blacks enrolled in medical schools to 12 percent of the total l school enrollment by 1975.

Comprehensive Manpower Training Act—Public Law 92-157— during the first session of the 92d Congress, would provide l assistance for medical training. Title VI of the Civil Rights 1964 assures that this assistance is available to all without to race, color, religion, or national origin. A special section o the manpower legislation assures that no person be denied as- because of sex.

le justice demands that employment be equally available with- crimination to students who have completed their formal on.

ly, the exemption proposed by the distinguished Senator would lear conflict with the Constitution and existing Federal law equires that opportunities for employment at publicly sup- nospitals be available to all on an equal basis. The amount of financial assistance in the field of health care is substantial. 947 over $12 billion in Hill-Burton funds have been spent for truction of health facilities.

98 percent of the general and specialty hospitals in this coun- ive some form of Federal assistance for health services. In ar 1971, 31 percent of the money spent on health care was Fed- ney—"The Size and Shape of the Medical Care Dollar," So- urity Administration, 1971.

know, the Constitution and Title VI impose a legal obligation Federal agencies to assure that Federal assistance be available cipients on an equal basis. HEW has taken several steps to as- the hospitals which receive Federal assistance be available to ients on an equal basis, and comply with Title VI.

Department has determined that protection of the rights of the beneficiaries of Federal assistance, the patients, requires that onal staff members, including physicians, be employed on a iminatory basis.

while the amendment by the distinguished Senator may create otion under Title VII for physicians employed by hospitals, the tion and Title VI would compel that employment remain avail- nondiscriminatory basis.

resident, I said earlier that this amendment, in my judgment, ll this country back 100 years. Certainly we have seen the dis- ion within the last 100 years that it would permit. I was vis- ny office, before coming over to the Senate floor, by a very shed former Governor of the State of New Jersey, who is very his Irish ancestry.

I asked Dick Hughes:

Dick, I have heard stories that in this country at one time there wer signs out where there were jobs available that no Irish need apply. was that, in the last century?"

He said:

No, it wasn't. It was a lot more recent than that.

My administrative assistant, Ben Palumbo, is of Italian ance I asked him:

I have heard that people with names ending in "o" indicating Italian ground have been discriminated against on that basis. When was tha years ago?"

He said:

My father says it was a lot more recent than that.

Irish, Italians, Jewish people, and women—these are the peop whom we are trying to give an equal opportunity. The mayo one of America's great southern cities shocked everyone not long when he suggested to his constituents that they "think black." W he meant by that was that his white constituency should try to u stand the feelings and the thinking of the black man.

As I stand here leading the debate on this measure, I try to t as a young person who has gone through that long, hard, and pensive trail to be the graduate of a medical school, be he ma woman, black or white, or whatever national ancestry. I say th this Nation, which so badly needs doctors, it would be a terrible if because of ethnic background, sex, race, or religion, the Amer people were denied the services of that new doctor.

That is exactly what this amendment would do. It would from a doctor the protection that the Constitution gives him would protect through this law. I think it would be against all this country holds itself up to be, in an area of one of our gre needs.

Right now, in the central city in New York City, there is one d for every 2,000 to 3,000 people. Rural America is crying for doc Yet this amendment would eliminate opportunities for those already tend to be shut out because of their race, religion, se national origin. This amendment stands out among all those pro as representing exactly the opposite of what we should be do this country, which is opening up opportunities for everyo strongly oppose the amendment.

The Presiding Officer. Who yields time?

Mr. Javits. Mr. President, will the Senator yield me 5 minute

The Presiding Officer. Does the Senator from New J yield time to the Senator from New York?

Mr. Williams. Mr. President, I yield the floor. I yield the Se such time as he may need, within our limitation.

Mr. Javits. Mr. President, I have heard with the greatest pl the statement of the Senator from New Jersey on this amend Interestingly, it seems to have roused him as almost no other a ment has, and I was very pleased to detect the note of indig with which he addressed himself to this subject.

Mr. President, I shall not endeavor to go over the same gr the Senator did superbly. I do have, however, one or two other I wish to raise.

, this amendment is so completely regressive that it does not
to undo what is in this bill, but it tries to undo what we did
ill passed 8 years ago, in 1964. That is what the amendment
ted to. It proposes to undo a measure we enacted in 1964,
which we have heard no complaints. There have been a great
rguments here about the fact that this, that, or the other
n has worked out in an oppressive way, but I have not heard
word said about the measure having worked out in an op-
way as to doctors and surgeons.

matter of fact, it was one of the most striking evidences of
ination that discrimination against doctors was exercised even
itals which were largely patronized by blacks. That was one
nost sensational aspects of the debate in 1964. So that is one
Mr. President: An effort is being made to undo a measure
as been in effect for 6 years without any real complaint that
ot been working properly and effectively.

ther point, which I think is critically important, is that every
e Senator from New Jersey has said about continuing dis-
ion up until very, very recent times in respect of race and
igin and color, as well as sex, is true.

ntally, I had that in my own family. My father was an
nt from middle Europe in about the late 1880's, and I am
gh to know the discrimination which was practiced, overtly
antly, through many of my adult years in respect to
ent.

f the things that those discriminated against have resented
is that they are relegated to the position of the sawers of
d the drawers of water; that only the blue collar jobs and
ging jobs are reserved for them; and that though they built
and certainly helped build it enormously in the days of its
struction, they cannot ascend the higher rungs in professional
r life.

be remembered that one of the most cruel aspects of discrim-
was the quota system practiced in many American universities
ame to doctors. It was the reason for the establishment of the
instein College of Medicine, one of the great colleges of medi-
e United States, in the city of New York. It involved a tre-
reaction. The first revolt within academic ranks on the part
ts and faculty, as well as the general public, came when these
e out.

is amendment would go back beyond decades of struggle and
ce, and reinstate the possibility of discrimination on grounds
origin, color, sex, religion—just confined to physicians or sur-
e of the highest rungs of the ladder that any member of a
could attain—and thus lock in and fortify the idea that being
or a surgeon is just too good for members of a minority, and
have to be subject to discrimination in respect of it, and the
aw will not protect them.

ould be most iniquitous. I simply cannot believe that in this
uld be seriously entertained as a possibility by way of exemp-
this bill.

very much, almost in self-respect, that the Senate will
reject this amendment.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PASTORE. Mr. President, I understand, I appreciate, and I a with everything the Senator from New York has said.

Down deep in my heart, I do not believe that the sponsor of amendment intends to do what this amendment actually wou There are those of us who come from nationalities that have bee criminated against in one form or another, at one time or anothe particularly by our immigration laws. Our parents have under grave injustices, inequities, and discriminations that violat very spirit of the Constitution.

I remember a time in my own State when individuals of ce racial extraction could not gain an internship in some of our hosp Today they accept them freely. But it was a hard road to recogni I know the experience of one individual in particular. Today he i of the greatest surgeons in this country. At the time I speak of, he refused an internship in a certain hospital. Later, that very hos begged him to come there to lecture—but by then he had become renowned in his profession of medicine. That goes to prove that ac ance was not a matter of qualifications at all.

No one here questions the right of any hospital or any medica thority to reject anybody, regardless of the color of his skin, or m bership in any minority group, if the applicant is not qualified. is not the question. All we are saying is that where all qualifica are met, please do not put certain groups under the burden of pro that they are twice as good in order to be considered equal. Th what we are trying to avoid. Equality is equality, under any stand and that is the one test that should be used in America. If yo any other test, you violate the very spirit of the Declaration of I pendence. It was written indelibly, not only on paper, not mer words, but as the will and the way in the hearts of all people believe in freedom. I hope that that indelibility will indeed e eternally in this great Nation of ours, and I hope the day never c when for any reason any person who is fully qualified will be criminated against because of the color of his skin or because he c from southeastern Europe or from any other part of the world. T of course, would be an injustice that America must consider in able.

For that reason I oppose this amendment—with all due resp the Senator who sponsors it. I know he is a man of good heart. H humanitarian, completely and in every respect, and I do not thi intends to do what this amendment would do—I hope that the a ment will be rejected.

Mr. JAVITS. Mr. President, I would add one prayer to that s quently uttered by Senator PASTORE: that even if he and I are no as ultimately we cannot be, the spirit of our immigrant forebears be voiced by someone on the floor of the Senate for as long as Nation may endure.

Mr. President, I yield back the remainder of my time.

Mr. WILLIAMS. Mr. President, how much time remains?

The PRESIDING OFFICER. The agreement was to vote at 3 o The Senator has 4 minutes remaining.

ALLEN. I yield back the remainder of my time.
WILLIAMS. I yield back the remainder of my time.
JAVITS. Mr. President, have the yeas and nays been ordered?
PRESIDING OFFICER. They have not not been ordered.
JAVITS. Mr. President, I suggest the absence of a quorum.
PRESIDING OFFICER. The clerk will call the roll. The legislative
roceeded to call the roll.
JAVITS. Mr. President, I ask unanimous consent that the order
quorum call be rescinded.
PRESIDING OFFICER. Without objection, it is so ordered.
vote cannot occur until 3 o'clock, under the unanimous-consent
ent.
BYRD of West Virginia. Mr. President, I ask unanimous consent
vote occur now.
PRESIDING OFFICER. Without objection, it is so ordered.
question is on agreeing to the amendment of the Senator from
'arolina. (Putting the question.)
mendment was rejected.
AVITS. I move to reconsider the vote by which the amendment
ected.
VILLIAMS. I move to lay that motion on the table.
notion to lay on the table was agreed to.
AVITS. Mr. Pre[illegible] nce of a quorum.
PRESIDING OFFICER. The clerk will call the roll.
egislative clerk proceeded to call the roll.
ALLEN. Mr. President, I ask unanimous consent that the order
quorum call be rescinded.
PRESIDING OFFICER (Mr. Brock). Without objection, it is so

* * * * * *

Senate continued with the consideration of the bill (S. 2515)
further promote equal employment opportunities for Ameri-
kers.
PRESIDING OFFICER. Under the previous agreement, the
ent of the Senator from New Jersey is now in order.
YRD of West Virginia. Mr. President, I ask unanimous consent
amendment of the Senator from New York be again tempo-
id aside and that the Senator from Alabama (Mr. Allen) be
ed for the purpose of offering an amendment.
PRESIDING OFFICER. Without objection, it is so ordered.
LLEN. Mr. President, I send an amendment to the desk and
it be stated.
RESIDING OFFICER. The amendment will be stated.
gislative clerk read as follows:

38, lines 10 and 11, strike the comma on line 10 and the words "which
tion shall not be reviewable in any court" on lines 10 and 11.

LLEN. Mr. President, I ask for the yeas and nays on this
ent.
eas and nays were ordered.

QUORUM CALL

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the or for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Alabama will state i

Mr. ALLEN. Will the Chair please rule on whether the amend submitted by the junior Senator from Alabama is in order?

The PRESIDING OFFICER. The amendment of the Senator from A bama is in order.

Mr. ALLEN. I thank the Chair.

Mr. BYRD of West Virginia. Mr. President, may I inquire of the tinguished Senator from Alabama as to whether he would be wi to enter into a time limit on his amendment?

Mr. ALLEN. I would be delighted to do so.

Mr. BYRD of West Virginia. What would the Senator suggest

Mr. ALLEN. I would say 1 hour, to be equally divided.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous con that time on the pending amendment be limited to 1 hour to be eq divided between the mover of the amendment and the manager of bill; that time on any amendment in the second degree, debatable tion, appeal, or point of order be limited to 10 minutes to be eq divided between the mover of such and the manager of the bill; that the time on any amendment to the amendment, debatable mo appeal, or point of order come out of the time allotted to the am ment in the first degree.

The PRESIDING OFFICER. Is there objection to the request of the S tor from West Virginia? The Chair hears none, and it is so ordere

Mr. ALLEN. Mr. President, the amendment which I have just to the desk for myself and the distinguished senior Senator from N Carolina (Mr. ERVIN) would knock from the bill one phrase, as lows: On page 38, beginning on line 10, "which determination s not be reviewable in any court."

This bill as introduced and as amended by the committee empo this Commission to act as court, jury, investigator, and prosecuto rolled into one. It provides that if the Commission at the outset o complaint and its investigation determines it is unable to secure v tary compliance from the respondent under a conciliation agree acceptable to the Commission, which determination shall not be r able in any court, then this would knock out that phrase "whic termination shall not be reviewable in any court."

Mr. President, the inclusion of this phrase in this section, giving Commission the authority to make this determination without ap view, is typical of the arrogance of the Commission, which was st as a conciliation agency, which has been in existence for some 7 y or more, and which now seeks the power not only to investigate plaints but also to file charges, to hear the charges, to reach a de

ation, to issue an order, and then to have the power to enforce those
ers.

t does not desire any control over its activity. It inserts the phrase
n reference to a determination of whether compliance under section
of this section can be obtained. The purpose of the amendment is
rike from the bill this one phrase.

Mr. President, I have previously discussed in great detail many of
inherent dangers and evils of S. 2515.

n my discussions of the bill, I have strongly denounced and criti-
d the fact that the legislation would violate the Constitution by
owering the Federal Government to interfere with the basic and
damental functions of State and local governments by dictating
r employment practices. I say again that the States' power over
employment functions is not only basic, but essential to the very
ence of State sovereignty. If we deprive the States of their basic
tions, it is pointless for anyone to maintain that we have a dual
of government.

my discussions of the bill, I have strongly denounced and cri-
ed the fact that the legislation would violate the very first item of
irst article of the Bill of Rights by empowering the Federal Gov-
ent to interfere with the free exercise of religion by dictating
st all of the employment practices of church-supported educa-
l institutions. I say again that it would be difficult to imagine any
ice more at odds with the idea of religious liberty than to say that
rst amendment left it open to the Federal Government to compel
h-supported schools at every level of education to capitulate the
ral Government's secular concept of "equal employment oppor-
y." If this is not true, the first amendment is but an empty pledge
ssed in idle words.

my discussions of the bill, I have strongly denounced and cri-
d the fact that the legislation is a direct assault upon the free
prise system. The bill brings within its orbit every employer hav-
ight or more employees and every labor union having eight or
members. Thus, the small businessman, already overburdened,
l encounter new regulations, investigations, hearings and appeals
yond his time, his energy, or his finances. If this bill becomes law,
of the most cherished benefits which organized labor has attained
last four decades would no longer become matters of right but
automatically become matters of administrative grace to be
out by EEOC bureaucrats as rewards for good behavior or
eld as punishment when any union does not comply with their
ds.

ny discussions of the bill, I have strongly denounced and criti-
the fact that the legislation would give judicial function to the
Employment Opportunity Commission by permitting it to order
dents to "cease and desist" from alleged unfair employment
ces with such orders subject only to limited review in a U.S. court
peals. To vest in a single Federal agency the prerogative of bring-
charge, then investigating it, then trying the case, while at the
ime sitting in judgment on it, and then enforcing its own find-
alien to guaranteed and fundamental principles of due process.
n absolute contradiction with all that our constitutional system
ls.

Mr. President, time and again throughout this debate we have heard the proponents of S. 2515 state, indeed insist, that Title VII of the Civil Rights Act of 1964 has not been a success. That is the title setting up the EEOC. We have been told that the Equal Employment Opportunity Commission has been weak, innocuous, and behind in its work because it did not have cease-and-desist power. It has been pointed out to the Senate repeatedly that the EEOC is only a paper tiger because employers, employment agencies, and labor unions have refused to cooperate with the Commission in its mandate under Title VII to conciliate charges of unfair employment practices found to be supported by facts adduced by EEOC investigations. All of these arguments have been made on the premise that the EEOC has diligently and faithfully endeavored to discharge its statutory obligation to attempt to conciliate unfair employment practice charges.

The language which we seek to strike out makes any decision it reaches with regard to whether the employer, the respondent, is pacified and whether a conciliation agreement can be reached, nonreviewable by any court whatsoever.

In listening to these arguments and the many statistics which have been presented to substantiate them, I became interested in the facts of the record. I wondered, Mr. President, just how the Commission has performed its conciliation role which all agree is the keystone of Title VII of the 1964 Civil Rights Act. I submit, Mr. President, that, on the basis of the EEOC's own figures, the answer is a dismal one.

For example, in the Commission's fourth annual report—its report for the 1969 fiscal year—the Commission determined that 12,63[illegible] charges warranted investigation, but completed investigation in only 7,543 of them. At the conciliation stage, the EEOC's total workload of cases was only 3,329 or 21 percent of the EEOC's total workload. Finally, the conciliation efforts of the EEOC were "fully successful" in only 486 cases—less than 15 percent of its conciliation caseload and less than 2 percent of the cases earmarked by it for investigation and conciliation. The report further states that EEOC conciliation efforts were "partially successfull"—whatever that means—in 90 cases and wholly unsuccessful in 729 cases during the 1969 fiscal year.

Looking at the Commission's fifth annual report—its report for the 1970 fiscal year—the Commission determined that 16,348 cases warranted investigation, but it completed investigations in only 5,0[illegible] of them. At the conciliation stage, the EEOC's total workload of cases was only 2,956 or 18 percent of the EEOC's total workload. Finally, the conciliation efforts of the EEOC were fully successful in only 342 cases—less than 15 percent of its conciliation workload and less than 3 percent earmarked by it for investigation and conciliation. The report further states that EEOC conciliation efforts were partially unsuccessful in 105 cases and wholly unsuccessful in 732 cases.

Mr. President, a record so devoid of accomplishments quite naturally raises sharp questions. Why is the EEOC conciliation caseload so low in relation to its total caseload? Why is the Commission so singularly unsuccessful in its achievements in the conciliation area—the very area to which the Congress specifically directed it to devote its energies under Title VII of the 1964 Civil Rights Act?

As I have previously stated, advocates of cease and desist authority for the Commission have pointed to the record I have just discussed

evidence of employer recalcitrance and a general unwillingness cooperate in achieving equal employment opportunity objectives. leed, the Commission itself has not hesitated to suggest the same ng, and at the same time stamp its feet and cry for an expansion its powers, including the right to issue orders enforceable against pondents in the employment field.

At that point I might point out that the proponents of the bill state t the EEOC now has approximately 1,000 employees; that in the t 2 or 3 years it is anticipated they are going to build up the num- of employees to where they will have approximately 2,000 em- vees.

That seems to be a quality, an attribute, or a feature of all govern- nt agencies with which I am familiar; they want to grow in size, y want to be more important, they want to exercise more functions, y want to get more people under their control, they want to have ater jurisdiction, they want to be able to order more people around. o here is a case, directly in point, of the expansion of the Federal eaucracy; this is an example of mushrooming Federal bureauc- ; it is an example of another invasion by the Federal Govern- t of the rights and everyday lives of the citizens of this country. r. President, it is not often that we in the Senate have an oppor- ty to strike a greater blow at Federal bureaucracy, and a greatly nding one at that, than we have with our vote on this bill, which titutes a power grab on behalf of the Equal Employment Oppor- ty Commission.

es; we can strike a blow at increased Federal expenditures; we strike a blow at the tendency of the Federal Government to take the rights of our citizens, because under this bill the EEOC is g to have control of employment practices of States, counties, the agencies of local government.

e have a chance, by standing firm, with respect to this bill by vot- against any effort to cut off debate on this important issue, by vot- against any effort to apply gag rule in the Senate.

his amendment would make the bill somewhat better. This amend- would make it subject to some control in making its determina- , subject to some oversight, and not allowing it to be a complete unto itself.

r. President, on page 1 of the EEOC fourth annual report for 969 fiscal year, we find the unadorned and unexplained statement "the Commission continued to be limited by a lack of enforce- power."

submit, Mr. President, that mediocre accomplishments of the l Opportunity Commission and its failure to achieve a better liation record is due in large measure to the Commission's simple al to carry out the congressional mandate set forth in Title VII e Civil Rights Act of 1964.

rther evidence of the Commission's misfeasance in failing to ientiously carry out its statutory mandate to achieve conciliation nfair employment practices charges may be found in its own ations. A cursory review of the legislative history of Title VII fically shows that the Congress intended that the filing of law- by aggrieved individuals would be a "last resort" after the mission has exhausted its conciliation efforts.

This desirable objective has been thwarted and frustrated by Commission procedures which permit the filing of lawsuits by charging parties without any finding of probable cause by the Commission and without any efforts on its part to conciliate at all.

This Commission has been operating for more than 7 years. They contend they have been doing a good job. They come in every year and apply for an appropriation; and I assume in support of that appropriation they point out what a good job they are doing and why they need more money to operate the Department. But, Mr. President, I point out that the Commission has not needed enforcement powers during the 7 years of its existence, so why should the proponents of this measure tie up the business of the Senate with this measure which seeks to give this Commission the authority to issue and enforce its own laws? Where is due process? There is none. There is no due process.

Mr. President, I commend the distinguished present occupant of the Chair, the Senator from New Hampshire (Mr. Cotton), for the valuable contribution he made to the amedment of this bill. The bill originally provided that the number of employees that an employer had to have to be covered by the bill would be reduced from the present law of 25 down to eight. The distinguished Senator from New Hampshire pointed out that that would bring under the control and operation of the Commission very small employers, employers who are already subject to so much Government redtape, already subject to so much Federal bureaucracy oversight, already subject to heavy taxation, and that to be harassed by this Commission would in all likelihood crowd these small businesses to the wall. Out of the goodness of their hearts the managers of the bill were willing to raise this number for required coverage after the several speeches by the distinguished Senator from New Hampshire, from eight to 15.

That might not sound like a whole lot but it will prevent literally tens of thousands of small employers from coming under the oppressive provisions of this bill; and a great contribution was made by the distinguished Senator from New Hampshire (Mr. Cotton). I commend him on his activity in that regard.

I should like to call to the attention of the Senate that section 1601.25a(c) of the EEOC's procedural regulations states that:

> At any time after the expiration of sixty (60) days from the date of the filing of a charge . . . the charging party or the respondent may demand in writing that a notice issue pursuant to section 1601.25 and the Commission shall promptly issue such notice . . .

Section 1601.25, however, provides that such notice shall issue:

> In any instance in which the Commission is unable to obtain voluntary compliance as provided by Title VII, and that the notice shall include . . . (b) a copy of the Commission's determination of reasonable cause.

Alabama employers and their counsel with whom I have discussed this matter have advised me that, despite the specific language of section 1601.25 and of the act itself, the Commission as a matter of practice continues to issue so-called suit letters in any case in which a charging party requests even though no "probable cause" determination has occurred and no attempt to conciliate has been made by the Commission.

All of this goes to say, Mr. President, that a charging party to date
s been able to bring suit on his claim even though the Commission
never rendered a probable-cause decision in his case and no—
epeat—no conciliation has occurred. Because of this fact, we readily
from the figures I cited just a few minutes ago why only a very
cases reach the conciliation stage at all. Thus, the most important
e of the Commission under Title VII—conciliator—is deliberately
arted by its own regulations and apparent blase attitude to the
ressed congressional judgment that conciliation is not only the
ferred method for eliminating employment discrimination, but
that conciliation efforts of charges were intended to be a con-
on precedent to the bringing of individual lawsuits.
t is obvious that the EEOC to date has had only limited conciliа-
experience. It is apparent, too, that the Commission, on the
onstrable record, is according only perfunctory significance to its
iliation role because of its continuing obsession with obtaining
Congress the power to issue coercive cease-and-desist orders.
resumably, the Commission well knows that a major failure on
art to conciliate will lend strength to efforts to obtain for it cease-
desist authority.
nciliation, Mr. President, can and should work. I know that
ama employers have, by and large, sincerely tried to comply
both the letter and spirit of Title VII. I am convinced that only
y low percentage of conciliation failures with Alabama employers
e to the latter's recalcitrance.
hat I am trying to say, Mr. President, is that conciliation will
given a fair opportunity, if, and when, the EEOC seriously
sincerely "gets with it." Instead of conferring additional admin-
tive power and authority upon the EEOC as the bill before us
rastically attempts to do, what we really should be doing is to
ly remind the Commission of its statutory obligation to attempt
nciliate every appropriate case.
m confident that the end result will be a heartening increase in
the number of conciliations attempted and the number of con-
ion agreements achieved; in short, the kind of progress which
Congress intended and expected when it passed the act 8 years

. President, how much time do I have remaining?
e PRESIDING OFFICER. The Senator has 2½ minutes remaining.
. ALLEN. I reserve the remainder of my time.
e PRESIDING OFFICER. The question before the Senate is on the
ion of the amendment. Does any Senator yield time?
. ALLEN. Mr. President, in the absence of Senators representing
oponents of the bill, I ask unanimous consent that I may suggest
bsence of a quorum with the time on the quorum call to be
ly charged to both sides.
e PRESIDING OFFICER. Is there objection to the request? The Chair
none, and it is so ordered.
e clerk will call the roll.
e legislative clerk proceeded to call the role.
. JAVITS. Mr. President, I ask unanimous consent that the order
e quorum call be rescinded.
. PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yield me 5 minutes?

Mr. WILLIAMS. I yield the Senator from New York 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, as we understand the amendment—we have sought to analyze it quickly in the time which has been made available—it seeks to provide a court review where the Commission rejects, or is unable to secure, a conciliation agreement from the respondent.

We can hardly conceive seeking to deprive the Commission of the opportunity to use its judgment, through court review, to endeavor to obtain a conciliation agreement or to substitute a court for it in deciding a conciliation agreement is acceptable. We come to the conclusion that that is what the amendment means when it says if the Commission determines—that is, the determination after attempting to secure voluntary compliance under subsection (b)—that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission.

Therefore, it seems to us that if this amendment is adopted, the words "acceptable to the Commission" might just as well be stricken because if the Commission is not permitted to determine that it is unable to secure a conciliation agreement, certainly one is not going to stultify the Commission and demand that it accept one which is not acceptable to it. Therefore, the determination becomes meaningless.

It seems to me that if we are going to give them the power of entering into a conciliation agreement at all, it has got to be one which they regard as acceptable, and not one mandated upon them by a court. So, if the amendment is to prevail, the whole clause ought to be stricken and the statement just ought to be that if the Commission determines, after attempting to secure voluntary compliance to subsection (b), that it cannot secure voluntary compliance, then it may go ahead and issue a complaint, or—if the Senate decides tomorrow to vote on the substantive matter—if it has got to sue, that it then can go ahead and sue.

I cannot see how one can expect the Commission to stultify itself by being subject to an order of the court that it is able rather than unable to secure a conciliation agreement acceptable to it. I emphasize that the amendment does not seek to strike those words. They remain in the clause.

So it seems to be that the words "which determination shall not be reviewable in any court," if we strike those out, now that they have occurred, it would simply stultify the Commission as well as the process. Our understanding of what is sought to be done here may be incorrect, but that is the way it seems to us, Mr. President.

For those reasons, as we wish to favor rather than frustrate conciliation with respect to activities of the Commission, and most of the cases—the overwhelming majority, are settled as a result of conciliation agreements, and since there is no compulsion on the respondent he does not have to enter into the conciliation agreement in any way, shape or form—it seems to me that the determination which the amendment would carry out is quite inappropriate, and that the Senate should reject the amendment.

Ir. WILLIAMS. Mr. President, I suggest the absence of a quorum.
he PRESIDING OFFICER. The time for the quorum call will come out
he Senator's time.
he clerk will call the roll.
he legislative clerk proceeded to call the roll.
Ir. WILLIAMS. Mr. President, I ask unanimous consent that the
er for the quorum call be rescinded.
he PRESIDING OFFICER. Without objection, it is so ordered. How
h time does the Senator yield himself?
Ir. WILLIAMS. I yield myself 5 minutes.
Ir. President, a parliamentary inquiry.
he PRESIDING OFFICER. The Senator will state it.
Ir. WILLIAMS. How much time remains on this amendment?
he PRESIDING OFFICER. The Senator from New Jersey has 21 min-
remaining, and that is all the time that is left on the amendment.
other side has used all of its time.
r. WILLIAMS. In the time that the author of the amendment had
xplain the amendment, it was not fully made clear to me just
tly what the amendment encompasses and what the basic result
d be if this amendment should prevail. I wonder if I could impose
the Senator from Alabama to ask him one or two questions.
r. ERVIN. Mr. President, I think I can answer the Senator's ques-
, if the Senator will yield me time.
r. WILLIAMS. Yes. Under present law, in the situation where the
mission is unable to secure from the respondent a conciliation
ment that is acceptable to the Commission, is that a decision or a
tion that is reviewable in a court of law?
r. ERVIN. It would be if it was prohibited by the bill, surely. It is
dition precedent to the Commission taking any action. It is a con-
precedent to the court having jurisdiction that the Commission
have attempted to effect a conciliation agreement conforming
law. That is a condition precedent, and ordinarily a man would
a right to raise it in court as a defense.
r example, an employer who, we will assume, is willing to make
reement complying with the law, which in full complies with the
ut the Commission is not willing to accept it. The bill would pre-
he court from inquiring into the matter.
other words, the Commission, by demanding more than the law
res, could say, "They have not come to an agreement satisfactory
e Commission," and no one on earth could dispute it in court.
. WILLIAMS. At what time is this failure to arrive at an agree-
reviewable in court?
. ERVIN. Well, under the bill it would not be reviewable at all.
. WILLIAMS. Without reference to that, but under the law as it
, is it the Senator's judgment——
ERVIN. Does the Senator mean under the 1964 act?
WILLIAMS. Yes.
ERVIN. No, the 1964 act was written just as this act is being
n, for the purpose of preventing a court from determining what
uth is.
I say, a court cannot even inquire into the matter. The court can-
en inquire whether the Commission has made a false statement,
herefore brought a man into court who should never have gone to

court. It is a condition precedent, just as there is a law in virtually every municipality that you have to give a notice before you can bring a suit against it.

Mr. Williams. It is clear that it is not in the law now. Is there anything in this bill, any language which suggests that the failure to reach an agreement is reviewable even if that language "which determination shall not be reviewable in any court" is stricken?

Mr. Ervin. It should be reviewable.

Mr. Williams. At what point? That is the question.

Mr. Ervin. It should be reviewable by the court when a man goes into court.

Mr. Williams. At what point?

Mr. Ervin. Whenever it gets there.

Mr. Williams. At the point where it is found that there is no agreement?

Mr. Ervin. Once the court reaches the case for trial, for hearing. In other words, if a man is perfectly willing to comply with the law he ought to be able to show the court that he was willing to make an agreement in compliance with the law but that the Commission demanded more; and, therefore, he ought never have been brought into court. He ought to recover his costs and, as we lawyers say, go hence without delay.

The Presiding Officer. The Senator's time has expired. Does the Senator yield himself the remainder of his time?

Mr. Williams. Yes.

In other words, if the Commission is unable to secure from the respondent a conciliation agreement that is acceptable to the Commission, at that point the respondent cannot go in to have that situation reviewed.

Mr. Ervin. That is right. In other words, nobody on earth can find that that statement is incorrect. It cannot be reviewed. Just tell the judge, "You have to shut your mind to the truth, if the truth is to the contrary."

Mr. Williams. Is it the Senator's viewpoint that, when the Commission discovers that it cannot get an acceptable agreement, at that point in time the respondent should be able to go to court?

Mr. Ervin. No, not then. A man ought not be compelled to go to court if he is perfectly willing to abide by the law. If he was perfectly willing to abide by the law and the Commission asked for more than the law required, the Commission ought not have him silenced when he gets to court. In other words, you have to have a condition precedent.

Mr. Williams. If this is stricken, what would the court be reviewing? I would imagine that, in this whole business of conciliation and negotiation toward an agreement, a great deal of the record would be on the basis of conferences and telephone calls, personal meetings where there is no record. What would the court be reviewing?

Mr. Ervin. I would think that if the judge was qualified for his office, when it appeared that the employer was willing to comply with the law and that the finding of the Commission on this point was not the truth, he would dismiss the case and say that the employer ought never have been harassed.

. Williams. At that point, I do not see where the record has made that a judge would have before him with the elements for ng an independent decision as to whether the respondent was g to enter into an agreement.

. Ervin. You have it in the record. If the Commission kept a d—and it should have—and the employer came in and said, "We illing to do this and that and that," that should go into the l; and then the Commission says, "That is not satisfactory to us."

. Williams. We are talking rather loosely about the record. I ggesting that the record could not be preserved in any printed

. Ervin. If the Commission does not preserve the record, it ought permitted to adjudicate the rights of other people.

Williams. This is in the very preliminary stages. No complaint en filed. It has been informal mediation and conciliation. No has been made. The judge would have nothing to go on.

Ervin. If I were the attorney for the employer, a record would t, because I would write it out and hand it to the Commission; they could not read, I would get somebody to read it to them.

Williams. That is the most improbable hypothesis of all.

Ervin. No, that is not improbable. Any competent lawyer, when s, "My client is not violating the law and is willing to take urse, in full compliance with the law," will put it in writing. It be the duty of the Commission to make a record of it, because they make a record to the effect that conciliation cannot be had, annot take action. That is a condition precedent.

Williams. I do not know how an objective record would be without one party reporting the conversation on the telephone he other party and vice versa, the sort of thing that makes for n a precise record, I would suggest.

Ervin. I learned a long time ago the truth of Lord Coke's state- hat one scratch of a pen is better than the slippery memory of witnesses. Whenever I represented a client who made a proposal a position, I reduced it to writing; and that is exactly what be in writing.

Williams. That would be an ex parte document. The Senator be making that out in his office, and it would not be reviewed other party as an accurate representation of what had ed.

Ervin. It would be an accurate representation of what I was to do.

Williams. A scratch of the pen would have been after you had ed to the other party what you were willing to do.

Ervin. Not if I were the attorney for the employer. I would in there when they were talking. I would put it in writing. You going to have a record made of the slippery memory of the ssion.

Williams. I am a former country lawyer from New Jersey, but we had one of those major lawyers from New York here to on this point. Frankly, I just cannot see it. It seems to me that e are talking about, in the working out of an agreement that nd does not come to pass, is not the kind of record with which lge could deal. They would have an informal background of

discussion—give and take—which did not jell into an agreement. A we would really have, perhaps, with any formality, would be the fi words of the respondent's offer, and that is all, without any of the gu of what went into it.

Mr. ERVIN. I do not see why there would not be a record. There is writing. A lawyer making a proposal on behalf of his client or stati his client's position is not going to trust to the slippery memory of commission. He would put it in writing. If I were the lawyer for t man, there would be a record.

Mr. WILLIAMS. I would not want to burden any judge with a revi of anything that imprecise as that record.

I yield to the Senator from New York on this.

Mr. JAVITS. Mr. President, the whole provision is self-operative seeking to set a time when, if the parties cannot agree, something el should happen, whether it is litigation or a complaint leading to cease-and-desist order.

I have never heard of a case in which a court could force anybo to make a settlement. The court might call them up to the bench a urge strongly that they settle and might imply that things go wro if they do not. But to provide that some court should review the det mination that they cannot settle is almost unheard of. I cannot co ceive of how a lawyer could advance such a proposal.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. JAVITS. I yield.

Mr. ERVIN. How is the court going to know that the Commissi has been unable to get an agreement satisfactory to the Commissio How is the court going to know that? Is the Commission going whisper it in the judge's ear, or is it going to have a written documen

Mr. JAVITS. If the Commission acts and the statute calls for a d termination, the Commission runs the risk that its decision may upset if the court determines, on review—and there is adequate j dicial review—that the necessary procedures provided by law w not complied with—to wit, that they did not try to conciliate and t they actually felt that they could not get a conciliation agreement. seems to me that a pendente lite decision on that score would simp hold up the works forever and espouse the proposition that peo can be made to settle, which just is not a judicial proposition.

Mr. ERVIN. How is the Commission going to give that informati to the court—orally or in writing?

Mr. JAVITS. In addition, I think the other critical point is that neg tiations for settlement are traditionally without prejudice. The Se ator's amendment would seek to make the negotiation of a settlem a judicial proceeding, again an absolutely unheard of provision. one's rights are cut off. The respondent can appeal in the event he not satisfied and has gone through the necessary procedures. A the party most affected—to wit, the basic party in interest—the cla ant, as it were—is not cut off from a suit that he is not a party to settlement of. This bill adequately provides for that.

Under those circumstances, it seems to me inconceivable that would enter into a court proceeding test, whether the Commis could or could not get a conciliation agreement, in terms of the la

of such a conciliation agreement, which gets down to the point we would substitute the court for the parties insofar as a settle- is concerned. If the court is going to get into that, to decide her it will or will not restrain or permit the Commission to make tlement, I cannot see how, without running afoul of the basic ciples of settlement in litigated cases, we can do it through the ts at this stage of the proceedings.

e opponents of this bill have made many amendments to it which arguable but, in the case of this amendment, I cannot see how it tand the proposition among lawyers in respect of the problems of ment of a case or of conciliating one.

. ERVIN. If the Senator will yield, I would ask, is the Commission ake no record of the fact that the Commission has been unable to n agreement?

. JAVITS. The Commission runs the danger, it runs the risk that hole proceeding may be upset after the cease-and-desist stage or tigation stage. I doubt very much that any commission would so simple a step as to certify for the record that they were unable rk out a conciliation agreement.

der this amendment I do not know what the court would decide v a court could probe into the minds of members of the Commis- whether they did or did not, in good faith, decide that they would uld not work out a conciliation agreement which the respondent have wished.

nnot see how we could possibly encompass this kind of provision to settlements. It certainly is completely outside the purview experience of every lawyer, not only myself, but I know of no r who would for a moment think that we could submit this to the as to whether the parties should settle. If they settle, they do. they do not and they go to court. This tries to introduce a totally nt standard than anything encompassed by our laws of practice. all these reasons, Mr. President, I hope that the amendment rejected.

. ALLEN. Mr. President, I yield back the remainder of my time.

. WILLIAMS. Mr. President, I yield back the remainder of my

. PRESIDING OFFICER (Mr. Brock). All the time has been yielded

question now recurs on agreeing to the amendment of the Sena- m Alabama (Mr. Allen).

his question the yeas and nays have been ordered.

. WILLIAMS. Mr. President, I suggest the absence of a quorum.

. PRESIDING OFFICER. The clerk will call the roll.

second assistant legislative clerk proceeded to call the roll.

. WILLIAMS. Mr. President, I ask unanimous consent that the r the quorum call be rescinded.

. PRESIDING OFFICER. Without objection, it is so ordered.

question is on agreeing to the amendment of the Senator from na (Mr. Allen).

his question the yeas and nays have been ordered and the clerk l the roll.

Mr. PASTORE (when his name was called). On this vote I have a pa with the Senator from Mississippi (Mr. Eastland). If he were prese and voting, he would vote "yea." If I were at liberty to vote I wou vote "nay." I withhold my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Ne Mexico (Mr. Anderson), the Senator from Nevada (Mr. Cannon), the Senator from Mississippi (Mr. Eastland), the Senator fro Georgia (Mr. Gambrell), the Senator from Oklahoma (Mr. Harris), the Senator from Indiana (Mr. Hartke), the Senator from Sou Carolina (Mr. Hollings), the Senator from Iowa (Mr. Hughes), th Senator from Minnesota (Mr. Humphrey), the Senator from Louis ana (Mr. Long), the Senator from Washington (Mr. Magnuson), th Senator from South Dakota (Mr. McGovern), the Senator from Mai (Mr. Muskie), the Senator from Alaska (Mr. Gravel), and the Sen tor from Washington (Mr. Jackson) are necessarily absent.

I further announce that the Senator from Florida (Mr. Chiles), th Senator from Massachusetts (Mr. Kennedy), the Senator from Mo tana (Mr. Mansfield), the Senator from Utah (Mr. Moss), and th Senator from Georgia (Mr. Talmadge) are absent on official busines

I further announce that, if present and voting the Senator fro Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Humphrey the Senator from Washington (Mr. Jackson), the Senator fro Washington (Mr. Magnuson), and the Senator from South Dako (Mr. McGovern) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. Bel mon), the Senator from Utah (Mr. Bennett), the Senator from N York (Mr. Buckley), the Senator from New Jersey (Mr. Case), t Senators from Arizona (Mr. Fannin and Mr. Goldwater), the Sen tor from Hawaii (Mr. Fong), the Senator from Florida (Mr. Gurney the Senator from Wyoming (Mr. Hansen), the Senators from Oreg (Mr. Hatfield and Mr. Packwood), the Senator from Ohio (Mr. Taft and the Senator from Texas (Mr. Tower) are necessarily absent.

The Senator from Kentucky (Mr. Cook is absent by leave of t Senate on official committee business.

The Senator from Kentucky (Mr. Cooper) is absent on offic business.

The Senator from South Dakota (Mr. Mundt) is absent because illness.

On this vote, the Senator from New York (Mr. Buckley) is pair with the Senator from Ohio (Mr. Taft). If present and voting, t Senator from New York would vote "yea" and the Senator from O would vote "nay."

On this vote, the Senator from Florida (Mr. Gurney) is pair with the Senator from New Jersey (Mr. Case). If present and vot the Senator from Florida would vote "yea" and the Senator from N Jersey would vote "nay."

On this vote, the Senator from Texas (Mr. Tower) is paired wi the Senator from Oregon (Mr. Hatfield). If present and voting, t Senator from Texas would vote "yea" and the Senator from Oreg would vote "nay."

[No. 42 Leg.]

YEAS—14

Ellender	McClellan
Ervin	Sparkman
Fulbright	Stennis
Hruska	Thurmond
Jordan, N.C.	

Va.
W. Va.

NAYS—49

Hart	Ribicoff
Inouye	Roth
Javits	Saxbe
Jordan, Idaho	Schweiker
Mathias	
McGee	Smith
McIntyre	Spong
Metcalf	Stafford
Miller	Stevens
Mondale	
Montoya	Symington
Nelson	Tunney
Pearson	Weicker
Pell	Williams
Percy	Young
Proxmire	
Randolph	

AND GIVING A LIVE PAIR AS PREVIOUSLY ANNOUNCED

against.

NOT VOTING—36

	Kennedy
Goldwater	Long
Gravel	Magnuson
Gurney	Mansfield
	McGovern
Harris	Moss
Hartke	Mundt
Hatfield	Muskie
Hollings	Packwood
Hughes	Taft
Humphrey	Talmadge
Jackson	Tower

Allen-Ervin amendment was rejected.

Mr. President, I move to reconsider the vote by which
endment was rejected.

I move to lay that motion on the table.

otion to lay on the table was agreed to.

Mr. President, what is the pending business?

The pending question is on the amendment
Senator from New Jersey and the Senator from New York
No. 878.

Mr. JAVITS. Mr. President, the Senator from New Jersey and t Senator from New York have presented to the Senate their amen ment with a view toward facing the realities of the situation and e deavoring to present for all who wish a bill a formula by which bill could be obtained, we believe. It seems to me that this is the dir tion in which the Senate has been moving. We deplore the idea t those who have different views as to the remedy are thrown in ind criminately with those who oppose the bill outright. We believe t tends to confuse rather than simplify the issue, notwithstanding deep feeling about the way we are organized today with rule XX The Senate does not operate by a constitutional majority but by tw thirds of those present and voting. I think this is a very serious def in our system of government. It has its classic result in frustrati what should be the controlling will after decent and honorable debat to wit, the will of the majority. Nevertheless, this is the world which we live.

In recognition of that fact, the Senator from New Jersey (M Williams) and I have proposed a formula by which we think t difficulty can be surmounted by those who want a bill.

Mr. President, the main criticism that has been made against plan is the fact that it represents no substantial difference from ce and desist. But, Mr. President, we respectfully submit that it does would like to suggest to the Senate, so that the matter may be stud overnight by individual Members, that they pay particular attent to the following two points:

The first point is that we provide for a review by a court of qu tions which arise in the course of the hearing before the EEOC, any question of controlling law in the proceeding. That is not pr vided for by the cease-and-desist process, but would be provided by special proceedings we suggest. Second, we provide that the Co mission cannot issue a cease-and-desist order; that only the court enter a decree. It is claimed that does not make a difference beca the court is bound by the evidence to the extent the evidence is substa tial. We feel it makes all the difference in the world because the arg ment of our opponents respecting cease and desist has been just words. We have constantly pointed out they cannot be enforced at except by court decree, even though it is called a cease-and-des order.

They have argued that if it is called a cease-and-desist order t brands the violator as a violator of the law. If that is true, the co verse is equally true. If we strike out cease and desist we cannot bra the violator as a violator of law. We are bringing it before the Co mission as a special matter, to hear the evidence, make the report the evidence, and recommendations to the court.

I respectfully submit in those respects there is a very real differe between cease and desist and the court-enforcement concept wh we have advanced to the Senate. We hope very much it will have interested attention of Members in light of the substitute which understand is going to be offered by the Senator from Colorado (M Dominick) to our amendment. So the Senate will have its choice the remedies available, make that choice, and go and deal with the in chief.

the effort to arrive at some time limitation on when we should
. I have been most sympathetic, as has the Senator from New
ey, provided we could get everything voted on at once. In other
ds, if there is going to be a resolution of the enforcement aspect
his law, it should be a total resolution. As the situation stands
if we agree to vote on the Dominick amendment at a given time,
no time to vote on the amendment which the Senator from New
ey and I have offered, the matter still would be up in the air. So
ave tried in the intervening time, without much success, to bring
t an agreement to vote on both measures in order to endeavor
ing this whole issue to resolution.

r. President, to give us an opportunity to consider that point a
further I now suggest the absence of a quorum.

r. DOMINICK. Mr. President, will the Senator withhold that re-
and yield the floor for me to offer my substitute?

. JAVITS. I would like to suggest the absence of a quorum first.
gest the absence of quorum.

e PRESIDING OFFICER. The clerk will call the roll.

e second assistant legislative clerk proceeded to call the roll.

. BYRD of West Virginia. Mr. President, I ask unanimous consent
he order for the quorum call be rescinded.

e PRESIDING OFFICER. Without objection, it is so ordered.

. DOMINICK. Mr. President, am I recognized? Do I have the

e PRESIDING OFFICER. The Senator from Colorado has the floor.

AMENDMENT NO. 884

. DOMINICK. Mr. President, I send to the desk an amendment in
ture of a substitute for the Williams-Javits amendment, and ask
be stated.

e PRESIDING OFFICER. The amendment of the Senator from Colo-
n the nature of a substitute for the Williams-Javits amendment,
e stated.

assistant legislative clerk proceeded to read the amendment.

. DOMINICK. Mr. President, I ask unanimous consent that further
g of the amendment be dispensed with.

e PRESIDING OFFICER. Without objection, it is so ordered.

. Dominick's substitute amendment to the Williams-Javits
ment 878 to S. 2515 may be found on p. 1383.)

. BYRD of West Virginia. Mr. President, will the distinguished
r yield, with the understanding that he does not lose his right
floor?

. DOMINICK. Mr. President, with great deference to my friend
West Virginia, I would like to explain the amendment at the
time before we get into any colloquy, if he does not mind.
e done shortly.

. BYRD of West Virginia. Surely.

. DOMINICK. Mr. President, there has been a great deal of dis-
concerning what should or should not be done with the en-
ent procedures of the EEOC. Some persons have interpreted
cussion as to whether or not those who are in favor of court
ire were in fact in favor of any enforcement procedure. Having

participated in the debate before the committee, having written individual views in the report, and having debated the issue on the floor extensively, I think it is only fair to say that, from my point of view, the EEOC deserves and needs enforcement procedure. That is why I insisted on reporting the bill and why I wrote my supplemental individual views, and that is why I have been carrying forward the discussion on the court enforcement method. It is an enforcement procedure and an enforcement procedure which myself and at least 3 other Senators happen to think is best.

The Senator from New York (Mr. Javits) has been very kind in this matter, and so has the Senator from New Jersey (Mr. Williams), but persons other than those in this body, in some of the more vocal "Now" groups, in the more militant women's groups, and other groups have said I was against civil rights. Nothing could be further from the truth.

I have said before, and I think it worthwhile repeating, that I have voted for every piece of civil rights legislation since I have been a Member of this body. In fact, I thought that the fair housing bill which was before us did not go far enough toward protecting minority rights. It is my guess that if we had had a fair housing bill with enough strength in it, we would not have the busing problem we are faced with in the school situation today, and I have said this repeatedly.

The language of this particular amendment is concise and uncomplicated. It says that if within 30 days after a charge is filed with the Commission, or within 30 days after expiration of any period of reference under subsection (c) or (d), of this bill, the Commission has been unable to secure a conciliation agreement, the Commission shall notify the General Counsel, who then can, if he so desires, bring a civil action against any respondent other than those within the category of a governmental entity.

In those cases, Senators will recall, we have already provided in the bill that with reference to disputes involving State or local governmental employees, the dispute would go to the Attorney General for the filing of a case in U.S. district court. Federal employees would exhaust their respective agency remedies and then the employee would have a right either to go to the Civil Service Commission Board of Appeal and Review or to submit it to the Attorney General for action through the U.S. district courts.

So the bill provides governmental employees and the governmental agencies with rights to redress their grievances in court. The only ones who are not subject to such court relief are the private employers and private employees; this, in my own humble opinion, is discriminatory in and of itself. I do not see why we should arbitrarily carve out a sector.

This particular amendment, which is offered as a substitute for the Williams-Javits amendment, says that the Commission shall take no further action after the General Counsel files the complaint before the court. The General Counsel goes before the U.S. district court judge, and if he certifies that it is in the general public interest, can request an expedited three-judge panel, similar to the procedure we now have in connection with voting rights, public accommodations, and the "pattern or practice" cases.

appeal from that three-judge panel then goes directly to the me Court. In terms of timing this is what happens: The charge l before the Commission, and they review it. If they find reason- ause and are unable to reach a conciliation agreement then the al Counsel goes into court. If he thinks that it involves an issue neral public interest, he can ask for a three-judge court. If it es individual rights, which is probably more likely, he would o the regular district courts with the right to have the judge priorities and expedite the hearing of the case.

case would be heard and it would then go, in the first instance, three-judge court to the Supreme Court, and in the expedited g would go through the regular appellate proceedings.

re is no doubt in my mind that this will be much more expedi- han the complex Javits-Williams procedure, which if I may has been tabbed by some of my knowledgeable friends in the rofession as a turkey.

problem is that it is not really a turkey; it is rather a camel, is a horse created by a committee. It has all the defects of the l amendment, and very few redeeming features.

procedure I have outlined would be far quicker than would vits-Williams amendment. Consider for a moment the delay d with the interlocutory appeal that might occur on evidentiary nder amendment No. 878. The respondent raises the issue with ring examiner hearing the case; any evidence which creates an nt concerning admissibility would have to be heard before a and I can foresee a lot of cases in that category. It seems to impartial court system would be far better.

he purpose of creating a record and after thinking about this ore and more, all the while getting more concerned over the ation of the sides, it seemed to me that we should get an opin- he relative merits of the two amendments from the people who en intimately involved with the enforcement of job discrim- —the Civil Rights Division of the Department of Justice. I ed them to send up such an opinion, and I shall send a copy opinion to every Senator late this afternoon or early tomorrow g.

etter from Assistant Attorney General, David L. Norman says ndidly that in his opinion the Javits-Williams amendment e extremely difficult to administer, it would be time consum- l it does not afford the protections available under the Domi- nendment. Mr. Norman indicates that he had already so testi- summary on the points in favor of my procedures before the tee and that he held such testimony urging that, as between o amendments, the Dominick amendment should be adopted. e my colleagues will read Mr. Norman's letter with some care, his opinion also deals with the Hruska "pattern or practices" nent, and then brings up a whole new issue which has not been ed at all concerning the exclusion from either court proceed- nforcement proceedings those cases which are presently pend- re the EEOC.

ust to give Senators some idea of what the Civil Rights Divi- s, I shall read into the Record at this point a portion of the g applied by the Civil Rights Division of the Department ce.

Amendment 878 (the Williams-Javits Amendment) carries forward the features of S. 2515 as reported by the Senate Labor Committee. Under Amendment, EEOC will have authority to issue orders, which may be enforceable in the courts after opportunity for judicial review. Although words "cease and desist orders" in the original bill have been deleted and term "recommendation" substituted therefor, this change does not appear be a substantial one, since under either version the EEOC position becomes enforceable order unless modified by the court upon review. Like the committee bill, the Williams-Javits Amendment calls for judicial review of the EE order on the Administrative record. Sec. 706(k)(1), pp. 6 and 7 of the Amendment. Like the Committee bill, the Williams-Javits Amendment makes the findings of EEOC "conclusive" on the courts if supported by "substantial evidence on the record as a whole" (Sec. 706(k)(2), p. 7 of the Amendment).

Although the Williams-Javits Amendment provides for filing of the administrative complaint with the district court, we do not perceive any substantive change resulting from that novel procedure. Also, the Williams-Javits Amendment provides for an interlocutory appeal to the district court on any "controlling question of law" if it finds that such review "would materially advance the ultimate termination of the litigation." It is doubtful that the addition is a significant one, since controlling issues of law were judicially reviewable under S. 2515, and this Department's experience under the analogous provisions for interlocutory appeal from district court decisions (28 U.S.C. 1292(b)) indicates that such appeals are only useful on rare occasions.

The one material change which the Williams-Javits Amendment would make in S. 2515 is to transfer judicial review from the courts of appeals to the district court. This change adds another layer of review to the already lengthy process of charge, investigation, cause finding, administrative complaint, hearing before hearing examiner, review before the Commission and review in the Court of Appeals.

Amendment 871 (the Dominick Amendment)—

The substitute incorporates those same provisions—

on the other hand, authorizes the EEOC to proceed in the appropriate United States District Court to secure relief from any employment practice it deems unlawful. In such proceedings, the evidence would be heard by the District Judge and the facts found by him. In addition, under the Dominick Amendment, the judicial proceedings would be expedited and the General Counsel could request the convening of a three-judge court with direct review in the Supreme Court upon a filing of a certificate of general public importance.

As you know, when I testified before the subcommittee on Labor of the Senate Committee on Labor and Public Welfare in October last year on behalf of the Department of Justice and the Administration, I again expressed our view that the granting for authority to the Equal Employment Opportunity Commission to bring judicial proceedings is a better means of enforcing Title VII than granting that Commission administrative enforcement powers. We still adhere to that view.

In my testimony before the Senate Labor Committee I set forth four grounds for our view that judicial enforcement is preferable to administrative proceedings. (Hearings pp. 150–151.) One of those was applicable only to governmental employers and was accepted by that Committee. The other three bases for our view may be summarized as follows: (1) Federal district judges hold office throughout the country and enjoy a confidence and respect in their community which cannot be matched by administrative officers; and their authority to issue enforceable orders enables them to resolve cases speedily;

If I may interject, Mr. President, I think this is a most important point. Under the procedures of S. 2515, and the procedures under amendment No. 878, the Williams Javits amendment, cease and desist orders or recommendations can only be issued in Washington.

Under court enforcement the district courts in every State of the Union are able to provide an impartial determination—an enormously simplified procedure insofar as both the complainant and the respondent are concerned.

Mr. Byrd of West Virginia. Mr. President, will the Senator from Colorado now consent to yield?

r. DOMINICK. I shall be through in just a few minutes, if I may
nue.

. BYRD of West Virginia. Very well, I thank the Senator.

r. DOMINICK. The letter continues:

because of the sensitive nature of the issues to be resolved and the fact
he larger cases involve the rights and expectations of substantial numbers
ple, it is inappropriate to leave the critical factual determinations and for-
ions of relief to hearing examiners and Commissioners sitting in Washing-
nd (3) the fact that Federal courts resolve the factual and legal issues in
opportunity cases in the areas of voting, housing, and education make them
icular appropriate forum for resolving the same kinds of issues in employ-
discrimination cases. In addition, I pointed out that there is a definite,
gh hard to measure, advantage in having the person who has heard the
ce be responsible for fashioning the relief which he must then enforce.

I have said, Mr. President, we will supply a copy of this letter to
Senator, whether he be for us or against us, either this afternoon
norrow morning.

ink the letter is extremely important, because it indicates what I
been saying—namely, that we must retain a belief in this country
he Federal district courts provide a method of impartial review
rhly emotional cases which involve not only basic human rights
so basic human emotions. Additionally, you can do far better in
rt proceeding which is impartial, organized, and ruled by prece-
nd established rules of procedure than you can from an admin-
ve proceeding composed of a group of people who are responsi-
no one except the person who appointed them—largely in the
ive department—or who may have been appointed as part of the
f the agency itself.

nnot conceive of anybody saying to me—as they have done over
er again—that what I am trying to do is in any way detrimental
viding fair employment opportunities to people throughout this
y. The fact is, my position provides a far more fair and far more
ial and far more expeditious way to solve these disputes by
g lasting precedents which can apply as a rule of thumb for
situations which are similar to that in other areas of the country.

President, I ask unanimous consent to have printed in the
l at this point editorials from the Chicago Sun-Times and the
go Tribune endorsing the court enforcement procedure.

ld to the Senator from West Virginia.

re being no objection, the editorials were ordered to be printed
Record, as follows:

THE SENATE AND JOB BIAS

House-passed proposal to allow the Equal Employment Opportunity Com-
to file suits in federal court on behalf of citizens who complain of hiring
nation is a step in the right direction, aside from the fact that it probably
all that could be expected out of Congress in an election year. South-
n the Senate who filibustered against a more liberal proposal one which
ave allowed the EEOC to issue "cease and desist" orders of its own—did
t the government interfering with subtle methods of blocking blacks
bs which required anything but heavy lifting and dirty hands. Nor did
ers of the filibuster, the Jim Crow leaders of Northern craft-union locals.
seven years since Congress ordered an end to discrimination, particularly
n employment, most responsible businessmen have taken the view that
nployment opportunity is not only good for individuals but good for busi-
lf. But the enforcement procedures given the EEOC to bring suit against
or employers have been restricted: only where a pattern exists can the
ove.

The House measure changes this to help individual plaintiffs, and it is a p
gressive move. After all, the federal courts have a good record in civil rights ca
and in administrative law, which the EEOC proposed powers would become,
word of a government agency is taken as prima facie evidence; it is up to
alleged offenders to prove their innocence. Admittedly, the federal courts are
clogged with cases, and this would add to the load, but it seems a small price
pay for widened enforcement powers for existing legislation.

Senate Majority Leader Mike Mansfield (D–Mont.) has said that if the p
posed legislation runs into too much more opposition, he'll lay the whole ma
aside for this session of Congress. It would be a pity if this should come to p
and we would urge all senators to support the House bill. Ending discriminat
in employment is already several centuries overdue, and this compromise, wh
not perfect, would be more than welcome.

Cease and Desist

Twice in three days, the Senate has defeated an attempt to cut off debate o
bill to give the Equal Employment Opportunity Commission power to issue "c
and desist" orders. A third attempt is expected later. If it fails, too, Senate lead
may shelve the question. If they do, passage of any new EEOC legislation in t
session will be in doubt.

The subject has already consumed an inordinate amount of Senate time. Fr
tration of "liberal" senators on this question should cause little if any regret.
deed, it is ironic that the same "liberals" who are trying to vest the EEOC w
"cease and desist" powers are generally the same ones who complain that ot
federal agencies—in particular, the Atomic Energy Commission—are too pow
ful in that they adjudicate their own affairs.

A more moderate proposal, approved in the House and sponsored in the Se
by Sen. Peter Dominick of Colorado, would empower the EEOC to go direc
to the courts to seek enforcement of its orders. At present, the EEOC is lim
to persuasion and conciliation, and has no enforcement powers beyond re
mending to the attorney general that he initiate civil action.

By persisting in the effort to give the EEOC an administrative baseball b
Senate "liberals" may have doomed EEOC to no increase at all in its enfor
ment powers. Better that than enabling it to act as an arbitrary tribunal, w
no necessity for placing controverted questions before an impartial court.

Mr. Javits. Before the Senator yields, I would appreciate it if
would yield to me, as I would like to have, at the same place and ti
our reply to the position of the administration, which we know ab
and which everybody expected.

Will the Senator allow me to speak before he yields for
unanimous-consent request in which I hope to be able to concur?

Mr. Dominick. If it is all right with the Senator from West Vi
ginia.

Mr. Byrd of West Virginia. Yes.

Mr. Dominick. I would like to keep the floor.

Mr. Javits. Mr. President, I ask unanimous consent that the Se
tor may yield to me without losing his right to the floor.

The Presiding Officer. Without objection, it is so ordered.

Mr. Javits. Mr. President, we have been expecting this. This is t
position of the administration. They prefer court litigation to t
cease and desist order practice which is contained in the bill repor
by the committee.

I have read with great interest the letter which comes now, declo
ing officially this position, and I most respectfully disagree.

Inherent in the Department's view is the very basis for our di
agreement. First, they say that Federal district judges hold co
throughout the country and enjoy a confidence and respect in the
communities which cannot be matched by administrative officers

respectfully submit that if that is true, we had better dismantle
hole administrative machinery in Washington, which includes
of thousands of cases not only in this field but in many other
as well, especially the National Labor Relations Board, which
les cases exactly in this field and which does issue cease-and-desist
s.

ond, the innuendo is made—and even was made this minute by
istinguished Senator from Colorado—that "these officers are
nsible to no one." They are appointed by the President, they are
med by the Senate, and they are surely responsible to the courts,
s the judges are. How many lower court decisions are reversed?
we have argued time and time again, before the cease-and-desist
can be enforced, it must be the subject of a court decree by a
court of appeals, and under amendment No. 878, by a district
as well.

the whole point comes in the next clause of the Department's

heir authority to issue enforceable orders enables them to resolve cases
.

us take a poll of any street—Washington, Takoma, San Diego,
—see who will tell you that the courts decide cases speedily.
lo not, of course; especially in the major industrial centers,
the district courts are 30 and 40 months behind in their calen-
nd that is where these cases are going to come up.

second point which gives the whole thing away is "Because of
sitive nature of the issues to be resolved." It is pretty sensitive
with questions involving trade unions in the National Labor
ns Board. It is pretty sensitive to deal with questions involv-
ud and deceit, just what the Federal Trade Commission deals
n terms of the issuance of cease-and-desist orders. And I am
only two. Precisely because it is sensitive, we have given that
tion to commissions, because we believe they develop an ex-
: they develop a sensitivity to the issues. They are mandated
otiate settlement and to try conciliation before they engage
summary action. We expressly created this idea of commissions
country because of the sensitive nature and the degree of spe-
ion and expertise which is required in these measures.

her, the fact that the courts do resolve civil rights cases in
elds—voting, housing, and education—does not make them a
larly appropriate forum for resolving job discrimination issues,
because it is job discrimination that gets away from you the

n a man is discriminated against in employment, he loses money
ay or goes on welfare, and that is where the difference comes
respect to housing, education, and voting, where you have time
around and where it is not a matter of eat or starve or go on

President, I understand that we have been over this ground
nd what the Department of Justice has sent Senator Dominick
ng new. But I do feel that the Senate has voted at least three
ejecting the thesis which Senator Dominick is now putting
again in his substitute amendment. That is a majority of the
and efforts have been made to overturn it, and it has not been

overturned. On the one occasion when the vote went the other way, was obvious that it was because Senators had left, and it was ju necessary to wait until they came back.

The whole situation is revealed nakedly. I have no complaints criticisms of any opponent. As the Senator from Colorado knows, have the highest respect and regard for his good faith and for h interest in civil rights legislation. I have never challenged that. B the fact is that if we are going to go this route, it will be notwit standing the will of a majority of the Senate and only because t Senate is not run by a constitutional majority, and perhaps the bigge thing which will emerge from this debate and our effort to pass a b will be that irrefutable fact. The fact is that if this is the route, will be only because this is the only way to get a bill, to yield to t minority, not for the minority to yield to the majority, as one wou expect in a democracy. That may be the only way to get legislatio and it may be the only thing that is left for us to do. I am not pr pared to subscribe to that. But I do think that as legislation and h enfold and the history of our country enfolds, it is absolutely essenti that that be made clear.

Again, I have no criticisms whatever. The Senator from Colora believes as deeply in his thesis as I believe in mine; and just as it my duty to do everything I humanly can to get my thesis accepted, is his duty to his conscience and those for whom he speaks to do t same thing. I am not complaining about that. But I am complaini strongly, as this is a lesson over and above the debate on a civil rig bill, in terms of the future of our country. This may not represent t shattering of the institutions of the Republic, but it could happen a could completely devastate the faith in our democratic system, b compelling the majority to do what the minority wants, notwithstan ing free and fair and open extended time for debate. That is the wa the system is now run. I deeply believe that is fair.

I repeat, I desire in no way to derogate from the good faith, t skill, and the capabilities of my colleagues engaged in this struggle o the other side, but it is essential for the future of this country clear to delineate where we are and why. That is the reason I have take these moments to speak.

I thank my colleague very much for his typical graciousness an fairness in yielding me this time.

Mr. DOMENICI. I thank the Senator from New York. I listene with great interest to his comments. I have no intention of getting in a debate on rule XXII. We have had so many of them since I came to the Senate that it is hard to say anything new about them.

I must say, in all fairness, that on the first vote on this particul issue there was only one vote difference until one of our Member paired. On the second vote, there were only two votes difference. I no time was that a majority of Senators either opposing court enforc ment or in favor of cease and desist. My amendment was only defeat by a plurality of those present.

I should also point out that the House, on a rollcall vote on t floor, adopted the Federal court procedure over the cease and desi procedure in a straight up or down vote. It is my guess that in ord to get some resolution of the impasse we are in now, we will hav enough Senators to objectively consider the changes which have be

in the competing amendments so that we can get my substitute
ed tomorrow. If we can do that, we will have a fair chance to
e bill out of this body. But, I must confess in all candor, that if
not adopt an amendment substantially similar to the one I have
we will not get a bill out at all. As a matter of fact, I have heard
ajority leader say that he was not going to waste much more
on it and he would pull it down.
if we are going to pass anything, we are going to have to pass
nendment, if we are going to get an enforcement procedure for
EOC, which I would like. Therefore, I hope that we will adopt
nendment.
h all due respect to my good friend from New York, who has
raordinary ability to organize his thoughts and speak brilliantly
s and many other subjects, I do not want to have the impression
n the record that by this amendment we are abolishing the
. The Commission remains. It does all the work it is doing
But all the work it is doing now and all the work that 34 other
ssions in the various States are doing has resulted in a 20-month
g. I do not think that this is an expeditious treatment of job
nination cases.
happy now to yield to the distinguished Senator from West
ia.

UNANIMOUS-CONSENT REQUEST

Byrd of West Virginia. I thank the distinguished Senator from
do.
I inquire of him as to whether he would be willing to make an
ent which would limit time on his amendment tomorrow, fol-
the vote on the motion to reconsider the vote by which the
nent of the Senator from Nebraska (Mr. Hruska) was rejected
ednesday, and also agreeing to a specific time to vote on the
ick amendment?
Dominick. I would have no objection to doing that at all. My
tion is that the motion to reconsider will probably involve,
motion to table, so that we may get two votes out of that. They
eduled for 2 p.m. so we would not be through until a quarter
rhaps; is that not correct?
Byrd of West Virginia. The motion to reconsider is scheduled
ote on tomorrow at 2 p.m. A motion to table would be in order.
of no intention to move to table the motion to reconsider, but
motion to table is made, that would consume an additional
utes. In any event, the motion to reconsider is scheduled for a
2 p.m. If no motion to table is offered, then the vote would be
ed on the motion to reconsider at about 2:15 p.m.
s wondering whether I might propound the following unani-
nsent request in order to see if it would meet with general
l:
President, I ask unanimous consent that the vote on the pend-
ndment by the Senator from Colorado (Mr. Dominick) occur
w at 4:30 p.m.; provided further that time on the pending
ent begin running tomorrow immediately upon disposition of
ion to reconsider the vote by which amendment No. 877 of the
from Nebraska (Mr. Hruska) was rejected; provided that
be equally divided between the distinguished Senator from

Colorado (Mr. Dominick) and the manager of the bill, the distinguished Senator from New Jersey (Mr. Williams); that time on any debatable motion, point of order, appeal, or perfecting amendment to the amendment in the first degree by the distinguished Senator from New York (Mr. Javits) be limited to 20 minutes, to be equally divided between the mover of such and the manager of the bill; with the further proviso that time on such will come out of the time allotted to the amendment of the Senator from Colorado (Mr. Dominick), with the exception, of course, of time on any motion to reconsider, which would naturally come after the vote on the Dominick amendment.

Mr. DOMINICK. Mr. President, reserving the right to object——

Mr. JAVITS. Mr. President, reserving the right to object——

Mr. DOMINICK. Mr. President, reserving the right to object—this is a terribly complicated unanimous-consent request which the distinguished Senator from West Virginia has just propounded.

It is my understanding that maybe we should get a parliamentary ruling on it first, before the Senator actually pushes it forward, on the fact that the proposal I put up is a substitute and would not be subject to any further amendments.

Mr. BYRD of West Virginia. The Senator is correct.

Mr. DOMINICK. Therefore, we are dealing with this one amendment and we do not have to worry about amendments to my amendment; is that not correct?

Mr. BYRD of West Virginia. The Senator is correct, but there is the possibility that a perfecting amendment to the amendment by the Senator from New York (Mr. Javits) could be offered and, in such case, that perfecting amendment would be voted on before the substitute would be voted on. So that, if that possibility should materialize, the proviso would take care of any such perfecting amendment.

Mr. DOMINICK. What is the time limited to on perfecting amendments?

Mr. BYRD of West Virginia. Twenty minutes, to be equally divided. Such time would come out of the time on the Dominick amendment.

Mr. DOMINICK. I could not agree, under those circumstances, because I have had considerable requests from Senators to speak on behalf of my amendment. I know that we will use at least 1 hour, if not more. I wonder whether the Senator could not put it this way: I do not know of any perfecting amendments that might be offered—there may be some, I suppose. But why should that come out of our time?

Mr. BYRD of West Virginia. I include that proviso just so that the Senate can be assured that a vote would occur, in any event, on the amendment of the Senator from Colorado (Mr. Dominick) no later than 4:30 p.m. tomorrow. I can revise the request if the Senator desires.

Mr. JAVITS. Mr. President, I do not think that would be satisfactory to us. The only reason we would have for agreeing—and I am not sure that we would agree—is that we still want to have something to say about it and that would be the fact that we could count on the time that is critical to us because of our situation here. I would make this suggestion, if we could agree—if the Senator from Colorado (Mr. Dominick) would give me his attention—perhaps we could set a time on perfecting amendments with a gentleman's understanding on the part of the Senator from New Jersey (Mr. Williams) and the Senator from Colorado (Mr. Dominick) that if someone has a perfecting

lment, accommodation would be made within the time limita-
The result of that would be that it might be 20 minutes, or it
be 3 minutes, 8 minutes, or 6 minutes. But the perfecting amend-
could be submitted to a vote when the time had expired and we
eady—at the end of the 4:30 p.m. period.
h that understanding, I think everyone would be protected. Con-
ly, once the time has expired, a motion might be made or an
ment could be submitted to our amendment, which would be
er and would be voted on with the gentleman's understanding
ere would be some accommodation to people who felt strongly
the matter.

DOMINICK. Mr. President, I say to the Senator from New York
e difficulty with that would be in the event the offerer of a per-
amendment would not want to agree to a time limitation.

JAVITS. No, because the time limitation would expire. And at
e it would have to be voted up or down.

DOMINICK. I do not know of anyone who wants to offer any
someone does so, it might not be fair to him or her.
difficulty, as I see it, is that we are trying to encompass every-
nder one blanket. I do not see how we can do it. We can say
ill be 2 hours on the Dominick amendment and not set a time
on at all.

JAVITS. That is our problem with respect to the matter. We then
up to having a vote at 7, 8, 9, or 10 o'clock. Anyone could sub-
perfecting amendments.

DOMINICK. If they do, what do we do about it? The time for
would have long since expired.

JAVITS. That would not be true the way I have suggested. The
from Colorado would have control of half the time and the
from New Jersey would have control over half of the time. If
had a serious perfecting amendment, the Senator from Colo-
ght allow him 1, 2, or 3 minutes. The same would be true with
to the Senator from New Jersey. That would be stipulated.
ould be no time, but they could get a vote. That is not unusual,
we do it all the time. All the votes would begin at 4:30. No one
e cut off.
ot see where the Senator from Colorado would be in jeopardy
and neither would we. The voting might take a little longer,
ould be at the voting stage at 4:30.

DOMINICK. Does the Senator from New York know of anyone
l offer any perfecting amendments?

AVITS. None whatever. I know of none. Like the Senator from
o, I know of none. Perhaps we might suspend for awhile so
Senator from Colorado could think about the matter.

OMINICK. I am just trying to get to a vote on my amendment.

AVITS. Mr. President, I think the Senator from West Virginia
t. We have to protect the rights of everyone. I have felt that
t to get a time limitation on the whole ball of wax—that is,
ominick amendment, and if it succeeds, then on the Williams-
mendment. If the Dominick amendment fails, then we should
ote on our amendment. I wish to note also that our amend-
uld be subject to amendment in that event.

Mr. President, when the Senator from West Virginia has fini
making his unanimous-consent request, as he might work it out
the Senator from Colorado and with us, I would like to incorpo
it, before we agree to it, in another unanimous-consent request
would be more inclusive and would set a time for voting on the w
issue, including the Dominick and our amendment as perfected.

I beg the Senator to give me that opportunity.

Mr. DOMINICK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. A unanimous-consent request is pendin

Mr. BYRD of West Virginia. Mr. President, I withhold my u
mous-consent request temporarily.

Mr. DOMINICK. Mr. President, assuming that a unanimous-con
request of some kind is finally agreed to here, is it not also true
if it does not encompass the Williams-Javits amendment, perfec
amendments could be offered to that after mine was disposed of in
event it got defeated. In the event it passed, it could not be. Is
correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMINICK. On the assumption that it is going to pass, I
happy to to say that there would then really be no reason for perf
ing amendments as far as I can see. If the Senator from West Virg
wants to propose his unanimous consent request, I see no problem.

In order to offset the possibility of having two votes at 2 o'clo
could we give ourselves another 15 minutes?

Mr. BYRD of West Virginia. Mr. President, if the Senator wo
yield, in the event there is no tabling motion, under the request wi
I have presented there would be a total of 2 hours and 15 minute
the Dominick amendment.

Mr. DOMINICK. The time to be equally divided.

Mr. BYRD of West Virginia. The Senator is correct.

Mr. DOMINICK. That would be all right.

Mr. JAVITS. Mr. President, if the Senator would yield, I would
to make the following unanimous-consent request, incorporating
request of the Senator from West Virginia and adding to it the
that after the vote has been taken on the Dominick amendment
any perfecting amendments which come before the Dominick am
ment, or after the vote has been taken on the Dominick amendm
there be 2 hours, the time to be evenly divided on the Williams-Ja
amendment, plus 20 minutes on each amendment or motion or app
the time to be also equally divided between the mover and the Sen
from New Jersey, and the vote then occur on the Williams-Ja
amendment as amended.

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. Mr. President, I object. I do not object to the reques
the Senator from West Virginia, but I do object to the unanim
consent request of the distinguished Senator from New York.

Mr. JAVITS. Mr. President, if the Senator will yield, we anticip
that objection. However, we thought it only fair to have the
clearly appear in the Record in respect of the Senate's judgme
to when debate ought to close. If that is what we are brought to
respect to this measure, I am now prepared to agree to the unanim
consent request of the Senator from West Virginia. However,
Senator from New Jersey can speak for himself, of course.

. Ervin. Mr. President, I am always anxious to put everything
e Record. That is the reason I supported the Allen amendment
ake the rulings of the EEOC reviewable.
. Byrd of West Virginia. Mr. President, I now renew my request.
ld the Chair like me to restate it, or is that necessary?
. Javits. Mr. President, would the Chair restate it so that we
all hear it?
e Presiding Officer. Following the disposition of the Hruska
dment, time will begin running on the Dominick amendment, to
ually divided and controlled by the Senator from Colorado (Mr.
nick) and the Senator from New Jersey (Mr. Williams), with 20
tes on any debatable motion or amendment, that time also to be
ly divided and the time to come out of the time on the Dominick
dment, with the vote on the Dominick amendment to occur at

Javits. Mr. President, the Chair did not mention a perfecting
lment to the Williams-Javits amendment which would be voted
he appropriate time, after the time had expired. Is that correct?
Presiding Officer. The unanimous-consent request as repeated
Chair did mention debatable motions or amendments, which
ed perfecting amendments.
Javits. Mr. President, I would not wish to be cut off once the
as expired from making a motion to table.
Presiding Officer. This agreement would preclude a motion
le.
Javits. Therefore, I wish to make that exception.
Byrd of West Virginia. Mr. President, let me state that if we
into an agreement to vote on the Dominick amendment at a
time then the Senate automatically is precluded from a motion
le.
Javits. I am aware of that. That is why I made the reservation.
s not debatable.
Byrd of West Virginia. Then, I have to revise my request to
that a Senator could move to table at that time.
Presiding Officer. Is there objection to the unanimous-consent
ent?
Dominick. This creates a reservation. What we are doing is
to create an escape hatch. I do not think I will go along and
vill have to object.
President, I object.
Presiding Officer. Objection is heard.
Byrd of West Virginia. Mr. President, I suggest the absence
orum.
Presiding Officer (Mr. Stevenson). The clerk will call the

second assistant legislative clerk proceeded to call the roll.
Williams. Mr. President, I ask unanimous consent that the
or the quorum call be rescinded.
Presiding Officer. Without objection, it is so ordered.

* * * * * *

Senate continued with the consideration of the bill (S. 2515) a
further promote equal employment opportunities for American
s.

Mr. Byrd of West Virginia. Mr. President, I renew my previous r
quest, and I shall restate it.

I ask unanimous consent that time on the pending substitute by M
Dominick, amendment No. 884, begin running tomorrow upon the d
position of the motion to reconsider the vote by which the Hrus
amendment No. 877 to S. 2515 was rejected last Wednesday;

Provided further that a vote occur on amendment No. 884 by M
Dominick at 4:30 p.m. tomorrow;

Provided further, that time be equally divided between the dist
guished mover of the amendment (Mr. Dominick) and the dist
guished manager of the bill (Mr. Williams);

Ordered further, that time on any debatable motion, amendment
meaning perfecting amendment to the Williams-Javits amendment
point of order, or appeal be limited to 20 minutes, to be equally divid
between the mover of such and the manager of the bill:

Provided, that the time on such perfecting amendment, debatab
motion, appeal, or point of order, be taken out of the time allotted
amendment No. 884, with two exceptions: One being in the case of
perfecting amendment which is pending at 4:30 p.m., in which i
stance that perfecting amendment be allotted whatever remaini
time would be necessary to round out the full 20 minutes: the seco
instance, of course, being on a motion to reconsider the vote on amen
ment No. 884; with the further understanding that in the event t
manager of the bill is not opposed to any perfecting amendment, m
tion, appeal, or point of order, the time in opposition to such wou
then be under the control of the distinguished minority leader or h
designee.

Mr. Javits. Mr. President, if the Senator will yield, reserving t
right to object—and I do not expect to object—it seems to me we ha
not stated properly the proposal as to perfecting amendments to t
basic amendment. As I understand, the votes on those would occ
at 4:30 p.m., and a reliance would be placed on the Senator from N
Jersey (Mr. Williams) and the Senator from Colorado (Mr. Dom
nick) to accommodate Senators who had any further proposals with
the time allotted, with the substantive vote to start at 4:30 p.m.

Mr. Byrd of West Virginia. However, in a case where a Senator o
fered a perfecting amendment, let us say, at 4:30, he would then ha
20 minutes. If he offered it before, say, at 10 minutes to 4, he wou
have 10 minutes.

Mr. Javits. That was not our understanding; our understandi
was we would start voting at 4:30. If there were perfecting amen
ments, both sides would allow Senators to discuss them, but we wo
vote at 4:30.

Mr. Byrd of West Virginia. Very well. I will delete the pro
which would accord to a Senator with a perfecting amendment, pe
ing at 4:30 p.m., 20 minutes.

Mr. Dominick. Mr. President, reserving the right to object. I s
foresee a situation where we would have 2 hours of debate, 1 hour
each side, and with 20 minutes on perfecting amendments, we wo
not get to debate the basic amendment. In view of that fact, I do n
see anything to do except object. I am sorry.

JAVITS. Let us not get hot——

DOMINICK. Well, we are getting that way——

JAVITS. Well, we are getting that way, then. I am trying to get at 4:30, not 8:30.

DOMINICK. I do not care whether we get them at 4:30 or 8:30.

JAVITS. I do. That is why I am agreeing to the unanimous-consent request.

DOMINICK. Mr. President, I object.

PRESIDING OFFICER. Objection is heard.

BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

PRESIDING OFFICER. (Mr. Stevenson). Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

BYRD of West Virginia. Mr. President, after several discussions with various Senators who are parties to the request which I am about to make, I propound the following unanimous-consent request:

I ask unanimous consent, Mr. President, that a vote occur on amendment No. 884 by the Senator from Colorado (Mr. Dominick) at 5 p.m. today; that time on that amendment begin running upon the disposition of the motion to reconsider the vote by which the Hruska amendment No. 877 was previously rejected; that the time be equally divided between the mover of the amendment, the Senator from Colorado (Mr. Dominick) and the manager of the bill, the Senator from New Jersey (Mr. Williams); provided further, that in the event the motion to reconsider amendment No. 877 by Mr. Hruska carries, the consideration of amendment No. 877 then be put over until the final disposition of amendment No. 884 by the Senator from Colorado (Mr. Dominick), at which time amendment No. 877 by Mr. Hruska then again be placed before the Senate for debate and disposition.

PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

BYRD of West Virginia. Mr. President, there is no question but that the vote on the amendment by Mr. Dominick will be a rollcall

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to the amendment (numbered 878) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 7, strike out everything from the word "the" on line 8 through the word "conclusive" on line 11, and insert the following in lieu thereof: "The findings of the Commission with respect to questions of fact shall be conclusive unless the court finds from the evidence that they are probably untrue".

2. On page 7, strike out everything from the word "with" on line 22 through the word "conclusive" on line 24 and insert in lieu thereof the following: "shall be conclusive unless the court finds from the evidence that they are probably untrue".

Amdt. No. 881

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

ended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to the amendment (numbered 878) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 7, strike out everything from the word "if" on line 10 through the word "conclusive" and insert the following in lieu thereof: "shall constitute prima facie evidence of their truth".

2. On page 7, strike out everything from the word "with" on line 22 through the word "conclusive" on line 24, and insert the following in lieu thereof: "shall constitute prima facie evidence of their truth".

Amdt. No. 882

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to the amendment (numbered 878) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

1. On page 1, lines 5 to 7, strike out the words "acceptable to the Commission, which determination shall not be reviewable in any court" and insert in lieu thereof the following: "conforming to the law".

2. On page 3, lines 12 to 14, strike out the words "acceptable to the Commission, which determination shall not be reviewable in any court" and insert in lieu thereof the following: "conforming to the law".

Amdt. No. 883

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 1972
Ordered to be printed

AMENDMENT

roposed by Mr. DOMINICK (as a substitute to the amendment (numbered 878) proposed by Mr. WILLIAMS and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: Strike out the matter to be proposed and insert the following:

On page 38, beginning with line 7, strike out all through line 18 on page 47 and insert in lieu thereof:

"(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall so notify the General Counsel who may bring a civil action against any respondent not a govern-

Amdt. No. 884

ment, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and fifty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the General Counsel has not filed a civil action under this section or the Attorney General in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon appli-

cation by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance.

"(2) In any such proceeding the General Counsel or the Attorney General in a case involving a government, governmental agency, or political subdivision may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the General Counsel or the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the

presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"(3) In the event the General Counsel or the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"(4) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the

earliest practicable date and to cause the case to be in every way expedited.

"(5) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

"(g) (1) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of

title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

"(2) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, reponsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Backpay liability shall not exceed that which accrues from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable."

[From the Congressional Record—Senate, Feb. 15, 1972]

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

ie Senate continued with the consideration of the bill (S. 2515) l to further promote equal employment opportunities for Amer- workers.

QUORUM CALL

r. Byrd of West Virginia. Mr. President, I suggest the absence quorum and ask unanimous consent that the time be equally ged against both sides.

e Presiding Officer. Without objection, it is so ordered, and erk will call the roll.

e legislative clerk proceeded to call the roll.

. Hruska. Mr. President, I ask unanimous consent that the order e quorum call be rescinded.

e Presiding Officer (Mr. Stevenson). Without objection, it is lered.

. Hruska. Mr. President, will the Senator from Georgia yield minutes?

. Gambrell. Mr. President, if the Senator would wait, I first l like to make an introductory statement and I will then yield Senator from Nebraska.

. Hruska. Mr. President, I would be pleased if the Senator from ia would do that.

. Gambrell. Mr. President, under the previous order, the Senate as turned to the consideration of the motion to reconsider the y which the amendment submitted by the Senator from Nebraska Hruska), amendment No. 877, was not agreed to on last esday.

President. I believe the Senate will recall that the vote on that lment was 33 to 33, and by virtue of there being a tie vote, the lment failed. Under the circumstances that developed at the had agreed to accommodate one of the Senators by giving a ir. And by virtue of my not having voted, the result might have hanged. I felt it incumbent upon me to make a motion to recon- he vote by which the amendment was rejected.

not intend to debate this matter at length and so stated to the ship at the time the time limitation was agreed to. I think that enators know what their position will be.

President, I favor the amendment of the Senator from Nebraska reasons I stated at the time the amendment was offered on ary 8, as set forth in the Record of that date.

nk the Senate should have an opportunity to express itself by rity vote on this issue and not have the issue decided by a tie

The proposal of the Senator from Nebraska, as I understand it, would limit the means by which action might be taken to protect minority rights under the job discrimination provisions of the EEOC bill.

I myself see no reason for saving six of seven different remedies for the protection of these rights, particularly when an employer would be thereby subjected to a great deal of harassment.

In my own judgment, by far the greater number of employers in this country would be happy to abide by this law and are simply seeking to find out what the requirements of the law would be and are not undertaking to frustrate equal opportunities for our citizens in connection with employment, whether by race, sex, religion, or national origin.

Mr. President, assuming that good faith, as I do, on the part of most employers, I do not think they should be held in suspense as to how many different modes of attack might be made upon them when any one or certainly the several that remain under the amendment of the Senator from Nebraska would be sufficient for the purpose.

Therefore, Mr. President, I at this time yield 10 minutes to the Senator from Nebraska for his statement in support of the amendment.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 10 minutes.

EXCLUSIVE REMEDY AMENDMENT

Mr. HRUSKA. Mr. President, I thank the Senator from Georgia.

Mr. President, I rise in support of the motion to reconsider the vote by which my amendment was rejected last week.

The proposed amendment provides that apart from those actions specifically sanctioned by S. 2515 or pursuant to the provisions of the Equal Pay Act of 1963, the only remedy available to individuals aggrieved by employment discrimination is a charge filed with the Equal Employment Opportunity Commission.

Under the amendment there are exceptions. Under this amendment actions filed by aggrieved individuals with State fair employment practices agencies; actions filed by the Attorney General in pattern or practice of discrimination cases; private actions filed by aggrieved individuals in the Federal district courts following the failure of the Commission to act upon a charge within the time proscribed in the bill; actions brought by the Secretary of Labor for noncompliance with the regulations of the OFCC; and actions brought in the courts for alleged violations of the provisions of the Equal Pay Act of 1963, are all preserved. The amendment would therefore, continue the availability of a wide range of avenues of redress from employment discrimination.

It might be noted parenthetically that the other body approved a provision similar to my amendment. But it was much more broad. It was much more broad, for example, in that the Equal Pay Act of 1963 was not included as an exception. That deficiency was noted in the debate in the other body. For some reason—very likely the fact that there was a closed rule prohibiting amendments—it was not incorporated in the text of the amendment as adopted, according to my recollection.

The merit of that proposal on the other side of the Capitol was recognized and there was inserted the additional exception for the Equal Pay Act of 1963 which, very simplistically, said that there must be equal pay for similar or equal work for men and women.

amendment reflects a recognition, however, of the fact that we
y curing the defects of the existing law by recognizing the ex-
of the Commission in the field of employment discrimination
anting the Commission the necessary enforcement tools with
they can satisfactorily fulfill their roll to end such discrimina-
doption of this amendment would result in funneling into the
ssion the matters within its expertise and the consequent avoid-
an unnecessary multiplicity of independent and overlapping
ought before other administrative agencies or under other laws.
er existing laws, individuals who allege that they are the victims
iminatory employment practices have access to a multiplicity of
before which they can bring actions seeking to redress a sin-
ged employment discrimination. Although Congress, in Title
the Civil Rights Act of 1964, created the Equal Employment
unity Commission and invested it with the primary responsi-
r investigating and conciliating alleged violations of Title VII,
slative history of that act as well as subsequent court decisions
hed that the Commission was not the exclusive authority for
ment of equal employment rights.

under the present law, an individual can subject an employer
organization to the necessity to defend simultaneously against
r of separate actions, brought before a number of separate and
forums for the same alleged offense.

Commission has noted in an ex parte statement submitted to
rstate Commerce Commission concerning Equal Opportunity
ce Transportation, ex parte No. 278:

e VII of the Civil Rights Act of 1964 did not grant exclusive jurisdiction
al Employment Opportunity Commission (EEOC) in all matters of em-
discrimination over which it has jurisdiction. On the contrary, its very
vides for the uses of *all available means* to achieve the end of employ-
rimination. (Ex Parte No. 278, Page 56) (emphasis added).

for example, notwithstanding the enactment of Title VII, it
that the National Labor Relations Board still retained juris-
n the area of civil rights in employment. In *United Packing-
orkers Union* v. *NLRB* (Farmers Cooperative Compress), 416
26, 1133, n11 (C.A.D.C., 1969), the court found, as a matter of
racial discrimination by an employer is an unfair labor prac-
stated that:

itself says nothing to indicate that the National Labor Relations Board
from jurisdiction in these matters, and an examination of the legislative
monstrates that the Board was not meant to be. 110 CONGRESSIONAL
07 (1964).

rly, court decisions issued subsequent to the passage of Title
held that Title VII has not preempted the field of civil rights
vment and thus an individual has an independent cause of ac-
ises of employment discrimination pursuant to the provisions
vil Rights Acts of 1866 (42 U.S.C. 1981) and 1871 (42 U.S.C.
983) and that actions may be brought under all three laws
eously.

er, according to the EEOC, the list of available forums in
tions concerning employment discrimination can be main-
ntinues. In its statement to the ICC, the Commission stated

. . . the provisions of Title VII only applied to the activities of the EEOC— to the Department of Justice as applicable—and were not intended to prec *other Federal agencies* from *independent* action in this area. (emphasis add

It is, therefore, the Commission's position that in addition to n regulatory administrative agencies such as the National Labor Re tions Board Federal regulatory agencies such as the FCC and I similarly have the authority to regulate the employment practices those who are subject to their jurisdiction.

Moreover, the Commission apparently is not satisfied merely w asserting that such regulatory agencies have jurisdiction over employment practices of their regulatees—a tenuous assertion at bes but it has also felt compelled to interject itself into the affairs of th agencies and attempt to direct those affairs.

For example, apparently without any charge having been filed, Commission conducted an independent investigation of the empl ment practices of the trucking industry and solely on the basis o statistical disparity in employment between minority and nonminor employees concluded that a prima facie case of discrimination at l had been established. This was not enough for the Commission, ho ever. After reaching this gratuitous conclusion, the Commission th tried to impose on the jurisdiction of the ICC by attempting to ha the ICC adopt rules forbidding discrimination in the surface transp tation industries, violations of which would hopefully, according the EEOC, result in loss of a carrier's license to operate.

Similarly, the EEOC has applied the same consideration to the FC and has interjected itself into the affairs of that independent agen For example, again apparently without any charges having been fi the EEOC conducted a study of the equal employment opportunit in the Bell System. In a voluminous report entitled "A Unique Co petence," the EEOC concluded that from top to bottom, the Be System discriminated against its employees on the basis of sex, r and national origin. However, the Commission's 290 page report is plete with conclusions unsupported by evidence and reads like a s chamber indictment. Nevertheless, the Commission on the basis of t obviously prejudiced report would have the FCC impose sanctions the Bell System.

Thus, in addition to all the other actions a respondent can be s jected to, the Commission would also include Federal regulatory ag cies in that already bulging list. It is apparently of no consequence the Commission that such agencies have neither the requisite expe ence in the area of civil rights in employment, nor the knowled training, resources or investigative know how to involve themsel in that area. On the contrary, the lack of resources and experience these agencies in the field of employment discrimination serves Commission's purposes all too well. The Commission can then in itself with the authority to act as the investigatory arm of these ag cies, draw unilateral conclusions as to the regulated industry's emp ment practices and utilize these agencies as mere rubber stamps for application of sanctions as a result of their conclusions.

Under the present provisions of Title VII, the EEOC was granted pro-century or enforcement authority which it could call in order to fulfill its role to eliminate employment discrimina Rather, the Commission was forced to rely solely on its efforts to

and conciliate in order to fulfill its function. Therefore, since
mmission had been given no enforcement authority, an arguable
ıle existed for the availability of multiple forums, each with
ction to hear, decide and remedy complaints of employment
nination. The lack of authority granted the EEOC in 1965
ed it inadequate for the task imposed upon it by Congress. It
nerefore, intended by Congress that victims of employment dis-
ation should be able to avail themselves to the fullest extent of
ources of other agencies and other applicable statutes.
ever, this rationale no longer is applicable. We are now granting
EOC the necessary authority to effectively administer and en-
he Nation's equal opportunity employment laws. Yet, the bill
fore the Senate contains no provision restricting the availability
rnative avenues of redress for persons aggrieved as a result of
ment discrimination. Nothing contained in S. 2515 prevents an
ual from subjecting a respondent to the onerous prospect of
ubjected to the vexations, time-consuming and financially bur-
e necessity of having to defend against a number of separate
before a number of separate forums, all for the same alleged
Further, even if a respondent successfully defends against one
he is still vulnerable to liability before any of the other
le forums.
procedure is contrary to this Nation's well established principle
e accused of a violation of the law should not be harassed and
y multiple actions for a single offense. This principle is con-
ally recognized in the criminal law by the prohibition against
jeopardy" and in the civil law by the correlative concepts of
udicata" and "collateral estoppel." It is also recognized in ad-
ative law. For example, the National Labor Relations Act, upon
he instant bill is largely patterned, provides that the Board
s exclusive jurisdiction in the area of its authority and other
are preempted from consideration of cases properly before the

eve that the failure of the bill to protect respondents from the
incident to being forced to defend against a multiplicity of
represents a serious deficiency. Our aim here is only to provide
authority to the Commission to enable it to provide protec-
the minorities and women of this Nation from employment dis-
tion. It is neither to harass respondents nor to deny them the
ental rights of due process.
mendment which I have offered merely represents a recognition
conclusion. It does not, as the rhetoric in the House suggested,
e actions under the Equal Pay Act and my amendment specif-
tains the availability of actions under that act. My amend-
not intended to eliminate the jurisdiction of the Attorney Gen-
attern or practice cases. We all recognize the fine and valuable
ne by the Justice Department in this area and my amendment
hat the Attorney General's efforts and jurisdiction will be
d.
mendment is only intended to eliminate actions brought before
or forums such as the NLRB, ICC, and FCC, which Congress
intend to have jurisdiction over employment discrimination.
r, while the need to preserve the right of private actions is

recognized and retained in this amendment, the expertise of the C
mission to sift and investigate the evidence and attempt conciliat
of the dispute before such private actions can be brought is neverthe
preserved.

Therefore, the intent of this amendment is not to impede the ef
tiveness of the Commission. On the contrary it is my opinion tha
would advance its effectiveness. We are all aware that one gage of
Commission's ultimate effectiveness will be its ability to obtain vol
tary compliance. Failure in this regard could result in the Comm
sion's being drowned in its own caseload. This danger is even grea
now that approximately 12 million additional individuals are be
included within the Commission's jurisdiction. S. 2515, in its pres
form, militates against such voluntary compliance on the part
respondents. Apart from the inherent unfairness of imposing this
bility upon a respondent, the fact that under S. 2515 an individual
still be able to bring a multiplicity of contemporaneous suits will
hibit respondents from entering into voluntary settlements. beca
any settlement effected before one forum will not eliminate its poten
liability before the other available forums.

Mr. President, it is not the intent of this amendment to abri
or to contract the rights and the benefits the law confers upon th
who allege discrimination in employment practices. They are f
protected and they are given every consideration in this amend
in connection with that matter with reference to their charges of
crimination, but they are denied that multiplicity of actions that
exists in their favor which can be used for harassment, for the accu
lation and imposition upon the labor unions and the employers
are made respondents, the necessity to expend much money, time,
litigation, all involving a single alleged offense.

Some point has been made that the Department of Justice wit
who appeared before the committee was opposed to an amendm
of this kind. Reference has been made to his testimony and a sub
quent letter which appears at page 162 of the hearings of the co
mittee on the bill, S. 2515. The fact is that there was not an outri
opposition. There was opposition to the extent that the language
the amendment could be interpreted as eliminating the use of p
visions of Federal law other than Title VII in the attack on empl
ment discrimination.

The witness, Assistant Attorney General David Norman, went
to say:

> We will be happy to work with the committee staff in clarifying the langua

The language to which he addressed himself did not have the
ceptions provided in the effective language of this amendment.

Reference has been made to the idea that all available resou
and remedies should be retained in the field of civil rights to as
employees their rights.

Among other things, Mr. Norman said:

> In the field of civil rights, the Congress has regularly insured that ther
> a variety of enforcement devices to insure that all available resources
> brought to bear on problems of discrimination.

It is submitted that is precisely what this amendment does. It sp
out the language and clarifies the language, it states what can be

cannot be used as the basis for a suit, and that is proved by the le cited by Mr. Norman in his testimony on page 163. He said:

xample, housing discrimination may be the subject of suit by the Attorney l, a private suit by the party affected, or a conciliation effort by the ment of Housing and Urban Development.

s amendment meets that exact situation. There is retained ex- the suit by the Attorney General; there is expressly saved employee a private suit by him or her; there is expressly ed the conciliation effort by the Commission and other agencies. ddition to those three, however, there is in the case of the pend- endment the saving grace of allowing the Pay Act to be fully e, and also any pending determination in State court.

PRESIDING OFFICER. The time of the Senator has expired.

TAMBRELL. I yield the Senator 3 additional minutes.

PRESIDING OFFICER. The Senator from Nebraska is recognized ldditional minutes.

HRUSKA. Mr. President, another example given by the Assist- torney General was in the field of education. He stated "rem- or discrimination are available to private persons," which is e in our amendment, "the Attorney General," which is the case amendment, and the "Department of Health, Education, and e," which is our situation again, except instead of HEW there qual Employment Opportunity Commission.

ent on to state:

s juncture, when we are all agreed that some improvement in the ent of Title VII is needed, it would be, in our judgment, unwise to in any way the variety of enforcement means available to deal with iation in employment. The problem is widespread and we suggest that ible resources should be used in the effort to correct it.

that statement this Senator completely concurs, but he will so far as to say there should be such a surplusage of means e that instead of being a tool, an instrument to achieve redress ngle offense in this area, that there is open the situation, the rimental, harmful, and expensive situation of a multiplicity nvolving a single alleged offense.

n that basis that the motion to reconsider should be approved re may have a vote anew with these facts before the entire body. resident, if there is any time remaining, I reserve it for future the time being I yield the floor.

RESIDING OFFICER. Who yields time?

AVITS. Mr. President, will the Senator yield to me for 10 ?

ILLIAMS. I am happy to yield to the Senator from New York.

AVITS. Mr. President, we oppose this amendment most stren- I wish to emphasize that to the entire Senate. If this amend- re to be accepted, I really fear for the fate of this whole into which we have poured so much time and effort.

y to the vote is whether we want this amendment; not whether be reconsidered. The motion to reconsider was simply a tech- which the tie vote could be resubmitted, as it were, when there e Members present. That is perfectly proper and legitimate, ieve that the consideration which we can give to the measure ebate is adequate for the purpose of voting substantially on

the motion to reconsider; that the vote should very decidedly be "
that there should not be reconsideration, and that the amendm
should fail.

The key to the reason it should fail is in the statement of the Sen
who proposed it, who said, "They are fully protected," meaning t
against whom there is discrimination in employment. Our answe
decidedly "no," they are not fully protected unless the amendmen
defeated. The reasons for that are as follows:

There are other remedies, but those other remedies are not surp
age. Those other remedies are needed to implement the promise
make under the Constitution to prevent discrimination in employm
The laws of 1866, 1871, as well as the law of 1964 are to imple
that promise.

Let me point out specifically what we have in mind. It will be n
that the key to the amendment is the word "remedy." That appears
the first page of the amendment, at line 6. It does not say anyth
about a suit or type proceeding to be instituted: it states "reme
and nothing else. That means, if we are to construe that word, e
remedy, whether that remedy is litigation, or decertifying a t
union, or denying somebody the right to a Government contract.
proposer of the amendment has, for all practical purposes admi
that himself.

These are not remedies encompassed in Title VII, which has its
methodology, whether that results in a pattern or practice suit
cease-and-desist order. The methodology in Title VII is a uni
thing: it pits the individual or class of individuals against the emp
er; it does not affect third parties. There have been cases in which t
parties have been guilty of bringing about the discrimination.
way those third parties have been reached has been through the sta
of 1866, the generalized civil rights statute, the injunction aga
denying the opportunity for contract without discrimination to
Americans. Also, Title VII does not have the facility to reach the b
gaining process as the NLRA can where the issue heavily inv
trade unions, and a whole union could be decertified.

Now, Mr. President, these are absolutely critical rights. Ther
detail some more, there is very grave doubt under this amendm
whether any effective effort can be made by individual complain
bar Government contracts, as we are retaining in the Departmen
Labor the Office of Federal Contract Compliance. This is a very im
tant right and should not be permitted to rest alone on the initia
of the U.S. Government.

Another area in which there has been an enormous amount of a
ity which might be curtailed by this amendment is in regard to
crimination by recipients of Government grants. There, for exa
a great deal has been done in regard to sex discrimination in col
Again, the exclusivity of remedy—that is the word that is u
would, it seems to me, bar a remedy for this kind of discriminatio
The Senator himself has made it clear that intercession, for exa
in ratemaking procedures, as, for example, the fact that this
mission itself has sought to intercede with the Federal Commu
tions Commission concerning possible discrimination by the Am
Telephone & Telegraph Co. against its employees, and using that
disqualifying fact in regard to the rate increase that may be so
by the A.T. & T., might be curtailed.

addition, private individuals can themselves sue State and local
rnments, without waiting for the Attorney General. We have a
very recently in which a judge in Alabama ordered the Depart-
of Public Safety to start adding black troopers immediately to
xtent of one-fourth of the force. That was a suit brought under
ivil Rights Act and the Constitution.

sk unanimous consent that the newsstory and description of just
was at stake, from the New York Times of Sunday, February 13,
be made a part of my remarks.

ere being no objection, the article was ordered to be printed in the
d, as follows:

TATE POLICE: THE FORCE THAT IS ALWAYS WHITER THAN WHITE

NTA.—When most Southern states bowed to external pressure in recent
nd integrated their state police for the first time, only Alabama and Mis-
refused to break the color line.

intransigence, as had happened in the anguish over school desegregation,
ed both states onto a collision course with the Federal courts. Last week,
separate rulings, the crash finally occurred.

e first and most significant ruling, District Judge Frank M. Johnson, Jr.
the Alabama Department of Public Safety to start adding black troopers
ately until one-fourth of the 644-man force—soon to be increased to 744—
osed of blacks, the racial balance of the state's population. He instructed
artment to hire one black trooper for every new white one until the bal-
is been reached. This was the first time a Federal judge had specified
ion ratios in the desegregation of a governmental unit.

lays later, Mississippi was ordered to guarantee that blacks would receive
pportunity to apply for 22 new openings in the Highway Patrol, but the
topped short of prescribing a quota, leaving some doubt about the legal
ences if no blacks are actually recruited. But even so, in Mississippi,
he shootings two years ago of black students at Jackson State University
state police further entrenched the agency's reputation among blacks as
dy instrument of a racist society, the action sent tremors through mem-
both races.

nains to be seen, therefore, how successful these states can be in recruit-
ks when all across the country state police agencies have had a lack-
ecord of attracting applicants from minority groups, particularly blacks.
the reasons:

is growing hostility in the black community to the police apparatus
ere.

s with the qualifications to become state troopers can easily find better-
pportunities in an improving job market.

tate police, whether they are restricted to traffic control or play a broad
an investigatory agency, assign troopers to posts far removed from
itan areas. In the South the countryside is usually the stronghold of
cists, bringing down harassment on the black trooper above and beyond
of duty. In the rest of the country the assignment to remote areas means
opers are forced to live and work outside of the black communities
ated in the cities.

w York State, which has a long tradition of hiring black troopers, there
only 10 blacks on a force of 3,463, a ratio approximately of one black
350 whites, or the equivalent of the ratio that exists now in Florida
rgia, and below the corresponding level in the Carolinas and Louisiana.
like to appoint 200 blacks today, but they just don't apply," Stephen
irector of personnel for the New York State Police, said. "We go to
irce we can find and they tell us they're not interested in law enforce-
ey don't want to be associated with the fuzz. We just recruited a
Indian as a trooper, and it was easier than getting a black. If Alabama
sful in digging up new black prospects I'm going down there and find
t's done."

rida, Gov. Reubin Askew, whose credentials on race relations are per-
best among Southern Governors, ordered the state's Highway Patrol
ll priority to the hiring of blacks when he took office last year, when

there were three black troopers on the force. Today, despite the campaign, number of blacks is down to two.

"We've gotten so desperate that the last black we recruited we had to w the weight restriction by 30 pounds just to get him in," says Col. Eldridge Be the new director of the patrol.

Blacks have argued, as they did in the Alabama suit, that state examinat for troopers are inherently discriminatory and can disqualify blacks who w otherwise make fine law officers. Florida, among other states, recently had ed tional experts view its standard state police applicant test. It was found t fair and "color-blind"—that is, it contained no material so oriented that it wo to exclude blacks, Colonel Beach said.

Judge Johnson refused to interfere with the existing Alabama test. He state police officials, "I am as interested as you all in maintaining the high qu of state troopers. I am unwilling to order demeaning tests just to get black the force." But, he said, "the burden is on you to find qualified blacks."

By week's end, amid widespread grumbling, a formula for compliance with order had yet to be announced by Public Safety Headquarters in Montgom

Mr. JAVITS. So, Mr. President, the key to the proposition which laid before the Senate—incidentally, this has now been the law for last 8 years—is that what this amendment would seek to do is ca away much of that law. It seems to me that should not be the attit of the Senate, in face of the fact, as I say, that employees are not fi protected by the exclusive remedy which is sought to be compelled this amendment.

It seems to me, therefore, that if we are to give this assurance t we are really and genuinely open about this and that we are try to deal with the problem of discrimination in employment, which consider to be basic, then we should allow the remedies presently av able to continue to be available.

One last thought which is critically important; it is well know and I speak from personal experience, since I was a party to the bate and the controversy which ensued—that the price of the C Rights Act of 1964 was a very weak job discrimination title. That the price exacted, and that was the price paid. That is why we here—to button that up—because time and the enormous backlog cases in the Equal Employment Opportunity Commission indicate this is a serious deficiency in the structure of our antidiscriminat law.

Under those circumstances, before we ever have had an opportu to make these laws more effective, now by such an amendment, i becomes law, we will dismantle what is already the law and the make a grave mistake.

It seems to me that is the absolute, clinching argument in res of what we are trying to accomplish. We are going to take perhaps steps forward and then take one step backward if we adopt the am ment. I think this is most unfair to the proposition which the Se would be espousing if we passed the bill.

I would like to emphasize the importance of this amendment. T who suffer from job discrimination, those who endeavor to righ discrimination, are deep and firm in their conviction that one of most critical issues on the bill is what is incorporated in the am ment. Should the amendment be adopted, a very critical aspect o enforcement of antidiscrimination in respect of employment or will have been affected, with a very critical weakening of the w structure—so much so that many of these people feel the bill is worthwhile, no matter what is left in it, if it has in it destructio what is in the law today.

all these reasons, I cannot emphasize enough to the Senate the tance of defeating the motion to reconsider. That is the reason e were deeply alarmed when the tie vote occurred, because there very slim attendance in the Senate. We are extremely fortunate was a tie. The same kind of absence could have resulted in the ment's prevailing. We have a chance to go ahead, with the now having an attendance, as shown by the last vote, of 83 ers, to defeat the motion to reconsider and lay the matter at rest ve the Senate decide the policy, at a time when everybody in- the Senator from Colorado (Mr. Dominick), who is arguing cease-and-desist order issue, agrees that we are at least trying to e than we have. At a time when we are trying to increase the en- ent power in regard to discrimination in employment, it is cer- not the time in which to dismantle a very important series of ps—and again I use that word—which would be dismantled is amendment to be adopted.

PRESIDING OFFICER. Who yields time?

TAMBRELL. Mr. President, how much time remains?

PRESIDING OFFICER. The Senator from Georgia has 9 minutes ing. The Senator from New Jersey has 15 minutes remaining.

TAMBRELL. Mr. President, I should like to address myself briefly le broader question that what is presented by this amendment have read in the press where there is a filibuster in progress in re to this bill, and I heard a rather heated discussion, chiefly the Senator from Montana and other Senators last Wednes- reference to the inability of the Senate to get on with its busi- what might be done under certain alternative situations that rise here today. I even read in the New York Times where I ducting a filibuster on this bill; and, interestingly, on the same ot a letter from the chairman of the committee, the Senator ew Jersey, congratulating me on my efforts to improve the ich I appreciated his writing me. So I have no concern about role in dealing with this bill.

eason why the bill is still here and has remained here for sev- ks are twofold: One is that the bill was imperfect as brought oor, as indicated by the number of amendments, including one l, which were approved while the bill was on the floor. I cer- ssume the editors of the New York Times and others who the finger at some of us do not want us, just like toy soldiers, and approve any old bill that was reported here by the com- ithout going over that bill with a fine-tooth comb.

ther reason why the bill has not been adopted is the intolerant e by the sponsors of the bill in having their way.

ILLIAMS. Mr. President, will the Senator yield?

AMBRELL. I yield.

ILLIAMS. Did I hear the words "intolerant insistence"?

AMBRELL. Yes; I said "intolerant insistence."

ILLIAMS. I wonder if the Senator would reconsider the use word. As a matter of fact, if there has been any criticism those who are leading the bill, it is that perhaps they have ready to consider changes and compromises. Citing the New mes as perhaps misunderstanding the Senator from Georgia, e newspaper suggested—did not suggest; they said—that the

Senator from New York and the Senator from New Jersey had thr in the towel and all we were trying to do is try to bring to bear forces of reason and compromise. I would hope the Senator wo reflect and retract his "intolerant" business.

Mr. GAMBRELL. Mr. President, I would ask the Senator from N Jersey if he would agree to make his comments on his time, ra than out of mine. Would that be agreeable with the Senator? If would he yield back to me?

Mr. WILLIAMS. Was my last statement timed, so that I might-

Mr. GAMBRELL. May I answer the Senator's question on the S ator's time?

Mr. WILLIAMS. That is all right with me.

The PRESIDING OFFICER. The Senator from New Jersey is recogni and yields on his time to the Senator from Georgia.

Mr. GAMBRELL. I would like to say to the Senator that I think New York Times used him rather badly in its comments. I do not sider that the Senator from New Jersey or the Senator from N York——

Mr. WILLIAMS. I was not complaining, by the way, about the n papers.

Mr. GAMBRELL. I do not think they offered anything, or compro their position hardly an inch. They cast a smoke screen over the position, and I will have to say fooled the editors of the New Y Times as to what they were trying to do. The compromise they of was no compromise whatsoever.

But I go back to my statement that a bill giving broad power the EEOC would have been passed on this floor a long time ag they had offered any compromise to go along with the Dom amendment, which gives broad and effective enforcement powers t this bill. I think the reason the bill is still here is because there no yielding on the proponents' side. They could have overco cloture vote any time they wanted to, but they insisted on havi their own way.

For those reasons, I hope some resolution of this problem ca arrived at this afternoon, so that the bill can receive a final vote be sent on to conference; because certainly the vote here this after is not the last word on the bill.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. GAMBRELL. I yield to the Senator from Nebraska.

Mr. HRUSKA. How much time remains on the respective sides President?

The PRESIDING OFFICER. There are 5 minutes remaining to the ponents and 13 minutes remaining to the opponents.

Mr. WILLIAMS. Mr. President, I yield myself 5 minutes.

I believe that the Senator from New York made all of the nec or essential points in opposition to reconsideration of this amend His arguments went, of course, to reasons for opposing the a ment itself. We have decided, on a tie vote, in opposition t amendment, and here we are faced with a motion to reconsider the rule. I do not wish to be redundant, in view of the presenta the Senator from New York. I simply wish to make one or two

The Assistant Attorney General was quoted by this Senato Friday, when this amendment came up, in support of a position

n to the amendment of the Senator from Nebraska. The Sena-
m Nebraska somehow sees in that quotation from Assistant At-
General Norman something to support his position. I do not
that way at all. Speaking for the administration, I think it
be reiterated, Mr. Norman said:

is juncture, when we are all agreed that some improvement in the enforce-
Title VII is needed, it would be in our judgment—

is the judgment of the administration—

to diminish in any way the variety of enforcement methods available to
h discrimination in employment. The problem is widespread, and we sug-
t all available resources should be used in the effort to correct it.

was in response to this question of the exclusivity of remedy.
ministration's position is the position that we take in the Senate
osition to this amendment.
of the basic statutes that have guided this country for a century
e wiped out, in substantial part, by this amendment. In 1866,
nacted that:

rsons within the jurisdiction of the United States shall have the same
every State and Territory to make and enforce contracts, to sue, the
give evidence, and to the full and equal benefit of all laws and proceed-
the security of persons and property as is enjoyed by white citizens, and
subject to like punishment pains, penalties, taxes, licenses, and exactions
kind, and to no other.

00 years, there has been built a body of law dealing with the
f individuals that would be wiped out, in terms of precedent
cause is advanced.
statute I have quoted was followed up, in 1871, by another
n. These are basic laws from which, as the Attorney General
leveloped a body of law that should be preserved and not wiped
l that all available resources should be used in the effort to
discrimination in employment.
nother point, I find an inconsistency presented by the Senator
braska. He speaks of exclusive remedy through the Equal Em-
t Opportunity Commission, and yet he advances the idea of re-
with the Attorney General the pattern and practice suits.
is, I think, directly in conflict with his approach here of
ing other remedies and retaining only the Commission
s.

RESIDING OFFICER. The Senator's 5 minutes have expired.
ILLIAMS. I yield myself 1 additional minute.
is another inconsistency also. In the Senator's vote to retain
he Department of Labor the Office of Contract Compliance,
in, the purpose of the bill is to bring together in the Equal Em-
t Opportunity Commission this particular aspect of discrim-
in employment, and that was resisted by the Senator from
a. So on basic matters he wants exclusivity; on other mat-
vants a proliferation.
that the way this bill presents the whole proposal, the Equal
nent Opportunity Commission should have the power of en-
t, but there should not be a single unitary method of defining
s of men and women in this country, and that the statutes
on the books from a long time back should not be repealed by
ndment.

Mr. JAVITS. Mr. President, will the Senator yield for just 1 min
Mr. WILLIAMS. I yield.
Mr. JAVITS. I, too, would like to revert to the remarks made by Senator from Georgia (Mr. Gambrell) about intolerance, giving superiority, and being stubborn.
Mr. President, how has the majority voted in this body? The jority has voted with us. We would be untrue to our mandate if—
The PRESIDING OFFICER. The Senator's 1 minute has expired.
Mr. WILLIAMS. I yield the Senator 1 additional minute.
Mr. JAVITS. We would be untrue to our duty as far as the Sena concerned if we abandoned a proposition which the Senate has tained. It seems to me that this is certainly not stubbornness: it is very contrary. It is our duty to seek to sustain a position which majority in the Senate have sustained.
I think that is the most critical single factor. As the Senator f New Jersey (Mr. Williams) has said, on the other hand we are accused of being too soft about this matter. So I must say that I seriously everything the Senator from Georgia says, and I do not we have been at all intolerant. I feel, on the contrary, we have done our duty.
The PRESIDING OFFICER. Who yields time?
Mr. WILLIAMS. Mr. President, how much time remains on this
The PRESIDING OFFICER. Each side has 5 minutes remaining.
Mr. HRUSKA. Mr. President, I shall not take all the time that mains. It is my understanding that the Senator from New Jersey completed his argument; and with that idea in mind, I should li close the argument on this motion for reconsideration.
Mr. President, the key word in this amendment is not "remedy all, as is contended. The key word is "person," rather than "reme because the amendment says that this proceeding under the Rights Act of 1964, under the EEOC, shall be the exclusive re of any person. I am confident that the word "person" will not in any Government agency as being a person.
Therefore, when it is argued that the rights of the Office of Fed Contract Compliance, for example, under that law are being forf and will be ineffective, that is not true; because whatever rights whatever prerogative the Office of Federal Contract Compliance have will not be within the purview of this amendment. It is the of limiting the remedy of the person who brings a proceeding the procedures set out in section 706.
The object of the amendment is to prevent the person from ta advantage of a multiplicity of actions so as to increase the harass and the expense, and to impose burdens upon the employer for a alleged offense. That is the thrust of the amendment, and that is it is met.
Mr. JAVITS. Mr. President, will the Senator yield, on my time, swer a question?
Mr. HRUSKA. Mr. President, I thought——
Mr. JAVITS. I yield myself 1 minute.
Mr. HRUSKA. I yield.

AVITS. Mr. President, I am puzzled by what the Senator says
he OFCC. The Senator is an excellent lawyer, and he has used
d "actions"; but the operative provision in his amendment is
d "remedy," not "actions."
fore, it seems to me that he would cut off the right of the
ual to complain to the Federal Contract Compliance, which an
ual now has a right to do and to generate that kind of remedy.
what we claim. We do not claim that the Office of Federal Con-
mpliance will be cut off, but we claim that the individual will
f from traveling that route and seeking that remedy.
ing the word "actions," I would not wish it to seem that the
nt changes the amendment.
IRUSKA. Mr. President, this brings us to the language in the
y of Mr. Norman, Assistant Attorney General.
of this kind have arisen. We will be happy to work with the committee
rifying the language.
enator certainly has interpreted the language of this amend-
l understands it to mean that there will be nothing to impair
atory capabilities of any of the Government agencies from
ng as they wish.
er, when it comes to the individual person involved, he may
tain—if this amendment is adopted—a number of actions in-
he same alleged offense in a number of forums; that is the pur-
is the idea, that is the thrust of the amendment.
it very much in consonance with fair play and with the effec-
of the enforcement powers and the available resources which
d out in the law.
AVITS. Mr. President, I suggest the absence of a quorum.
RUSKA. Mr. President, will the Senator yield back his time?
ILLIAMS. I yield back the remainder of my time.
RUSKA. I yield back the remainder of my time.
VITS. Mr. President, I suggest the absence of a quorum.
RESIDING OFFICER. All time has been yielded back.
rk will call the roll.
sistant legislative clerk proceeded to call the roll.
RD of West Virginia. Mr. President, I ask unanimous consent
rder for the quorum call be rescinded.
RESIDING OFFICER. Without objection, it is so ordered.
RD of West Virginia. Mr. President, I ask for the yeas and

as and nays were ordered.
VITS. Mr. President, I suggest the absence of a quorum.
RESIDING OFFICER. The clerk will call the roll.
ond assistant legislative clerk proceeded to call the roll.
ILLIAMS. Mr. President, I ask unanimous consent that the
the quorum call be rescinded.
RESIDING OFFICER. (Mr. Taft). Without objection, it is so

estion is on agreeing to the motion entered on February 9,
econsider the vote by which the Hruska amendment No. 877
ed on that day.

On this question the yeas and nays have been ordered and the c will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from N Mexico (Mr. Anderson), the Senator from Indiana (Mr. Hart the Senator from Minnesota (Mr. Humphrey), the Senator fr Washington (Mr. Magnuson), the Senator from Maine (Mr. Musk and the Senator from Washington (Mr. Jackson) are necessar absent.

I further announce that the Senator from Massachusetts (Kennedy), and the Senator from Georgia (Mr. Talmadge) are ab on official business.

I further announce that, if present and voting, the Senator fr Indiana (Mr. Hartke), the Senator from Washington (Mr. Jacks the Senator from Washington (Mr. Magnuson), and the Sena from Minnesota (Mr. Humphrey) would each vote "nay."

On this vote, the Senator from New Hampshire (Mr. Cotton paired with the Senator from Washington (Mr. Magnuson). If p ent and voting, the Senator from New Hampshire would vote "y and the Senator from Washington would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. Fon the Senator from Wyoming (Mr. Hansen), and the Senator fr Oregon (Mr. Hatfield) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent becaus illness.

The Senator from New Hampshire (Mr. Cotton) is detained official business.

On this vote, the Senator from New Hampshire (Mr. Cotton paired with the Senator from Washington (Mr. Magnuson). If p ent and voting, the Senator from New Hampshire would vote "y and the Senator from Washington would vote "nay."

On this vote, the Senator from Wyoming (Mr. Hansen) is pa with the Senator from Oregon (Mr. Hatfield). If present and vo the Senator from Wyoming would vote "yea," and the Senator f Oregon would vote "nay."

The result was announced—yeas 37, nays 50, as follows:

[No. 44 Leg.]

YEAS—37

Allen	Eastland	McClellan
Baker	Ellender	Miller
Bennett	Ervin	Randolph
Bentsen	Fannin	Roth
Bible	Gambrell	Smith
Brock	Goldwater	Sparkman
Buckley	Griffin	Spong
Byrd, Va.	Gurney	Stennis
Byrd, W. Va.	Hollings	Thurmond
Chiles	Hruska	Tower
Curtis	Jordan, N.C.	Young
Dole	Jordan, Idaho	
Dominick	Long	

NAYS—50

Harris	Pearson
Hart	Pell
Hughes	Percy
Inouye	Proxmire
Javits	Ribicoff
Mansfield	Saxbe
Mathias	Schweiker
McGee	Scott
McGovern	Stafford
McIntyre	Stevens
Metcalf	Stevenson
Mondale	Symington
Montoya	Taft
Moss	Tunney
Nelson	Weicker
Packwood	Williams
Pastore	

NOT VOTING—13

Hatfield	Mundt
Humphrey	Muskie
Jackson	Talmadge
Kennedy	
Magnuson	

motion to reconsider was rejected.

RESIDING OFFICER. The question recurs on amendment No. 884
enator from Colorado. Time until 5 p.m. is equally divided
the Senator from Colorado and the Senator from New Jersey.
lds time?

OMINICK. I yield myself 10 minutes.

RESIDING OFFICER. The Senator is recognized for 10 minutes.

OMINICK. Mr. President, if I may have the attention of Sen-
want to say that what we are going to vote on at 5 p.m. may
ey to determination of whether we are going to get a bill at
ainly, if we get a bill it seems to me we want to have a bill in
ther side in an employment discrimination case will have the
f the court system to determine whether or not the case is
whether or not the defense to it is just.

resident, while we have so many Members present I would like
r the yeas and nays.

as and nays were ordered.

OMINICK. Mr. President, the amendment which I have pro-
way of a substitute to the amendment proposed by the Sena-
New Jersey and the Senator from New York has the basic
s in it that I talked about when we had those very close votes
go. I think the Senate is pretty evenly divided on this partic-
ect. I am certain that many Senators feel they are somewhat
d to one side or the other at this point. For those who still
e doubt, however, I would like to give them a couple of rea-
voting for my amendment, which I think are different than
sons before enumerated.

in objection, as I understood it, to my particular amendment
act that the court system is, by and large, bogged down and,

therefore, it would not be possible to get a fast hearing and revie
an employment discrimination charge. There was a feeling among
proponents of the Williams-Javits amendment that an administra
procedure by way of a cease-and-desist order would be quicker
more efficient.

I sincerely believe that it would not be either quicker or more
cient. Certainly, the present amendment, for which I am offerin
substitute, would not be quicker or more efficient. It would create
siderable delay beyond the original amendment that I had put in
time before a case could be decided because it would require an a
tional order of the district court by way of appellate procedure to
termine whether the recommendations and findings of the Commis
were, in fact, valid.

Under the Williams-Javits amendment, as I read it, and I do
think it has been denied, there would be, first of all, the initial de
mination of reasonable cause; after conciliation efforts failed the
would be heard by the Commission and "recommendations" enter
it would then be sent to the court.

Anyone who felt aggrieved could ask for review. The district co
would review the procedure, and after they made their determinat
the case could go to the appellate court and then to the Supreme Co

So obviously, Mr. President, you have another level of review
there and, therefore, further delays in the final determination of
case.

Mr. JAVITS. Mr. President, will the Senator yield on a point of f

Mr. DOMINICK. I yield.

Mr. JAVITS. I understood the Senator to say that if there was
conciliation agreement under the amendment of the Senator from N
Jersey and me, the case is sent to the court. That is not the way
amendment is drawn. If there is no conciliation agreement the ca
sent to a hearing before a hearing examiner or to the Commission.

Mr. DOMINICK. I think the Senator should reread it because
understand it he is giving jurisdiction to a district court, but ther
then held a hearing by the hearing examiner of the Commission
the Commission has a right to issue a ruling on it.

Mr. JAVITS. If the Senator will yield. There are two matters confu
The district court does have the right to consider substantial quest
of law which may arise in the course of hearings, but no tra
through district court is required; it goes direct to hearing.

Our plan, as we understand it, is that it goes to hearing.

Mr. DOMINICK. Mr. President, I think, for the benefit of the re
I might read from amendment No. 878, which is the Williams-Ja
amendment, just to clarify this particular point. What it says is
once it is decided that a conciliation agreement acceptable to the C
mission is not possible. The Commission notifies the General Co
The General Counsel then initiates a formal hearing before the C
mission by issuing and serving upon the respondent a complaint
he issues this complaint, he files the complaint with the U.S. dis
court for the district in which the unlawful employment practi
question is alleged to have occurred.

So perhaps we are both right. Perhaps what I am saying is that
court retains the jurisdiction for the legal question, but the hearin
held by the Commission.

AVITS. We are not both right, because filing a proceeding with does not initiate a proceeding. Nobody is heard. It is true that t is informed that such a proceeding is pending, so that, if an law is involved, and the parties go before the court, it does e from the moon. I agree with the Senator that perhaps it is eris. It is not the pattern of normal proceedings.

DOMINICK. I shall be happy to accept the modifications the Sen- made of my explanation, but I think the proceedings are sub- really large amount of delay under this type of proceeding. her words, there is practically no precedent for this type of re that I can think of. What it amounts to is a cease-and-desist ing in which the district court does have some jurisdiction on utory orders concerning major matters of law, but not much. the Commission issues recommendations instead of cease-and- ders, but those recommendations become final unless an appeal respondent, is made, in which case the court is restricted to t the record taken by the Commission, and if it finds the rec- ations supported by any kind of substantial evidence, then commendations become conclusive.

pointed out yesterday, Mr. Norman, the Assistant Attorney for the Civil Rights Division, says in his letter to me that:

h the words "cease and desist orders" in the original bill have been d the term "recommendation" substituted therefor, this change does r to be a substantial one, since under either version the EEOC position n enforceable order unless modified by the court upon review.

the original bill language, the ceast-and-desist order would modified by the court of appeals; in this case it is modified trict court if it is modified at all.

ter, a copy of which I put in the Record yesterday continues to say:

h the Williams-Javits amendment provides for filing of the adminis- nplaint with the district court, we do not perceive any substantial sulting from that novel procedure. Also, the Williams-Javits amend- des for an interlocutory appeal to the district court on any "controlling f law" if it finds that such review "would materially advance the ulti- nation of the litigation."

letermination again is made by the Commission, of course. ssistant Attorney General continues—

ubtful that this addition is a significant one, since controlling issues re judicially reviewable under S. 2515, and this Department's expe- er the analogous provisions for interlocutory appeal from district sions indicates that such appeals are only useful in rare occasions. material change which the Williams-Javits Amendment would make in to transfer judicial review from the court of appeals to the district change adds another layer of review to the already lengthy process investigation, cause finding, administrative complaint, hearing before aminer, review before the Commission and review in the Court of

Mr. Norman goes on to say that my amendment would be the tem. This conforms with the testimony which he gave before committee when he appeared there during the hearings. appy to show this letter to any Senator who is interested g it.

other significant changes which I have made since we last my court enforcement amendment is that I have provided

that in cases of general public interest, so certified by the G Counsel, that instead of going before a district court for enfor procedures, the case will be referred to a three-judge court in the manner as is true now in voting rights cases, in the same man is true in housing cases, and in the same manner as is true in accommodations cases. In this way, there is a three-judge cour the losing party can have its order appealed directly to the Supreme Court, thereby expediting the remedy procedures.

In like manner, where the case is not so certified, it will be exp within the Federal district court.

I realize that such expedition is not a very easy thing to accom in the district courts. I want to be perfectly frank about that. B language does indicate to all that we are making the effort wh have job discrimination cases of importance. I am talking ab even-handed hiring practice which might have been in effect number of years, which has been handled, for example, by big panies employing thousands of people.

The Presiding Officer. The Senator's time is expired.

Mr. Dominick. I yield myself another 10 minutes.

Take for example the case involving A.T. & T.

What happened there was that A.T. & T. put out a recruiting phlet for office service and for telephone service and illustrated a picture of a girl and in the body of the pamphlet referred t The company also sent out at the same time a hiring practice pa with a picture of a lineman up a pole and referred to him. Th pany is being sued for blatant discrimination by women, ground that women can get only office jobs and men can get jo on pole work. Such allegation may be true. There may be some who would like to be a pole woman instead of a pole man. The be some men who would rather be a secretary than be out on t service. That is perfectly true. But to say the company wo subject to a charge of deliberate and intentional discrimination to me, pretty hard to swallow. It had apparently been follow even-handed approach. I would presume that this case, which h been decided in any way whatsoever yet, will be of some signi because it deals with an even-handed method of trying to hire The fact that there is a picture of a woman on one pamphlet picture of a man on another I do not think is too bad.

Perhaps we are going to have to put a picture of a zebra o of them and get away from depicting a man or woman at all t to avoid a charge of sex discrimination.

In any event, it seems to me that this is the type of case that easily be referred to a three-judge court. After hearing, if so wanted to appeal the finding, it could appeal that directly to preme Court, and thereby expedite the whole proceeding.

If, on the other hand, a party had to go ahead under a pr like that under the Williams-Javits amendment, the aggrieved have a complex series of problems. First he or she would ha before the Commission. On any controlling issue of law he or sh have to go to a court for an interlocutory order. Then the C sion would issue recommendations and findings. These reco tions and findings would undoubtedly be appealed to the distr The district court, in turn, would have to go through the record

hen, after the district court had finally issued its order and s enforcement procedure available, the case would be appealed ircuit court of appeals, and it would be only after that that the uld get a final decision.

ne procedures I have outlined in my amendment would gen- nake the procedures and determination of what is fair and e available as soon as possible. That is what we are all aiming

an article just the other day by Edward Bennett Williams, in e was deploring the problem in criminal cases of a lack of rial and appellate procedures. Well, in like manner, the civil roughout these discrimination procedures are terribly bogged nd they are bogged down in the Commission right now—when iders, as I have said repeatedly, that the Commission is 32,000 more behind already, that they take 20 months in even con- a case before a person can file a complaint, let alone hear a issue recommendations. On top of that, the increased juris- he Commission is going to get under this bill just exacerbates lems posed by the procedures proposed by the Williams-Javits ent.

would hope that the Senate would support this substitute. I l from the very beginning that I would like to see us get a bill. must confess in all fairness that unless we separate these ad- ive agencies so they do not have executive, legislative, and powers all within one agency, this country is going to become l more centralized. We are going to have more and more with the Federal Government injecting itself into every area yone's business, and we are going to have difficulty in main- he separation of powers which has been such an inherent part ructure of the United States ever since this country was

s particular point, I believe it would be relevant to have n the Record an article entitled "Separation of Powers: Old ill Alive," written by James J. Kilpatrick and published s Washington Star. I ask unanimous consent that the article d in the Record.

being no objection, the article was ordered to be printed in the as follows:

SEPARATION OF POWERS: OLD ISSUES STILL ALIVE

(By James J. Kilpatrick)

ed States Senate has been locked in debate for almost a month on an l as the Republic itself. The pending bill, having to do with the Equal t Opportunities Commission, may be disposed of this week. The issue emain. It merits your thought.

ite centers upon an effort led by Sen. Williams of New Jersey and ew York to endow the EEOC with power to enforce its findings by the cease-and-desist orders. A conservative coalition, led by Sen. Dominick is opposing the move.

touch the bedrock of our philosophy. If the Founding Fathers were by one impetus more than any other, it was by their hostility to the of a remote and central government. The King had refused his assent r establishing judiciary power." Instead, he had "erected a multitude es and sent hither swarms of officers to harass our people." With the won, a new Constitution sought forever to prevent a recurrence of

Two principles emerged. One was the principle of federalism, by which pol
powers would be dispersed among the central government on the hand, an
separate states on the other. The second principle was separation of pow
the concept that by separating the judicial powers of the central government
old abuses might be avoided.

Both principles have eroded with time. The Senate's current debate
directly to this question: Shall the doctrine of separation of powers be fo
eroded? Senate liberals are cheerfully agreeable: The Williams-Javits bill w
make of the EEOC a combined executive and judicial agency. Senate con
tives are stoutly resisting: They want judges alone to do the judging.

Liberals make this case: More than a dozen executive agencies, notabl
National Labor Relations Board, already have the power to issue binding
and desist orders. Such orders result from the findings of professional h
examiners. The 25-year-old Administrative Procedures Act provides abu
safeguards of due process of law. In any event, final orders are subject to ju
review. At a time when federal courts are sorely burdened, with heavy ba
and long delays, judges should not be further burdened by the trial of
charging discrimination in employment.

Conservatives make this response: The EEOC, with a backlog of 32,000
is more burdened than the courts. Even if an independent general counsel
provided, the agency still would be functioning as prosecutor, judge and
The very nature of the EEOC makes impartial determinations impossible. Fo
commission and its staff have a built in bias in favor of minorities. Ju
review is severely limited by the practice of routinely affirming cease-and-
orders if "substantial evidence" supports them..

At the heart of this disagreement is the difference that eternally divides
and conservative. The liberal tends to trust government and to urge
powers be expanded; the conservative looks upon government with a warin
and asks that its powers be restrained.

This is what the fight is all about. If the liberals prevail, the EEOC w
come one of the most powerful agencies in government—far more powerfu
the NLRB, which is confined to areas of organized labor. Its coercive au
would reach to charges of discrimination (by reason of race, sex or reli
both public and private employment. In small business as well as large
nents agree that a vast new bureaucracy would have to be created.

Fortunately, the House already has voted, though narrowly, against
expansion of power. Nixon opposes the Williams-Javits bill, but he ap
only in part. Politically, the issue is exceedingly close; philosophically, th
sides are at least 200 years apart.

Mr. DOMINICK. Mr. President, let me just go over the language
amendment, so Senators will know, what the procedural steps wo
if my amendment should be adopted, as I certainly hope it will b

A charge is filed with the Commission; and if, within 30 days
that charge is filed, the Commission is unable to secure a co
agreement, then the Commission notifies the General Counsel, a
Counsel may then bring a civil action against any respondent
than a governmental agency.

Such action, as I say, can be brought either before the district
if it is determined to not be of general public importance, other
can be brought before a three judge court, thereby expediting th
If it does involve a governmental agency or an employee of a g
mental agency, be it local or State, then it is sent over to the At
General, the Attorney General decides whether to bring it in
A Federal employee, under the amendment, would still have a
go through the agency and determine whether or not he wants
the Civil Service Commission for final determination or whe
wants to go into court himself in order to get a solution to his
This was worked out in committee; I worked on it with the S
from California (Mr. Cranston), and we think that we have a
more remedies for those who are discriminated against in Fede
ployment than have ever been available to them before.

oint is, however, that every governmental agency and every
e of a governmental agency, State, local, or Federal, has his
the Federal courts. Under the bill as reported and under the
s-Javits amendment, you do not have that right if you are a
mployee or a private employer. I, for the life of me, cannot see
should discriminate against that one group. It seems to me that
e are dealing with job discrimination, it makes no difference
e of job you have, you should be entitled to the same remedies
lse in that situation has, and this is a right to have the Federal
ermine whether or not you have been discriminated against.
esident, I reserve the remainder of my time.

RESIDING OFFICER (Mr. Taft). Who yields time?

VITS. Mr. President, I yield myself 10 minutes.

heard with great interest the arguments of the Senator from
, but I really think that to engage in a discussion as to which
ore time consuming, though I think it is very important in
choosing between remedies, is really not relevant to the choice
he two methods of approach to the court system which are
in the amendment of Senator Williams and myself and that
r Dominick. Once you are over on the court system, the ques-
ow do you minimize an extended burden, rather than what
se in the bill fundamentally, which is that the proceedings
a cease-and-desist order take place in the Commission.

nance of a cease-and-desist order by the Commission is an im-
uthority, and is a remedy of a really different order of magni-
use it enables the Commission to make a finding, which is in-
d in an order, which is then made public, and which brands a
respondent as a discriminator. That is, its real importance,
substantially extremely important, because we are dealing
usiness concerns, practically all of which are dependent upon
ronage for their future.

ore, the power to issue a cease-and-desist order is a very
e power and a very thorough power in bringing respondents
nd hence an agency which has that power has much more
cutting down its workload than an agency which has not,
ere is a certain finality in what it deals with, and we feel
gly that the reason for the backlog in the Equal Employ-
portunity Commission is precisely the lack of any finality,
est we can do is say, "Okay, we cannot conciliate this; we
lain to other Government departments with whom you have
but essentially you are on your own; go ahead and sue."

w we come to a situation in which we have been unable,
nding the will of the majority of this body, to prevail in
everyone knows that, including the Senator from Colorado.
e to consider what else we may do under the circumstances,
e will of the Senate is going to be determined, not by a
as the Constitution requires, but by two-thirds. So the
om New Jersey and I have decided that we simply have to
commodation with the minority, which is what it is, in
the court route, and we feel that in doing that, now we are
totally different type of enforcement, and we ought at least
leal with the question of congested court calendars.

what it really comes out to. And the only way we see we can
he question of congested court calendars is, for all practical

purposes, to make the Commission an official referee. So that, as i practice in bankruptcy or where a special master is appointed given case, the case is heard, the findings of fact and conclusio law are offered to the court, and the record is closed, except if a desires it added to. So we felt that that was a way, especially i big industrial centers, to cut down the time delay, and that is all amendment is about.

For all practical purposes, we have gone over to the court me but we have gone over to it in an effort and with a technique w can cut the timelag very materially.

Frankly, I will not—because I think it is fruitless—be drawn an argument with the Senator from Colorado about the niceties practice in both of these approaches. Though he said that we copy of a complaint in court, I point out that that does not repr a proceeding. It represents notice to the court, and no time whatever is involved in that.

As to the other niceties of procedure, I do see a major differen a dependence upon congested court calendars, whether it is a judge court or a one-judge court; and that is the step which w trying to abbreviate, without in any way jeopardizing the rig the parties who are protected before the hearing examiner Administrative Procedures Act and the review of the court wh bound to ensue in our case. There is no other way, because the can issue the decree.

Again I point out that you are dealing with such long delays courts that justice deferred is justice denied. It is interesting to pare the time relationships to the statute itself.

Let us understand that we are dealing with a round peri approximately 150 days, that that is the allowable time for the mission to move into a given situation. The first 30 days repr an effort to conciliate, making a total of 6 months. So that Commission operation. At the end of 6 months, it becomes pl Looking down the list of these delays in all the court cases, w that the average is 17 months. As you go down the circuits individual district courts—and that is where the overwhelming ity of these cases will lodge—it is simply appalling: because courts where you are going to have the major cases and the con in the great industrial States, the delays are in excess of 18 m In my own State of New York, for example—I say this with there is a delay in the Second Circuit, in the southern district, is the primary business district, of 35 months in civil cases.

As you go down the list, what do you find? Massachusetts, dustrial State, 19 months. New Hampshire, which is not an in State, 14 months. Rhode Island, another industrial State, 18 Connecticut, another industrial State, 27 months. The State York, practically all industrialized, no less than 18 months; a is in the western district, around Buffalo; and 35 months in th ern district, which is the major district. New Jersey, an in State, 29 months. In Pennsylvania, a major industrial State, delay is in the middle district, 23 months; the most delay eastern district, around Philadelphia, 41 months—probably t est in the country. And so on as you go down the line.

As you tackle the industrial States, you find that that is wh congestion is the most severe, and that is where your problem

eresting that in Alabama, a Southern State, generally a rural
he minute you get into an industrial area - to wit, the south-
rict of Alabama, which undoubtedly includes Birmingham—
e a 20-month delay. When you get into other industrial States—
example, Illinois—the least delay is in the eastern district, 16
; but in the northern district, which is Chicago, 20 months.
is what the amendment of Senator Williams and myself seeks
down, and nothing more than that. As a matter of fact, you
rite our amendment very unelaborately by simply including
o that in all such cases there shall be a referee or special master
hall be the Commission, unless there is some good reason to
rary, and you can eliminate the rest of it and get down to the
hat we are trying to accomplish.

'RESIDING OFFICER. The time of the Senator has expired.

VITS. I yield myself an additional 5 minutes.

esident, I understand the feeling of the Department of Justice
administration, and I do not agree with them. They came into
ation with a recommendation for court enforcement. They
ady to go to the extent of cease and desist, and they have made
mmendation, and they are stuck with it; and apparently they
ove off the dime. There is no real argument here as to why
ld try to abbreviate the time taken in district and circuit court
gs through having a special master or referee technique
provided by Senator Williams and myself.

listen to the reasons of the Justice Department. This is what
tant Attorney General says:

stimony before the Senate Labor Committee I set forth four grounds
w that the judicial enforcement is preferable to administrative pro-

not the argument now, by the way. One of those was applica-
o governmental employees and was accepted by the commit-
t is out. That leaves three:

eral district judges hold court throughout the country and enjoy a
and respect in their communities which cannot be matched by ad-
e officers; and their authority to issue enforceable orders enables
olve cases speedily.

esident, I do not see how anybody could write that without
e in his cheek. Look at the record which the Department of
always inveighing against, with an enormous machinery
nistrative conferences as to how you can hold down court
do not understand how anybody could have the unmitigated
t is all it is—to make as an argument the fact that "their
to issue enforceable orders enables them to resolve cases

nds me of Gilbert and Sullivan and that line of the policemen
going to catch the pirates. They said, "We go! We go!" And
d said, "But you don't go." And that is all these fellows say.
it enables them. Certainly, it does. They all can be making
edily, but they do not, and they cannot, because under this
at they have to try the case and they have many other cases.
are being bedeviled about criminal cases they are not trying,
dockets are bogged down. To make this kind of statement
t adult people who have some knowledge of the situation in

the country to accept the fact that we should turn this over
Federal courts in nisi prius proceedings because they are able to
cases speedily is a far cry from resolving them speedily.

The second argument:

Because of the sensitive nature of the issues to be resolved and the fa
the larger cases involve the rights and expectations of substantial nu
people, it is inappropriate to leave the critical factual determinati
formulations of relief to hearing examiners and commissioners sitting in
ington.

Where do these fellows sit? What is the arrogance about sitt
Washington? They sit in Washington. Are they looking dow
noses at those who sit in Washington? Are they running do
other fellows who sit in Washington?

In the multiplicity of decisions which will come from distric
judges, as we have seen in all the civil rights cases since 1964, w
the grist of an enormous amount of court work, the courts of
and to the Supreme Court; whereas, in the decisions of these
istrative agencies, you have at least the possibility for a coord
body of law moving right from a circuit court of appeals to
preme Court, with "stare decisis" being easier to obtain. If this
ment be valid, then we should immediately move to reveal every
mandate which gives cease-and-desist power to any agency, in
the National Labor Relations Board. I think that is really the
of the position that the Senator from Colorado would have us
This is a generic proposition. It is not generally directed to
It happens to be one which catches the fancy of businessm
have been proved to be involved. I gave this example in pra
all the States today with cease-and-desist powers—34 States.

The Presiding Officer. The time of the Senator has expired.

Mr. Javits. Mr. President, I yield myself 5 additional mi

The Presiding Officer. The Senator from New York is re
for 5 additional minutes.

Mr. Javits. Mr. President, the third point:

The fact that Federal courts resolve the factual legal issues in equa
tunity cases in the areas of voting, housing, and education make the
ticularly appropriate forum for resolving the same kinds of issues in emp
discrimination cases.

The only trouble there is this: In voting, we vote every
housing we do not get houses every Wednesday. In the ed
cases, we arranged for a child's schooling at the beginning of t
and he goes through the year.

All these cases involve, generally speaking, respondents
State and local governments—with the possible exception of
Certainly voting and education do. But do not represent the
diacy of the discrimination which hurts in respect of a job be
job is here today and it does not wait—someone else is hired
of the man discriminated against, separating the man from t
hood of welfare against the fact that he has a job out of wh
earn a living. So that is the immediacy, the personal quality,
diversity of the respondent—all the business concerns, for all
purposes, in the United States, employing each of them mo
people, that makes it necessary that some new techniques be est
The very argument used in favor of the Dominick amendme
biggest argument against it, and that is the backlog of the
because it seeks to profit from the fact that the agency has been

rtailed through having no remedies, being denied the only
s that will be effective.

e case of the Williams-Javits amendment, at least we get to
blished position in respect of applying action and a court reme-
h will reduce the tremendous delays in the law in this country,
hich it is being plagued and which we will pyramid, with
problems placed on the courts whose backs are well-nigh broken
by the problems posed by delayed calendars.

s look at the amendment of the Senator from Colorado (Mr.
k). What does he promise? There is a lot of talk about expedi-
t let us see what we actually say in dealing with expedition. I
ike to read that to the Senator because I think it is extremely
nt:

nited States district court and each United States court of a place
the jurisdiction of the United States shall have jurisdiction of actions
nder this title. Such an action may be brought in any judicial district
te in which the unlawful employment practice is alleged to have been
l. in the judicial district in which the employment records relevant
ractice are maintained and administered, or in the judicial district
he plaintiff would have worked but for the alleged unlawful employment

districts constitute the biggest glut and backlog in terms of the
ecause there are districts in which either the establishment is
in which the man would have worked, where the office records
tained, or where they denied him the job. These are the indus-
ers of the country. Sure, there would be cases everywhere, but
alking about the great majority of cases. These are the basic
damental places where there is a glut of industrial business.
e the ones that have bogged down the court calendars.

her thing as to this matter of expedition. I refer to page 3
nendment at the bottom of the page. It states:

eceipt of the copy of such request it shall be the duty of the chief
he circuit or the presiding circuit judge, as the case may be, to des-
mediately three judges in such circuit, of whom at least one shall be
judge and another of whom shall be a district judge of the court in
proceeding was instituted, to hear and determine such case, and it
e duty of the judges so designated to assign the case for hearing at the
acticable date . . .

t that, "at the earliest practicable date." "At the earliest prac-
ate." Mark that well, Mr. President; "at the earliest practi-
e."

an expedited case?

is the earliest practicable date? Twenty months, 35 months,
ıs?

ESIDING OFFICER. The time of the Senator has expired.

VITS. I yield myself 2 additional minutes.

ESIDING OFFICER. The Senator from New York is recognized
itional minutes.

VITS. Then we go on. Suppose they do not say this is a major
we do not need a three-judge court, then a district judge is
This is the instruction. So, in the event that the General Coun-
Attorney General does not file a request, the chief judge of
ct is immediately to designate a judge to hear and determine
If no judge in the district is available, the chief judge or the
ief judge shall certify that fact to the chief judge, who then

designates a district or circuit judge to hear and determine the case. I other words, these judges will be going wild trying to get someone t hear existing cases let alone other cases.

It shall be the duty of the judge designed pursuant to this subsection to assig the case for hearing at the earliest practicable date . . .

There we go again, "at the earliest practicable date."

Nineteen months, 20 months, 35 months, 43 months?

Now, Mr. President, the great wrong which the Senator from Ne Jersey (Mr. Williams) and I have done is that we have tried to exp dite this practice by having the Commission hold the hearing. This the first time, and it is claimed this will involve us in all kinds of awf complications.

Well, the only awful complication that it will involve us in is to cu down the time it takes to try the cases by something like 12 months o 14 months.

The Presiding Officer. The time of the Senator has expired.

Mr. Javits. Mr. President, I yield myself 1 additional minute.

The Presiding Officer. The Senator from New York is recognize for 1 additional minute.

Mr. Javits. That is all. That is the big deficiency in the amendmen that we will cut the time, cut the delay by somewhere around 3 months, given the average of all the district courts which is in th area of 17 months—the average, aside from the big industrial plac where it is very much greater.

We have been frustrated. We cannot get cease and desist. We shou get it, but we cannot, even though the majority says they want i So we have got to go to court proceedings. At least, let us not brea the backs of the courts. That is all we ask. Therefore, we believe th the Dominick amendment should be rejected and ours should b approved.

Mr. Cooper. Mr. President, will the Senator from New York yield

Mr. Javits. I yield.

Mr. Cooper. Would it not be possible if the amendment offered b the Senator from Colorado (Mr. Dominick) is adopted for the cou to appoint a commissioner, or a master, or examiner, to hear this typ of case?

Mr. Javits. Yes, it would. I might tell the Senator that if the Dom inick amendment should be agreed to—and I hope and pray that it w not be because I think it is ill advised in terms of this whole matter that is one point to which I will address myself or, perhaps, happil the Senator from Kentucky (Mr. Cooper) will, because that would b an important point, to try to find some other way to cut down the tim element involved in actually dealing with these congested cases.

Mr. Cooper. Let me ask the Senator this question. If one agrees th the judicial process rather than the cease-and-desist process is the be procedure, why would not the appointment of a master, commissione examiner, or whatever, by the district court expedite these cases a quickly as the Commission?

Mr. Javits. Mr. President, I would say to the Senator that it pro ably will not expedite it as much because of the fact that in most ca we do not even have the background of a referee in bankruptcy w deals with the subject all the time, as a commissioner would, with a opportunity to establish guidelines and the ground rules in a giv place, in a given court, namely, the U.S. District Court for the Distr

olumbia. I do not believe it would be as expeditious. However, it ld certainly be an improvement on the Dominick scheme.

r. Cooper. Mr. President, will the Senator from Colorado yield 3 minutes?

r. Dominick. I would be happy to yield 10 minutes to the Senator Kentucky.

he Presiding Officer. The Senator from Kentucky is recognized 3 minutes.

r. Cooper. Mr. President, I do not need the 10 minutes. The Senator New York (Mr. Javits), the Senator from Colorado (Mr. Dom-) and the Senator from New Jersey (Mr. Williams) have worked hard on this bill and have contributed much to the debate in the s it has been before the Senate. Not being a member of the com-e, I cannot claim their expertise.

. President, I do address myself to what I believe is a funda-al point. The Senator from New York is absolutely correct when ys that the dockets of the courts are clogged. In my State of ucky there is a delay in the trial of cases. I have seen the table ing the backlog of cases from which the Senator from New quoted. The delay is applicable to all types of cases.

e Senator is correct in his statement that if justice is delayed, is no justice. However, I go beyond the question of the back-f cases in my thinking. That is bad. The reason I suggested, if Dominick amendment is agreed to, the use of commissioners or rs or examiners or whatever we term it, to hear these cases, l remove in great degree the problem of delay.

ill vote for the Dominick amendment, believing that the expedi-of the hearing of such cases can be accomplished, but, chiefly, I ort the amendment because, fundamentally, I believe that the ct courts, with the competence to hear the evidence at first hand ch fairer than the cease-and-desist procedure, providing a hear-y the Commission, judgment by the Commission, and if there is peal to the courts, the record upon which the court may finally is only the record of the Commission. I do not consider this fair uly due process.

e Senator from Colorado is correct in stating that the greatest ess in the field of civil rights against discrimination has been gh the decisions of the courts.

ave confidence in the fairness of the courts. I want, of course— of us do. I believe—that full justice be accorded those against discrimination in employment is practiced. But it is necessary fair not only to the complainant, but to the respondent.

nnot escape the conviction that if a Commission is established ne objective in mind and dealing in a very delicate field, that ission would not be as objective or as unbiased as a court. The of fear and coercion arises, whether or not correct. All must e that justice is done. No, it is not upon the question of delay— , of course, that I support the Dominick amendment is impor-but it is upon my belief that the courts are the best, due proc-e best way to cope with discrimination in employment. We ave to protect our fundamental system of justice.

President, I recognize and have great respect for the argu-of my friend, the Senator from New York, but on these funda-l grounds. I intend to vote for the Dominick amendment.

Mr. TAFT. Mr. President, the arguments favoring the Dominick amendment because the EEOC would be investigator, prosecutor, and judge, are simply in error. On January 20, I offered an amendment to this bill which removed the prosecutory function from the EEOC and placed it with a totally separate agency under the direction of the President. This amendment was adopted. Consequently, as this legislation now stands the EEOC will not be able to issue any cease-and-desist orders or take any action against any party without the concurrence of this independent office of General Counsel.

The real issue is whether the small businessmen will have to defend charges before an agency or go to the expense of hiring big city lawyers to defend them in U.S. district courts. In my judgment, the small businessmen of this country are going to find themselves in very costly, lengthy and difficult situations if they are hauled into U.S. district courts to answer every charge. It is far easier, cheaper and more convenient to have these matters handled administratively, as they now are with the Federal Trade Commission.

Cease-and-desist orders are nothing new for the businessmen of Ohio and many other States. The Ohio Civil Rights Commission, and its parallel organizations in the majority of our States, have been vested with cease-and-desist authority for many years. It is, therefore, regrettable that certain national organizations are taking a position that if successful, will only have the effect of throwing the small businessmen of this country into U.S. district courts with the great expense that is associated with those actions.

This is one reason why I oppose this amendment.

Mr. DOMINICK. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. DOMINICK. Mr. President, I think that the Senator from Kentucky has said more in a few short sentences and has gotten to the heart of a whole matter better than we did with a lot of words.

I appreciate the support of the Senator from Kentucky. I value it highly. I think it is important to our cause that he once again point out the fact that this is by no means an anticivil rights amendment.

Briefly, in reply to the Senator from New York, for whom I have great respect, and refer to the statement of Mr. Erlenborn before the Labor Subcommittee. In that statement he says:

> An examination of the Fifth Annual Report of the Equal Employment Opportunity Commission, submitted April 1, 1971, shows that the top ten States in terms of the number of charges of employment discrimination recommended for investigation are: Alabama (897), California (665), Florida (633), Georgia (633), Illinois (433), Louisiana (1,102), New Jersey (373), Pennsylvania (611), Tennessee (617), and Texas (1,522).

He then lists for those 10 States the median time interval for nonjury trials. The longest is in the northern and eastern districts of California which are 23 months and 21 months respectively. One district in Pennsylvania, the middle district of Pennsylvania, has a delay of 21 months.

The rest of the districts range from 1 to 13 months, with a median time of 10 months, which certainly is better than the situation with respect to the present backlog in the EEOC.

I bring that up because I, too, like the Senator from New York, feel that if we can get enforcement power of some kind, the backlog

d to decrease because there will be muscle power by which settle-
s will come about more readily than was the case before.
r position in supporting enforcement was also supported before
committee not only by Mr. David L. Norman, but also originally
Ir. Brown, Chairman of the EEOC. This convinces me that we
ot operating on something which will either harm or destroy the
de and integrity of the EEOC. We are doing something that will
lish fundamental justice for both parties, trying to separate the
rs of the administrative agencies.
e Senator from New York said that if this measure passes, we
d immediately launch into the same procedure and the same
of thing in the other agencies. I think it should be considered
ot done immediately.
ere is nothing new about my machinery. Justice Jackson recom-
ed this a long time ago and Mr. Landis recommended it when he
ved the administrative agencies.
re is nothing new in this. It was not done because they thought
dministrative agencies would be more efficient. We have said over
er again that probably the most efficient form of government is
bly anything other than the republican form of government we
n this country. I think that our republican form of government
best.
pe we can keep it that way by keeping the separation of powers
ocated in my amendment.
President, I reserve the remainder of my time.
Javits. Mr. President, I yield myself 5 minutes.
Presiding Officer. The Senator from New York is recognized
inutes.
Javits. Mr. President, I yield to no one, as is well known, in my
t for the Senator from Kentucky. However, even by his own
ion there is not contained within the Dominick amendment—
er we may do thereafter, and that is always up to the Sen-
ven the elementary precaution which has been suggested, the
tment or the mandatory appointment within a given time of
master.
, as to the median figure cited by the Senator from Colorado,
d like to point out that that word "medium" is a killer. I have
he annual report of the Director of the Administrative Office
. Courts. I do not think there is anything more authoritative.
matter of fact, that is more authoritative than Representative
orn who is a distinguished colleague of ours in the other body,
s extrapolated on this matter.
report refers to the district court backlog for fiscal 1970, the
ar for which we have information, and it shows 17 months.
it goes into key industrial areas, as I have described them.
President, I ask unanimous consent that the table to which I
ferred may be printed in the Record.
e being no objection, the table was ordered to be printed in the
l, as follows:

U.S. District Court Backlog

ed by the Subcommittee on Labor of the Committee on Labor and Public
re, Harrison A. Williams, Jr., Chairman. Based on Annual Report of the
tor of the Administrative Office of the United States Courts, 1970. Re-
d at pp. 508–513 Hearings, on S. 2515.)

Time interval from filing to disposition of tried cases (fiscal year 1970)

Circuit and district:	Time interval in months—median
Total all district	17
District of Columbia	21
First circuit	17
Maine	—
Massachusetts	19
New Hampshire	14
Rhode Island	18
Puerto Rico	21
Second circuit	26
Connecticut	27
New York:	
Northern	20
Eastern	20
Southern	35
Western	19
Vermont	13
Third circuit	35
Delaware	—
New Jersey	29
Pennsylvania:	
Eastern	41
Middle	23
Western	36
Virgin Islands	10
Fourth circuit	14
Maryland	20
North Carolina:	
Eastern	20
Middle	—
Western	13
South Carolina	12
Virginia:	
Eastern	12
Western	9
West Virginia:	
Northern	—
Southern	31
Fifth circuit	13
Alabama:	
Northern	9
Middle	6
Southern	20
Florida:	
Northern	10
Middle	18
Southern	14
Georgia:	
Northern	17
Middle	5
Southern	17
Louisiana:	
Eastern	27
Western	22
Mississippi:	
Northern	13
Southern	9
Northern	12
Eastern	13
Southern	17
Western	8
Canal Zone	9
Sixth circuit	16
Kentucky:	
Eastern	23
Western	15
Michigan:	
Eastern	[illegible]
Western	1[illegible]
Ohio:	
Northern	[illegible]
Southern	[illegible]
Tennessee:	
Eastern	[illegible]
Middle	[illegible]
Western	1[illegible]
Seventh circuit	1[illegible]
Illinois:	
Northern	[illegible]
Eastern	1[illegible]
Southern	1[illegible]
Indiana:	
Northern	[illegible]
Southern	1[illegible]
Wisconsin:	
Eastern	[illegible]
Western	[illegible]
Eighth circuit	[illegible]
Arkansas:	
Eastern	1[illegible]
Western	1[illegible]
Iowa:	
Northern	[illegible]
Southern	[illegible]
Minnesota	[illegible]
Missouri:	
Eastern	[illegible]
Western	[illegible]
Nebraska	[illegible]
North Dakota	[illegible]
South Dakota	[illegible]
Ninth circuit	[illegible]
Alaska	[illegible]
Arizona	[illegible]
California:	
Northern	[illegible]
Eastern	[illegible]
Central	[illegible]
Southern	[illegible]
Hawaii	[illegible]
Idaho	[illegible]
Montana	[illegible]
Nevada	[illegible]
Oregon	[illegible]
Washington:	
Eastern	[illegible]
Western	[illegible]
Guam	[illegible]
Tenth circuit	[illegible]
Colorado	[illegible]
Kansas	[illegible]
New Mexico	[illegible]
Oklahoma:	
Northern	[illegible]
Eastern	[illegible]
Western	[illegible]
Utah	[illegible]
Wyoming	[illegible]

Ir. JAVITS. Mr. President, I wish to refer to one other matter that nportant: Why the role of the Commission? I deeply believe the e-and-desist power in these particular cases with this kind of case, considering the condition of our courts, is absolutely essential to best functioning of the guarantee against discrimination respecting loyment.

point out that there are many very popular agencies, with the back- of the very people who are against this kind of power for the OC, which have cease-and-desist powers. The Federal Trade Com- sion is a striking example. In addition, a number of Government de- ments have it. We have analyzed all of those.

this were so iniquitous—what the Senator from Colorado calls ing the investigative, prosecutorial, and judicial powers in the same acy—look at the situation. Thirty-four States have authority ogous to this authority in their State establishments in which they to correct discrimination in employment. I think that is the weight ne evidence.

to the generic case for administrative agencies and administrative I think the courts themselves would be the most violent opponents y effort to dismantle that machinery. They know it would crush destroy them. They could not survive with the inundation that d result unless we changed the court system and tripled or rupled the number of judges. Unless that were done we would be I do not need to argue that case here and now, but that is the situa- we are inviting.

e last point I wish to make is that the three-judge court idea is not and is not something that the Senator from Colorado is giving this amendment. It is in the law now. A three-judge court may be med at the request of the Attorney General, and that is contained ge 64 of the committee report, setting forth section 707(b) of the e.

short, Mr. President, we would be departing from the classic way ich to enforce these rights.

w that we have filed our amendment the question is: Which of vo methodologies is preferred? We hope there is a way to deal his crushing burden on the court process. The plan of the Senator Colorado does not deal with that at all. Perhaps the idea of the or from Kentucky would be the right one, but I have no feeling it. However, the Dominick amendment just throws the cases into urts, and there are bound to be many cases. The backlog amend- works against the Dominick amendment rather than for it. It throw the cases into the courts, to sink or swim, with tremendous stion on the court calendars. If our amendment is imperfect we ange it, but we tried to provide a time relation through time in- s in the law of 1 or 6 months.

time intervals defined in the Dominick amendment refers to the st practical date. Based on the tremendous congestion in the , that would be 10 months, even by his amendment, against 6 s, which is the maximum bracket of the Commission.

President, for all those reasons I adhere to my original view. I rry my beloved friend does not agree with me but we agree so there would be something wrong with one of us if we did not

disagree sometime. However, I feel the Dominick amendment should be rejected and that the Williams-Javits amendment should be agreed to.

I reserve the remainder of our time.

Mr. WILLIAMS. Mr. President, I yield myself 5 minutes.

First it impresses me that the debate supporting the Dominick amendment rather fundamentally puts into question the viability, the workability of so much of our accepted government procedures within the last 35 years. Of necessity, a growing country, with this tremendous new activity, had to deal with its problems of growth and congestion and confusion by administrative agencies.

It is suggested here that there is a question about the procedures of government working the will of the people through administrative agencies and their procedures.

In most of our economic areas we have created agencies of government with responsibilities defined by law, with questions to be decided and they are decided by administrative agencies. In order to protect that system and to insure fairness of procedure, in 1946 there was enacted into law the Administrative Procedures Act which defines the rights of individuals, in a sense, "on trial" before these agencies of government. The Securities and Exchange Commission, created back in 1934, was one of the first to be given powers to decide. We have the Interstate Commerce Commission and it goes back farther. We have the National Labor Relations Board and we have the Federal Trade Commission. All of these agencies of government, to be effective, have to have a machinery for decision. That is exactly what seems to be questioned here in the debate that supports the Dominick amendment.

This is another area of the application of now proven methods, and it is resisted. I would say this has been the central point of the debate on this bill and we are now down to the opportunity to decide it for the third time during this debate.

This issue was before the Senate 2 years ago when we had the bill before us. The vote then was in opposition by a rather substantial margin, I believe, to the proposal of the Senator from Colorado. I think the vote was 41 to 27. We will shortly vote on this proposal. While I personally regret that there is a question over administrative procedure because we know it is part of American Government today.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. WILLIAMS. That is a regret, but I do not want to linger too long on that, because, with the amount of debate on the method of enforcement, perhaps some of the major advances are being overlooked. That is what I would like to focus on for a moment.

I suggest that we have made a tremendous advance toward the goal of bringing the effective opportunity of eliminating discrimination in employment, because the question is not whether there should be enforcement power added to the mandate of the Equal Employment Opportunity Commission, but how it should be done. It is a matter not of quality but, in a sense, it is a question of degree. So it is a tremendous advance that the Senate has come to that point where we are really in dispute only over method, not over the substance of the issue of

ent, although I am sure there will be those—they will be a minority—who will object altogether to new enforcement au- in this area.

ond that, this bill, if enacted, will be a landmark of new oppor- for millions and millions of people, because the legislation will the force of law to support the constitutional promises to the ns of people who are employed in State and local government. they are constitutionally protected now in the 14th amendment, equire statutory and legal enforcement of a constitutional right. ill does that.

ourse, the bill broadens its coverage to reach the employers of nore and unions with 15 or more members. I will say that is a dvance. Ideally, I think it should apply to all, but we have hat decision, and for only practical reasons have we made it ers of 15 or more and unions with 15 or more members. A man an who has been discriminated against has been wronged just h whether he or she is an employee in a little shop with three or one with 15 or more. However, for practical reasons, it is great advance in bringing legal protection to so many millions le who are not now covered by the law.

e area of Federal employees, the employees long questioned they had the right to sue in court to protect their right against ination. We have established that right in this bill and made ear that the Civil Service Commission has clear authority. I ot dwell on that, because I was not the author of the provision engthened the opportunity of Federal employees. The Senator olorado was the author of that significant advance in the bill. this point, when we are locked in debate on the method of ment, let it not be overlooked that the bill is a major advance-

e the Senator from New York and I are in opposition to the ent offered by the Senator from Colorado, his hand on all of ajor advances in the broadening and strengthening of equal nity I think should be noted at this time.

Presiding Officer. The time of the Senator has expired.

Williams. Mr. President, I yield myself 2 minutes just to say stand on the amendment.

k the Senator from New York, again, has crystallized and clear the compelling reasons for bringing to the Equal Em- t Opportunity Commission in its new enforcement powers the administrative machinery that we see in other agencies of ent. There will reside that expertness which is needed in this nsitive and indeed complex area.

now the Federal judges are burdened, and we burden them d again. The subject matter before us is as broad as life, and e a backlog of cases. We fear, and fear for good reason, that litional burden of initial jurisdiction would be a crushing ndeed and would defeat the true effectiveness of the law that l be enacted.

ose reasons of a mechanism that truly goes to effectively reach , I oppose the amendment offered by the Senator from Colo- d I do it expressing the greatest respect for the Senator and

the greatest appreciation for all that he has done in what I feel to b a most constructive way on this legislation.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I intend to yield to my distinguishe colleague from Alabama, but I think it would be worthwhile at th point to put some of the following quotations into the Record.

The Chairman of the EEOC, Mr. Brown, in testimony in 1971 b fore the House General Subcommittee on Labor said as follows:

> In the area of relief I believe that the District Court approach is clearly a demonstrably preferable to th cease-and-desist method. The pertinent yardst is the amount of time an aggrieved person must wait before he is afford relief, either temporary or permanent. . . . Under the district court approach one prevails before the court, he is entitled to an immediate injunction a other relief to bring about a rapid end to the discriminatory practices proved the trial. . . . As a matter of practice, this would not be the case under the ceas and-desist approach.

In connection with the amount of time and the cases as they no stand before the Commission, it is interesting that the Senator fro New York has been emphasizing the so-called industrial States, whe as the fifth annual report of the Equal Employment Opportuni Commission which was submitted on April 1, 1971, shows that th top 10 States in terms of the number of charges in employment discri ination recommended for investigation are: Alabama, with 897; Ca fornia, with 665; Florida, with 633; Georgia, with 633; Illinois, 45 Louisiana, 1,102; New Jersey, 373; Pennsylvania, 611; Tennesse 617; and Texas, 1,522.

Then I might add that it goes on and shows that in those States I have pointed out, the median time interval in nonjury trials rang from 1 month in the southern district of Georgia, in Savannah, to months or at the maximum 23 months in the northern district of Ca fornia. I do not think, therefore, that the relevant district court bac logs are unconscionable.

Certainly, as the Senator from Kentucky has previously stated, the judge finds in any one of these districts that he is totally ove whelmed with the caseload, and he cannot get these matters hea in a reasonable time, he is entitled in any case to appoint a hearin examiner and have the hearing examiner go ahead and hear the ca under his jurisdiction. That is perfectly allowable under the Fede Rules of Civil Procedure, and he can do it any time he feels that would expedite the decision of the case.

So it would seem to me that, with the original testimony of the Cha man of the EEOC in favor of my approach, with the support of t Assistant Attorney General for the Civil Rights Division of the Just Department in favor of my approach and with the support of t administration as a whole, there is substantial authority for court enforcement. Additionally, what we are doing is trying to provid remedy which will clear up this backlog and will cut down, I hope, one of the questionable investigatory procedures of the Commiss which many people have complained about and said they thought w not really investigation on the complaint that had been filed, but so form of harassment.

This, I think, is too bad, because I do not like to see the Commiss find itself faced with that problem. Yet it can do very little ab

as long as it has no type of enforcement procedures. It just has
ng down all the weight of the Federal Government in order to be
o handle such volume.

. President, how much time do we have remaining on our side?

e PRESIDING OFFICER. The Senator from Colorado has 45 minutes
ining.

. DOMINICK. I yield 20 minutes, or as much thereof as he may
to the Senator from Alabama.

. ALLEN. I thank the Senator from Colorado for yielding to me
s time.

. President, I commend the distinguished Senator from Colorado
Dominick) for the introduction of this amendment and for the
ation that he has given to the task of seeing that some measure
r process of law is provided for the determination of complaints
harges of discriminatory employment practices.

President, every Member of the Senate, I am sure, would like
every person in this country go just as far in life as his ability,
nbition, and his efforts will take him. Every Member of the
, I feel sure, wants to see every person in this country have an
tunity to seek and obtain employment where employment is
ble, without any discrimination against him, and without any
employment practice being used against him. As the distin-
d Senator from New Jersey said just a moment ago, about all
left in this issue is the matter of the enforcement machinery.
distinguished Senator from New Jersey and the distinguished
or from New York want to lodge all power in the hands of the
Employment Opportunity Commission to receive complaints,
stigate complaints, to make charges based on those complaints,
and adjudicate those charges, and then to issue cease-and-desist

distinguished Senator from Colorado, in his amendment, which
ort, would continue all of those powers in the EEOC except
e charges would have to be filed with the various Federal district
throughout the country where the alleged unfair employment
es took place.

President, much has been said about the congestion of the
l court dockets. There are 398 Federal district judges in the
y, and only one Equal Employment Opportunity Commission.
is there more likely to be a bottleneck? In one Commission,
here in Washington. There is great significance to that state-
ecause if all of these matters are to be tried in Washington, is
ir to witnesses? Is that fair to the parties, that they should have
ar before the Commission in Washington?

not more reasonable that these charges should be tried in the
l district courts, where the occurrences took place, where the
l judges have some knowledge of community conditions, and
they have some knowledge of the parties involved? I say it is
easonable to expect that these complaints be tried in the Federal
courts. Already the EEOC has a backlog of some 18 to 24
of work, and it is contemplated that it will have an additional
complaints before it during this fiscal year and an additional
n the next fiscal year.

The proponents say, "If they had cease-and-desist powers, they could clear that docket in a hurry." Well if they can clear the docket in a hurry with cease-and-desist powers, it would certainly indicate that they are going to throw efforts to conciliate these disputes out the window.

That is the main reason why the EEOC was created, and that is the power that it has now, to conciliate suits. But if they are going to clear a docket of some 32,000 to 45,000 cases, and take on every State, city, and county employee, every employee of every educational unit in the country, and every employee of an employer who employs as many as 15 people, how are they going to perform their function of conciliation if this one Commission is to try all of those cases? Think how many cases they would have to turn out, literally every hour of the day. And how much due process can you get where one Commission is judge, jury, and prosecutor all rolled into one?

Mr. President, I have been interested in the so-called compromise that has been suggested. It was interesting to me that the compromise amendment, which was introduced, I believe, on February 8, was offered by the distinguished Senator from New Jersey (Mr. Williams) and the distinguished Senator from New York (Mr. Javits). This caused the junior Senator from Alabama to inquire, "compromise with between whom?" They certainly did not compromise with the distinguished Senator from Colorado (Mr. Dominick). They did not compromise with the distinguished Senator from North Carolina (Mr. Ervin). So whom did they compromise with?

The New York Times on February 8, before the amendment was even offered, said:

> Senate liberals yield in dispute over job rights.

There has not been any yielding. No one in the Senate feels there has been any yielding. Obviously there has not been any.

The distinguished Senator from Colorado (Mr. Dominick) has indicated that if this amendment is approved by the Senate, he would support the bill. When the Dominick amendment was defeated by a narrow margin of 48 to 46 votes, the junior Senator from Alabama made the statement on the floor of the Senate that in his opinion this would be one of the most expensive victories that had been won by the proponents of the measure, because he felt that a sufficient number of Senators would be willing to debate this measure until cut off by cloture if a measure of due process is not provided by the bill—due process such as is provided by the Dominick amendment.

I again commend the distinguished Senator from Colorado for his determination to see that due process is provided by this bill.

Mr. President, I believe that this issue is rapidly coming to a head. Just as the junior Senator from Alabama predicted that the defeat of the Dominick amendment might make it difficult for the bill to be passed, he believes now that if this amendment is adopted, the bill as a whole it will continue to be discussed, will be passed in that form. I cannot believe that a sufficient number of Senators will be induced to vote for cloture if this amendment is adopted.

So it does not seem to the junior Senator from Alabama that there is any logic in the position of the proponents of this measure to point to the so-called clogged condition of calendars in the Federal courts

there are 398 Federal district courts throughout the country that
l divide this work—assuming, of course, that suits would be filed
all 398 Federal district court judges.
President, the so-called compromise that is pending before the
e, to which the Dominick amendment has been offered, is not a
omise. For all that appears here, for all that appears from the
ors who have debated the issue, not one Senator has come over to
sition of this so-called compromise amendment.
here has been no compromise, even though the liberal press has
ted that there was.
as interested in the headline of the article in the New York
. "Senate Liberals Yield in Dispute Over Job Rights." Mr.
lent, I ask unanimous consent to have the article from the New
Times printed at this point in the Record.
re being no objection, the article was ordered to be printed in
cord, as follows:

TE LIBERALS YIELD IN DISPUTE OVER JOB RIGHTS OFFER COMPROMISE IN HOPE OF ENDING A FILIBUSTER ON FEDERAL PANEL'S POWER

(By David E. Rosenbaum)

INGTON, February 8.—Unable to break a Southern filibuster, liberal
s gave up today on their fight to give the Equal Employment Opportunity
sion the power to order employers and unions to stop discrimination in

ors Jacob K. Javits, Republican of New York, and Harrison A. Williams,
ocrat of New Jersey, offered a compromise proposal today, along the
ored by President Nixon, in an effort to obtain action on legislation that
before the Senate since it convened January 18.
r than authorize the commission to issue "cease and desist" orders
companies and unions that it found to be discriminating, the Javits-
s proposal would merely allow the commission to go into Federal court
discrimination and ask the court to prohibit it.

COULD CERTIFY DISCRIMINATION

ixon Administration has recommended all along that the commission be
e authority to institute court suits, and the House approved a measure
fect last year.
avits-Williams plan would give the commission's findings additional
n court proceedings, however, by empowering the commission to hold
on cases of alleged job discrimination and to present certification of dis-
ion to the court, much as a bankruptcy referee presents his findings to

ing to Senator Javits, the courts could be expected to uphold the com-
findings most of the time under this procedure, since most of the evi-
uld already have been heard by the time cases reached a judge.

DOMINICK IS OPPOSED

r Peter H. Dominick, Republican of Colorado, who has been the principal
n for the Administration in the battle over giving enforcement power
mission, said that he would oppose the Javits-Williams plan.
r Dominick, whose amendment to allow the commission to go into
court instead of issuing cease-and-desist orders was rejected two weeks
votes, plans to offer his amendment again as a substitute for the Javits-
proposal.
on these measures is unlikely to come before next week.
mmission was created by the Civil Rights Act of 1964. It was empowered
earings and to try to obtain voluntary conciliation from employers who
ate but was given no means to enforce its findings.

Senator Javits acknowledged that he was "giving away a lot" by his c promise but said that there was no other way to get any bill past the South filibuster.

He said he believed that with his proposal he could obtain the necessary t thirds majority vote needed to cut off the debate. Two attempts to halt the buster have failed.

In another concession to the Southerners, the Senate agreed, 56 to 26, toda a compromise on the size of companies and unions that fall under the com sion's jurisdiction.

At present, a company must have at least 25 employes and a union of at l 25 members before the commission has jurisdiction. The pending legisla would have lowered the ceilings to eight. The Senate agreed to lower it t next year.

Mr. ALLEN. This article refers to the so-called yielding prior to time the amendment even was introduced into the proceedings of Senate. So there has been no yielding.

The issue is still the same: Will these alleged unfair employm practices be tried before a Federal district court judge, or will they tried by the very same agency that receives complaints and prosec the complaints and hears the complaints?

Mr. President, I do not believe that the national media have gi proper coverage to the arguments made against this bill by the op nents of the bill. I do not believe that the national news media h been telling the American public the full and true facts about this to expand the power and authority of the Equal Employment Opp tunity Commission.

This debate has been rather extended, but no good bill has los the Senate by reason of this debate. Just the other day, I noted tha the Senate calendar were only 20 measures pending before the Se After the 92d Congress has been in session for more than 13 mon all it has on the calendar are some 20 measures. So this debate will hold up—and has not held up—anything. It has not held up for aid. That bill was passed. It has not held up the dock strike legislat It did not hold up the seabed treaty that the Senate approved t morning. It is not holding up a single piece of meaningful legislat So the debate should continue until due process of law is provided this bill.

Mr. President, one would think, from hearing the argument of proponents of the measure, that this bill seeks to outlaw discrimina in employment. It does not do any such thing. That is already the It does not take this bill to provide a rule or a law against discrim tion in employment. We hear the proponents of the measure actu refer to themselves as "the good guys." That reference has been m by proponents of the measure on the Senate floor. They are the g guys. I suppose that if they are the good guys, the opponents of measure must be the bad guys. I do not see it that way.

I want to see due process of law provided in the settling of these pute regarding unfair employment practices, and we are not going get fair treatment where we have a commission that does the w job.

Are you going to get biased treatment in favor of employers by ing into the Federal court? The record indicates otherwise. Who been enforcing the civil rights matters throughout the country? Federal court. Who has provided for the desegregation of the pu schools? Who has provided for the enforcement of antidiscrimina

using? The Federal courts. They have had compassion in the
r of civil rights, and there is no indication that they would not
the same degree of compassion regarding charges or complaints
fair or discriminatory employment practices.
. President, the purpose of this extended debate is to alert the
ican public to the dangers and evils of the bill. I submit that the
nal news media have failed in their responsibility to report the
acts underlying the opposition to this bill. The proposed legis-
has been before the Senate for possibly a month, and those of
o oppose it have revealed time and again the threats the bill
to individual rights and freedoms. Yet, you turn on the radio
evision or read the newspaper, all you hear or see is that a few
ors—usually they are the Southern Senators—are filibustering
ll to make employment opportunities fair and equal. You hear
bout the contents of the bill itself.
y does not the national news media tell the public that the bill
give a Federal agency the power to control the employment
es of all schools, including private and parochial?
y does not the national news media tell the public that the bill
give a Federal agency power to control the employment prac-
f all State, county, and city governments?
does not the national news media tell the public that aside
he swarm of Federal agents which would be required to carry
repressive provisions, the bill does not create one single new

news accounts always refer to the measure as a civil rights
et, in the opinion of the junior Senator from Alabama, the bill
the most precious of all civil rights—the right of trial by jury.
does not the national news media tell this to the people? Why
not tell the people that the bill would make the Equal Employ-
Opportunity Commission investigator, prosecutor, judge and
in one?

PRESIDING OFFICER (Mr. Taft). The time of the Senator from
na has expired.

DOMINICK. Mr. President, I yield 5 additional minutes to the
r from Alabama.

PRESIDING OFFICER. The Senator from Alabama is recognized
ditional minutes.

ALLEN. Mr. President, news accounts last week, reported that
promise" amendment was being offered by the bill's sponsors.
ent debate on the Senate floor revealed that no compromise
r been reached and that proponents of the bill admitted this
ut not one word of this startling admission ever appeared in
was said on radio or television.
is not a civil rights bill. It is a force bill. If fair employment
nity is the only issue, not five Senators would vote against
sure.
not believe there would be a single vote against the measure if
re the only issue: namely, fair employment opportunity. On
r hand, if the American public knew what the bill contains, the
of protest would be so strong that a majority of Senators
ot dare vote for the legislation.

Mr. President I call the national news media to give the Am
ican public a full explanation of the threats which the bill pose
individual rights, liberties, and freedoms.

I am confident that fully informed Americans will not supp
legislation which endorses the surrender of principles and conce
which are so inseparable from our cherished system of democracy

Mr. President, the proponents of this bill have extended the o
ation of the act to every educational institution in the country. T
have extended it to every State, county, and city employee. They h
extended it to the employer or the employees of every employer w
employs as many as 15 people.

The only thing left is whether the Commission can issue its o
orders based on its investigation and its prosecution of any compl
before itself. It would be judge, prosecutor, and jury and, I gu
Federal marshal as well. That would not provide due process for
employer caught within the toils of the EEOC.

Mr. President, I feel that there would be an excellent chance for
bill to become law if this amendment is adopted. Every single p
sion of the Dominick amendment adds to the power and auth
of the EEOC. There is not one single line in the bill—not one si
line in the Dominick amendment—that takes one bit of power,
bit of authority, or one bit of jurisdiction away from the EE
Every single line adds authority. It adds power. It adds jurisdi

So, Mr. President, far from indicating any lack of sympathy
those who say they are being discriminated against in employ
this amendment adds power, just as the bill itself does, to the EE

Mr. President, I support the Dominick amendment. I hope th
will be agreed to by the Senate when the vote occurs at 5 p.m. toda

Mr. President, I ask unanimous consent to have printed in
Record three editorials, two of which indicate my point with regar
the treatment by the national news media. The third is an edit
published in the Birmingham News of last week.

There being no objection, the editorials were ordered to be print
the Record, as follows:

[From the Washington Post, Feb. 10, 1972]

THE CIVIL RIGHTS FILIBUSTER

The month of February has slipped into town with the shoddy spectacle
Senate of the United States droning on in a quiet anti-civil rights filibus
threatens to eat up most of the legislative month. This one has already c
the cease and desist powers that a bill reported out by the Labor and P
Welfare Committee would have given the Equal Employment Opportunity
mission. Although proponents of the committee bill have abandoned the
cease and desist and have retreated to the softer ground of giving th
mission the authority to go into court to enforce its will, opponents of th
still vow to continue the filibuster.

All of this dredges up ghosts of an earlier day. Fair employment legislati
one of the earliest legislative goals of the civil rights movement even b
movement's heyday in the '60s and more than once the country watched
proposal robbed under by filibusters in the Senate Chamber. Finally it
established by the Civil Rights Act of 1964.

But, as we have noted before, discrimination in employment against
and minorities persists, massively. This is true partly because of bias
because of tradition, partly because of the complexity of the problem and
because this commission was not created equal. The commission was giv
thority to receive complaints, investigate them, find reasonable cause and

ate. There the EEOC's powers stopped. It was given no enforcement power
e burden of further action was placed on the individual complaint to take
se to court—providing he had sufficient resources and will. For the com-
n, conciliation without a bite at the end was something like a kiss without
eze—not much.

clear that if the Congress seriously intends for the EEOC to make a
contribution to the still mountainous problem of employment discrimina-
must give the agency some credible enforcement powers. Now that the
nd desist powers are ruled out, for this session at least, the next best
tive is to give the commission expeditious procedural recourse to the
At this stage of the debate, we are witnessing a filibuster without a point.
is time, it is not just the racial or ethnic minorities who are being hurt.
o women. The Senate should stop this silly business, vote on the bill and
with its work.

[From the New York Times, Feb. 10, 1972]

THE SAME OLD STORY IN THE NATION

(By Tom Wicker)

its beginnings, the Nixon Administration has insisted that the way to
ts civil rights activities was to "watch what we do, not what we say."
plication was that, while talking one way to mollify a conservative con-
y, the Nixon men would accomplish a great deal in the other direction.
ern Senators, on the other hand, having long been the most determined
ts of any kind of social or economic or politica' advance for blacks, have
aken to insisting that they and their constituents have gone further than
of the nation in providing equal opportunity for all. Particularly in the
school desegregation, there is some substance in this Southern claim—
n in the Nixon Administration's "watch what we do" boast.

e crucial area of employment opportunity, however, both the Southern
s and the Administration can now plainly be seen wearing the same old
rate uniforms. It is, in fact, rather like old times in the Senate now that
therners, with Administration support, have filibustered to death the
to equip the Equal Employment Opportunity Commission with cease-
st powers against employers found guilty of discriminating.

et loss, of course, is not just for blacks; since the E.E.O.C. has jurisdiction
as well as race discrimination, the Senate's action also is a grievous blow
n's rights. And one of those most responsible is also a man who has had
nd in defeating or watering down the women's rights amendment, Sam J.
. of North Carolina.

is no question, however, that the Senate's action was mainly another
to do anything much about the problem of job discrimination against
studies of black unemployment—which runs consistently at about twice
whites, and far worse in the cases of black teenagers and black women—
s not entirely even largely due to their lack of job skills and education,
ss to an unwillingness to work; rather the problem is to a great extent
scrimination.

heless, as it now stands, the E.E.O.C. has no enforcement powers at all
in thirty states there are commissions that have cease-and-desist author-
as the price for getting any kind of bill past the Southern filibuster,
Javits and others have had to agree to a compromise. It would, first, give
).C. only the right to go to Federal court to try to get compliance with any
f discrimination; second, it would raise from eight to only fifteen the
f employes that would have to be in a company, or members of a union,
that company or union under E.E.O.C. jurisdiction. The filibustered bill
ve made it 25 employes or members, vastly expanding the commission's

mpromise adopts, in effect, the Administration's position, which is already
in a bill that passed the House. That it is intended to be a soft position,
an a tough stand against job discrimination, became apparent when Sen-
r Dominick, the Administration spokesman on the issue, said he would
part of the proposed compromise that would have permitted Federal
accept the E.E.O.C.'s findings as evidence, without further trial on the
iscrimination cases.

Since the Federal courts are already clogged, and the average delay in position of cases is about ten months, it is apparent that adding a whole new of litigation to their burdens is not an expeditious way to handle job discrimination; it is more nearly another way to bog down judges and prosecutors alr unable to manage their workloads. Moreover, lengthy trials, plus the long app process, are bound to be more costly to complainants than the administra remedy that had been proposed for the E.E.O.C.; the result will be to leave m discrimination essentially unchallenged.

Just this week, Federal Judge Frank M. Johnson Jr. complained that alth he had ordered the state of Alabama, about two years ago, to cease employ discrimination in all state agencies, "It looks like my order wasn't very effect He was in the process of issuing another order, this one to the all-white Alab state police, to recruit enough blacks to fill a quarter of its positions. Two y from now, will anything have been done about this second order, which is sur be appealed?

Since the E.E.O.C. is being given jurisdiction over state and local workers, were also to have cease-and-desist powers—as does the National Labor Rela Board, the Securities and Exchange Commission, and the Federal Communi tions Commission, to name only a few—it might well be able to get a better quicker response by administrative sanctions than Judge Johnson could court orders.

But action is not what the Nixon Administration and the Southern Sena want; delay and talk and promises are all they care to offer in the way of e employment opportunity.

A Dangerous Grab for Power

Another move to deliver statutory enforcement into the hands of a fed administrative agency at the expense of the country's employers is presen before Congress.

What this would amount to, if granted, would be to place a federal agenc the position of being prosecutor, judge and jury in cases where adjudication rested effectively, until the present, in the federal courts.

The basic effort is known as the Williams Bill (S. 2515), the provision which would hand over to the Equal Employment Opportunity Commission and desist powers in the area of employment complaints, similar to that p now held by the National Labor Relations Board, a lever that has proved t more of an abuse of employers than a protective arm for complainants.

There is no argument heard today that protection against unfair employ practices is unneeded or that still more stringent enforcement powers should be given the EEOC. To place that agency in a position where it may investi and file complaints, and then, in turn, hear arguments and defense and rule on the issue is too much like a "hanging jury" to fit the concept of democratic process.

The Dominick amendment to the Williams measure provides for initial judication of employment complaints in federal district courts, an area wh contrary to arguments by proponents of the Williams Bill, is equipped to re decisions within a reasonable length of time.

Supporters of the Dominick amendment do not base their arguments a desire to thwart the presentations of fair employment opportunities to all q fied persons regardless of race, sex or creed. The day when job bias w tolerated is past. And it is the duty of Congress, as we see it, to fashion leg tion which will give appropriate federal agencies the power to bring fair emp ment opportunities to all people who are qualified and willing to hold a j

We do not believe, however, that another step in the encroachment of fed bureaucracy, which possesses no greater expertise in this field than do the c is the answer to employment abuses.

The Williams Bill suggests handing government another cudgel to wa the private sector of the nation's economy. The Dominick amendment sug a far more conciliatory method and one that will have a more satisfactory for all parties involved.

Progress in the area of job opportunities will not be accomplished at expense of equitable treatment for all.

Mr. Dominick. Mr. President, I yield myself 30 seconds to exp my deep appreciation to the distinguished junior Senator from

(Mr. Allen) for the comments he has just made on behalf of
nendment. I sincerely hope that we will be successful this time.
I agree with him that there is a good chance we will get a bill.
TAFT. Mr. President, I take the floor at this time to discuss the
ion we find ourselves in on the upcoming vote which will occur
y. I still disagree with the concept of the Dominick amendment.
expect initially to cast my vote against it.
el, however, as has been pointed out here today, that there are
provisions in the bill at the present time, in my opinion, which
ost desirable and which we should attempt to enact into law and
prove the present statutes on the books with regard to equal
tunity and the operation of the Commis ion, especially regarding
employee coverage matter, which has been discussed earlier
I especially refer to the General Counsel provisions. In respect
General Counsel provisions, it is important from the point of
f legislative history that we not confuse what I believe has been
ous statements with regard to the current status of the bill, in
f the passage of amendment No. 797 which was proposed by
stinguished Senator from Pennsylvania (Mr. Schweiker), on
half, and on behalf of the distinguished Senator from New
Mr. Javits) as well.
id from amendment No. 797, in part, as follows:

The General Counsel shall have responsibility for the issuance of com-
the prosecution of such complaints before the Commission, and the
of litigation as provided in sections 706 and 707 of this title. The
Counsel shall have such other duties as the Commission may prescribe
nay be provided by law. The General Counsel shall appoint regional
rs with the concurrence of the Chairman, and shall appoint such other
es in the Office of the General Counsel as may be necessary to assist
ing out the General Counsel's responsibilities and functions under this

President, quite a number of times this afternoon, and since
of amendment No. 797, it has been alleged that the Commission
ies—under the legislation as passed without the Dominick
nent—to exercise the prosecution and the judicial as well as the
strative functions under the law.
uld demur from that, with regard to the question of prosecu-
cause I believe, under the terms of the amendment as adopted,
undantly clear that a case must begin by a complaint starting
e General Counsel, and then being filed by the General Counsel,
re to keep this legislation in the bill.
to me, eliminates some of the difficulties that I might other-
ve had with maintaining the position that the Commission
directly or indirectly have the authority to issue cease-and-
orders.
d, if this amendment had not passed, I would have long since
ed the original amendment. I believe that with this change it
provement and is worthy to try to get into the law.
ms to me that along with the other improvements, the time
ut come for the Senate to realize that it must go ahead, because
tly cloture is not going to be obtained.
hat reason, I will later - although I do not think I will change
vs on the bill—I will give a pair to a Senator who will not be
vote.

We will have to go to conference on the bill with the House, bec the House does not include the provisions of the Javits' compro of the Dominick amendment as now proposed.

It is obvious to me that we are not going to get the original pr sions in the language of the bill on cease-and-desist orders or perh even the language of the Javits' compromise proposal. So, with a these items in balance, I wanted to explain to the Senate my inten to give a pair. It is my hope that the bill will proceed through Senate expeditiously and proceed to conference and will be gre improved in the language as proposed.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Taft). Without objection, it is ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515 bill to further promote equal employment opportunities for Amer workers.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 4 minutes.

It is my feeling that we are rapidly approaching D-day on this p ticular bill. It is my sincere feeling that unless we can pass this s stitute amendment of mine, we are not going to have a bill at all. A pointed out a little earlier, the number of complaints filed before EEOC is rapidly growing. The number of complaints which they able to settle by conciliation agreements satisfactory to the Com sion has not substantially improved; in fact, they have gone down

The major reason for that, in my opinion, is that there is no enfor ment procedure at the present time which gives the EEOC the ne sary muscle to reach an agreement which is satisfactory both to respondent and to the aggrieved.

My approach, which is the court approach, is a method of enfor ment, just as is the so-called cease-and-desist approach originally ported in S. 2515, and just as is the method which has been offered the Senator from New Jersey (Mr. Williams) and the Senator fr New York (Mr. Javits). For the life of me, I can see nothing wr in proceeding with an enforcement procedure which would give us muscle by which we could then settle more employment discrimina cases probably much more rapidly and probably with many fe cases going to the courts.

It is a procedure relying on an institution inherent to our syste is a procedure which I think conforms to the basic separation of pow which we desperately need to reemphasize in this country. It is the on why, in many cases, many of us have been urging that we ge power out of Washington, so as to be able to decentralize such p to the various areas the resources with which to handle their own p lems.

In this particular type of situation, we would be distributing power to enforce this law to 93 district courts with 398 district jud

rown, the Chairman of the EEOC, has said very frankly that it take quite awhile to get the necessary attorneys, the hearing ex- rs, the rules and regulations, and everything else set up in the that the EEOC received the cease-and-desist powers. He has ted that the enforcement system would be far more flexible and ore efficient if we adopted the district court procedure. Mr. n so testified before the House committee. It was his feeling that complaint filed before the Commission, you had immediate en- ient through the injunctive process, but if you had a cease-and- order before the Commission, you had to go before the district and receive an enforceable order before you could get anything And therefore, you had anything but an efficient system to ob- junctive relief, which in many cases seems to be what is needed. h the emotional involvement in our country over matters in- g discrimination, I have no illusion that this will be an easy ier for the Commission or for the courts. But I do feel deeply be far more fair to the respondent and the complainant alike it in traditional hands, rather than to put still another power e hands of an administrative commission responsible to no one the person who originally appointed them. It does not seem o me, as I have said repeatedly to put into the hands of any strative agency the powers to make the rules, investigate r the rules are being abided by, receive the complaint, and sue the orders. This is the very thing we have tried to get away n our country.

is can be done, we shall have taken, to paraphrase a famous s, at least one small step in the right direction.

President, I reserve the remainder of my time.

PRESIDING OFFICER. Who yields time?

JAVITS. Mr. President, I know I join my colleague from Colo- expressing the wish that there were Senators here to listen to osing arguments in a matter as important as this, something ch we and they have fought literally for years. Ever since the ights Act of 1964 was passed, we have known that it had this l weakness of a lack of enforcement power. There has always is deep dispute about what the power should be, and here we he voting point.

nk, Mr. President, that now, this afternoon at 5 o'clock, this ought to be definitively settled, and I feel, speaking for my- twithstanding the number of votes we have had on it, and I ne Senator from New Jersey (Mr. Williams) probably feels e way, that whatever the verdict of the Senate may be, this

ave worked on this question and fought it up and down the as long as I think anyone has any right to.

mmarize our argument, Mr. President, we say that cease and right, and that it is the way to cut down the backlog and the develop the expertise which the agency requires, and the way h to give this act teeth. Even though it does not have plenary y, the cease-and-desist order itself is allegedly feared by the community. On the contrary, nothing happens until you get decree. But that is water over the dam. Mr. President. Even the majority of the Senate wants cease and desist, it cannot

have it, the way the Senate is organized today and the way r
XXII operates.

So the question, then, is what kind of court proceeding should the
be? The Senator from New Jersey and I have realistically understo
that, and done our best to present to the Senate a practice which d
fers from that of the Dominick amendment in the essential point t
we have the Commission which is holding the hearing through
hearing examiner certify the record to the court and make reco
mendations respecting findings of fact and remedies, that is, a decr
Then the court, and only the court, has the power to enter a decr

We believe that by vesting in the Commission this authority to he
we are in effect automatically providing a special master or refe
in each case, and that thereby we would be able to cut down the t
mendous court delay. We submitted our chart of the official record
the U.S. district court backlog, which showed that we ought to
able to cut that backlog time by more than half by the techniq
we have suggested.

I analyzed the objections of the Department of Justice, and show
that they were based upon illusion and not upon fact, because the D
partment of Justice tells us that the courts can resolve cases speedi

They can, but they will not, because they have these tremendo
backlogs. They say the courts can deal with critical and sensitive cas
Again, that is precisely why we have commissions, to build up a body
expertise to deal with critical and sensitive cases. They tell us t
courts are resolving critical and sensitive cases in other civil rig
areas such as housing and education, and we point out that there
time to move around and have a proceeding, which differs from e
ployment.

Second, we point out that in these particular areas you are deali
mainly with governmental entity.

For all those reasons, we believe that the difference respecting t
procedure which is involved in terms of cutting down the time lag
tributable to the court delays because of the tremendously conges
calendars can very much better be handled by the amendment of Se
tor Williams and myself. Beyond anything else, I emphasize the n
rowness of the difference. The fact is that it is the court which w
make a decree, under our amendment or his amendment. The fact
as Senator Cooper properly pointed out, that the technique of spe
masters or referees is not unusual. It can be used, and we requir
to be used. In addition, we get the benefit of the administration wh
has great expertise in a central procedure fully protected by the A
ministrative Procedure Act.

Finally, I think this absolutely dispenses with the argument t
you are putting the powers of investigation and of punishment in
hands of one body. In the first place, we do it with many other bod
but that is ended, because both amendments vest the power to is
the decree ab initio, in the first instance, in the court.

For all those reasons, I believe that our amendment is a dist
improvement; that it gives a great benefit, considering the nature of
discrimination—to wit, in jobs—over that of the Senator from Co
rado, and that his amendment should be rejected and ours should
supported by the Senate.

The PRESIDING OFFICER. Who yields time?

o Senator yields time, it will be charged equally to both sides.
Javits. Mr. President, I ask unanimous consent that we may
quorum call, with the time charged equally to both sides.
Presiding Officer. Is there objection? The Chair hears none,
s so ordered.
Javits. I suggest the absence of a quorum.
Presiding Officer. The clerk will call the roll.
legislative clerk proceeded to call the roll.
Dominick. Mr. President, I ask unanimous consent that the
or the quorum call be rescinded.
Presiding Officer. Without objection, it is so ordered.
Dominick. Mr. President, how much time do I have remaining?
Presiding Officer. The Senator has 3 minutes remaining.
Dominick. I yield myself those 3 minutes.
President, during the process of this debate, reference has been
the comparable cease-and-desist powers that are in the NLRB.
ner executive agencies are largely, I would say, regulatory
s, as opposed to the EEOC or the NLRB.
nk it is a matter of interest that before the Special Subcommit-
Labor in the other body hearings were held on proposals to
e the NLRB processes. Those hearings, it should be noted,
out the point that it could take 2½ years from the time a
walks into a regional NLRB office with a charge until the time a
appeals finally issues an order that he be reinstated with or
back pay. So it seems perfectly apparent that even in an
that has been established that long, which has hearing exam-
n independent General Counsel, special expertise and all its
nts, it still takes 2½ years.
ot think that this would be true under job discrimination with
ption of my amendment, because once the trial is over, the
that point is free to issue injunctive relief and to issue such
medies as it may deem appropriate, or even, to dismiss the
it determines that the evidence has not supported the com-
t.
mmary what we are doing, is asking for enforcement for the
through the court system, through an expedited three-judge
here the case is of general public interest, so that there can be
d proceedings with appeal directly to the Supreme Court.
he case is not of general public interest will be brought into
court for expedited hearings, and once the decision has been
he judge who has jurisdiction can issue whatever remedy
itable in view of the facts before him.
ids the conglomeration of powers in one executive agency of
secution, the investigation, the judicial hearing, and the
ent proceeding—all of which put into one body are wrong,
EEOC or the NLRB.
ge the adoption of my amendment.

HITS AND THE NEED FOR ENFORCEMENT OF FAIR EMPLOYMENT PRACTICES

Moss. Mr. President, the struggle to expand equality in
has had a long journey. The path is marked by periodic
shments that have advanced rights that should have been

given to all our citizens at the establishment of our Nation. The S
ate is now considering another in the recent series of such landma
and the action we take will have an important effect upon the fut
course of the civil rights movement.

Will we move ahead steadily, or will we fall back and pause, p
haps beginning a decade of backsliding in our commitments to
minority groups in our Nation? The present question before us is
in terms of the right of Americans to hold jobs on an equal basis. I
rather ironic that we face the crucial question of employment at
we have faced most of the other questions of civil rights. Empl
ment is the most basic and fundamental avenue to attaining the
ity to pursue li e, liberty and happiness. Work is an end in itself,
it also provides the means for a person to exercise many of his o
rights. With a job, a man can begin to emerge from the ghetto or
rural slums, seek better housing and education, and drop his cons
dependence on public agencies to provide his support. Without a
chance at job placement and advancement, none of these rights h
full meaning for him.

The past two decades have seen momentum build in the effor
deliver human rights to all Americans on an equal basis. The la
mark in that struggle was the enactment of the 1964 Civil Rig
Act. Throughout these two decades, a coalition has emerged at e
stage attempting to thwart the sharing of these fundamental rig
We decide again today whether that coalition will prevail, or
cause of equality will advance another step. Because of the cru
role employment plays in providing status and substance, the ac
ties of the Equal Employment Opportunity Commission are an
tremely important measure of our commitment to equal rights. If
are serious, we must give it the power to enforce the part of the l
act that promises equal employment opportunities.

"Unfinished business" still dominates the field of civil rights
tivity. We have discovered that the promises in the 1964 Civil Rig
Act were just a beginning, for they are empty without enforcem
for they are empty without enforcement and implementation. We h
learned since that date that job discrimination is more pervasive
subtle than we supposed; an examination of the discussion in 196
veals that we were naive about such discrimination, thinking
voluntary compliance and conciliation would be enough to stop
prejudicial activities of most, and that those who blatantly and
antly excluded others from the opportunity to work would be ste
by court action. We now know that the problem is much deeper.
have found that discrimination is pervasive, and that those discr
nating often do not do so overtly. Many do not even recognize that
have constructed hiring and promotion systems that are discrimina

In many real ways, the 1964 act has been the basis for disco
rather than cure. We now discuss the employment problems of wo
Spanish-speaking Americans, Indians, and other groups. The ac
ties of the EEOC and the Civil Rights Commission have allowed
tests to be registered from all those who have grievances, and we
discovered that basic civil rights must be extended to all groups
suffer from the denial of fair employment practices. This has
a worthwhile awakening for the country.

Considerable room for progress remains. Blacks constitute 10
cent of the labor force, but hold only 3 percent of the professio

cal and management positions. Their average family income in
vas only 60 percent the level of income for whites, and Spanish-
ng families received even less. The figures are $10,236 for a
family, $6,279 for blacks, and $5,641 for Spanish-speaking.
n scientists receive only three-fourths the salary of men in the
ield, and do even worse at lower levels of training.
we fulfill the promises we have made? Unless we give ex-
d enforcement powers to the agency responsible for ending em-
ent discrimination under the statutes we have passed, we will
I felt that there were a reasonable chance that the more gentle
ques presently in the law would work, I would not be as con-
as I am. But the history over the past years shows an increase
number of discrimination complaints and all too little satisfac-
resolving the grievances. The employer presently can refuse
n; he knows that most workers do not understand courts and
afford to take their problems there.
have been presented a reasonable bill by the Committee on
and Public Welfare. Procedural due process is guaranteed in
when cease-and-desist orders are issued, and disputants will
have recourse to the courts in the end.
bill says, in effect, that we plan to carry out the promises that
e made in the past. We are not going to allow State and local
ments to discriminate in employment, nor will we exempt
cale employers from the obligation to treat other humans in a
shion in the employment market. Both of these sectors of our
y will actually benefit from such guidance; community rela-
re bound to improve when policemen, firemen, educators, and
ublic employees reflect balanced proportions of their com-
s.
movement toward equality in our time will not go forward
tically. Citizens and their elected officials must continue to
or advancements. The momentum began anew during our gen-
, and we should see to it that this trend continues. We must
in to backslide. The task before us is that of shaping a founda-
the creation of a better society. I believe that the Williams-
amendment to S. 2515 is a reasonable compromise that still
appropriate powers for the Equal Employment Opportunity
sion, and I, therefore, intend to support it rather than any
te measure.

PRESIDING OFFICER. The time of the Senator from Colorado
ired.
Senator from New Jersey has 1 minute remaining.
AVITS. I yield myself 1 minute.
President, I think the arguments have been summarized, and in
ute I should like to state the following:
I hope that this will be the final decision on this question.
I hope that Senators will understand that if the Dominick
ent is rejected—which we urge upon the Senate—the amend-
Senator Williams and myself will follow immediately and can
l on, which will also give us a court procedure, but with the
d of cutting down the time required in order to try a case,
having the hearing agency the Commission itself; and in our
t that will serve to cut that time by at least a half and prob-
-thirds.

The VICE PRESIDENT. All time on the amendment has expired.

Under the previous order, the question is on agreeing to the am ment of the Senator from Colorado to the amendment of the Sen from New York and the Senator from New Jersey. On this que the yeas and nays have been ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the abs of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator f Colorado (Mr. Dominick) (No. 884) to the amendment of the Sen from New York (Mr. Javits) and the Senator from New Jersey Williams).

On this question the yeas and nays have been ordered and the will call the roll.

The legislative clerk called the roll.

Mr. TAFT (when his name was called). On this vote I have a p with the distinguished Senator from Wyoming (Mr. Hansen). I were present and voting, he would vote "yea;" if I were at liberty vote, I would vote "nay." I withhold my vote.

Mr. FULBRIGHT (after having voted in the affirmative). On vote I have a pair with the distinguished Senator from Maine Muskie). If he were present and voting, he would vote "nay." were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. MANSFIELD (after having voted in the negative). On this I have a pair with the distinguished Senator from Georgia (Mr. madge). If he were present and voting, he would vote "yea;" if I at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Mexico (Mr. Anderson), the Senator from Indiana (Mr. Hartke Senator from Minnesota (Mr. Humphrey), the Senator from W ington (Mr. Jackson), the Senator from Washington (Mr. Mag son), and the Senator from Maine (Mr. Muskie) are necessarily sent.

I further announce that the Senator from Georgia (Mr. Talma and the Senator from Massachusetts (Mr. Kennedy) are abse official business.

I further announce that, if present and voting, the Senator Minnesota (Mr. Humphrey), the Senator from Washington Jackson), and the Senator from Washington (Mr. Magnuson) w each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. Fo the Senator from Wyoming (Mr. Hansen), and the Senators Oregon (Mr. Hatfield and Mr. Packwood) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent be of illness.

If present and voting, the Senator from Hawaii (Mr. Fong the Senator from Oregon (Mr. Hatfield) would each vote "nay."

The pair of the Senator from Wyoming (Mr. Hansen) has previously announced.

The result was announced—yeas 45, nays 39, as follows:

[No. 45 Leg.]

YEAS—45

Cooper	Jordan, N.C.
Cotton	Jordan, Idaho
Curtis	Long
Dole	McClellan
Dominick	Miller
Eastland	Roth
Ellender	Saxbe
Ervin	Smith
Fannin	Sparkman
Gambrell	Spong
Goldwater	Stennis
Griffin	Thurmond
Gurney	Tower
Hollings	Weicker
Hruska	Young

. Va.

NAYS—39

Inouye	Pell
Javits	Percy
Mathias	Proxmire
McGee	Randolph
McGovern	Ribicoff
Mcintyre	Schweiker
Metcalf	Scott
Mondale	Stafford
Montoya	Stevens
Moss	Symington
Nelson	Tunney
Pastore	Williams
Pearson	

T AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—3

ht, for.
ld, against.
gainst.

NOT VOTING—13

Humphrey	Muskie
Jackson	Packwood
Kennedy	Talmadge
Magnuson	
Mundt	

. Dominick's amendment (No. 884) to the amendment of the from New York (Mr. Javits) and the Senator from New Jer- Williams) was agreed to.

ILLER. Mr. President, I move to reconsider the vote by which dment was agreed to.

OMINICK. I move to lay that motion on the table.

otion to lay on the table was agreed to.

PROGRAM

ANSFIELD. Mr. President, at this time I would like to ask the ished Senator from Louisiana a question. Would it be possible p the debt ceiling measure which I understand needs consid- mmediately, even if it meant delaying the reporting of H.R. 1 r 3 days?

ONG. The committee has scheduled hearings on H.R. 1. We eduled hearings for the day after tomorrow, which is Thurs-

day. It was my intention that we remain on that bill until it is rep
ed, and I insist on doing that, unless the President and the majo
leader feel it necessary to move with the debt limit bill during
time. If the leaders would like us to do that we will turn to the
limit bill and move with that bill as expeditiously as we can. I am
it is understood that the time we put on that bill is time we cannot
on H.R. 1. We cannot do both things simultaneously.

Mr. MANSFIELD. I understand that, but there is a dire need for
consideration of this legislation as soon as possible. The distingui
chairman of the committee informed the Senator from Montana
eral weeks ago that he thought all of the hearings and the prelimi
work would be done by about March 1, and then the report woul
prepared, which would take a week, 10 days, or 2 weeks. It is a hig
complex and complicated measure.

However, in view of the economic situation confronting this cou
it would appear that a delay of 2 or 3 days on H.R. 1 would not b
that much significance, as long as the day is far ahead.

If the chairman of the committee could see his way clear to g
consideration to taking up the debt ceiling bill, it might be in the
interests of the Nation at this time.

Mr. LONG. If that is what the leadership on both sides of the a
want, we will do our best.

Mr. SCOTT. That is a matter of very considerable urgency, and w
the amount approved in the House bill is not as much as the am
requested by the President, it is desirable that we act on the debt
first. I would hope there would be a minimum of time taken on rep
ing it to the floor. Perhaps we can get a time limitation.

Mr. LONG. I would hope that action on the debt limit bill w
not require a lot of extraneous issues, and that we can limit ours
to that measure and act expeditiously on the floor. If so, we ca
back to H.R. 1 in short order.

Mr. SCOTT. I agree. It is hardly a bill that needs many rider
rides pretty heavily in the saddle itself. I hope Senators will s
their accouterments.

On another matter, I am informed that a cloture petition wi
filed today on the pending legislation, to be voted on, I suppose,
Thursday. Is that correct?

Mr. MANSFIELD. Mr. President, if the Senator will yield, if a clo
petition is filed today I would hope that the vote could occur an
11 o'clock Thursday morning next. I make that statement, bec
on that day there does begin the annual Canadian-United States in
parliamentary meeting. If a cloture petition is filed and voted a
11 o'clock it would give many senatorial delegates time to arrive
at a reasonable hour, not as reasonable as originally intended, b
something could be done it would be most appreciated, because
have sort of let the Canadians down on occasion because of the
of business in the Senate. I would ask the distinguished Senator f
Vermont and also the distinguished Senator from Idaho if they w
consider that as being possible.

Mr. CRANSTON. Under the arrangements that have been worked
the delegation was supposed to leave here at 5 o'clock in the after
tomorrow. The first session is to commence during the evening.

Mr. AIKEN. We have nothing special tomorrow evening, as f
I know, except to get settled in Ottawa.

PASTORE. Mr. President, we cannot hear a thing. May we have

PRESIDING OFFICER (Mr. TUNNEY). The Senate will be in order.

CHURCH. The sooner we can have the vote the better it would
odate the delegation.

AIKEN. It will take only an hour and a quarter to get there.
take care of appointments in the afternoon, that is, if we
have a cloture vote. I hope we can wind up the bill without it.

GRIFFIN. Mr. President, will the Senator yield?

MANSFIELD. I direct these remarks especially to the distin-
Senator from North Carolina (Mr. ERVIN), the distinguished
from Alabama (Mr. ALLEN), and the distinguished Senator
orgia (Mr. GAMBRELL). I wonder if it would not be possible at
e, in view of the vote on the Dominick amendment, to perhaps
t a time limitation covering amendments and amendments
to the rest of the bill. In that way it would be possible to avoid
n cloture and maybe we could bring this matter to a close.
have the reaction of the distinguished Senators mentioned?

ERVIN. Mr. President, in reply to the suggestion made by the
ished majority leader, I consider this bill so bad I think I
e derelict in my duty if I agreed to a time limitation.

ASTORE. The answer is "No." [Laughter.]

RVIN. This bill would destroy the Federal system of govern-
would make Federal judges employment agencies for States.
ill, for the first time in American history, undertakes to con-
the Federal Government, acting through Federal judges,
er to determine who will be the officers, as well as the em-
of States and political subdivisions of the States. I feel that
ve such a destructive effect on the Federal system of govern-
t I could not agree to a time limitation.

ANSFIELD. I was trying to avoid a vote on cloture, if possible,
nder, in view of the situation which has developed which
to the conclusion that if we are ever going to dispose of this
n it will be either the cloture or laying it aside.
would the Senate think of the possibility of a vote on cloture
w afternoon at a reasonable hour?

OMINICK. Mr. President, will the Senator yield?

ANSFIELD. Yes, indeed.

OMINICK. At a moment I believe we have before us the Javits-
amendment, as amended. I thought we could dispose of that
he time we get to this matter for fear that we will get caught
iamentary quandary.

ANSFIELD. The Senator has a good point. I thought I would
question to see the prospects, as long as we have so many
in the Chamber at this time.

VIN. Mr. President, will the Senator yield?

ANSFIELD. I yield.

RVIN. If the majority leader makes a unanimous-consent re-
t we vote on cloture at some stated time tomorrow afternoon,
e event cloture fails to be agreed to, that this bill would be
, we certainly would have no objection.
ter.]

ANSFIELD. Well, under ordinary circumstances I would give
some consideration—not much, but some—but under present

circumstances I could not give it any consideration, because we h
gone this far. We ought to try at least once more. Then after tha
will be up to the joint leadership to decide what should or should
be done about the pending legislation. But I hope this time clo
will prevail, and I hope to be one of the signers of the cloture mot

Mr. RANDOLPH. Mr. President, if the Senator will yield, as lon
we are talking about future dates, can the majority leader tell u
there is to be any business from the standpoint of possible votes in
Senate on the observance of Washington's birthday next Monday?

Mr. MANSFIELD. The answer is "Yes."

Mr. President, the Senator from Colorado has the floor.

Mr. COTTON. Mr. President, if the Senator will yield. I am thorou
ly aware of the fact that we cannot please every Senator, but wo
10 o'clock be as good for Wednesday?

Mr. MANSFIELD. Ten o'clock would be agreeable, if a motion is h
before the Senate.

Now I think I ought to yield to the Senator from New York, w
has an amendment.

The PRESIDING OFFICER. The question recurs on amendment No.
as amended.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is the Williams-Javits amendment now any furt
amendable?

The PRESIDING OFFICER. No.

Mr. JAVITS. And the text of it now is what was the Dominick amen
ment?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. Not yet.

Mr. JAVITS. I see no necessity for them. I hope we will have a v
vote.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Willia
Javits amendment, as amended. On this question the yeas and n
have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from N
Mexico (Mr. Anderson), the Senator from Oklahoma (Mr. Harr
the Senator from Indiana (Mr. Hartke), the Senator from Minnes
(Mr. Humphrey), the Senator from Washington (Mr. Jackson),
Senator from Washington (Mr. Magnuson), the Senator from S
Dakota (Mr. McGovern), the Senator from Maine (Mr. Muskie),
the Senator from Alaska (Mr. Gravel) are necessarily absent.

I further announce that the Senator from Georgia (Mr. Talma
and the Senator from Massachusetts (Mr. Kennedy) are absen
official business.

I further announce that, if present and voting, the Senator f
Washington (Mr. Magnuson), the Senator from Washington
Jackson), and the Senator from Minnesota (Mr. Humphrey) w
each vote "yea."

GRIFFIN. I announce that the Senator from Hawaii (Mr. Fong), nator from Wyoming (Mr. Hansen), and the Senators from (Mr. Hatfield and Mr. Packwood) are necessarily absent. Senator from South Dakota (Mr. Mundt) is absent because of

resent and voting, the Senator from Wyoming (Mr. Hansen) ote "yea."

result was announced—yeas 81, nays 3, as follows:

[No. 46 Leg.]

YEAS—81

Dominick	Nelson
Eagleton	Pastore
Eastland	Pearson
Ellender	Pell
Ervin	Percy
Fannin	Proxmire
Fulbright	Randolph
Gambrell	Ribicoff
Goldwater	Roth
Griffin	Saxbe
Gurney	Schweiker
Hollings	Scott
Hruska	Smith
Hughes	Sparkman
Javits	Spong
Jordan, N.C.	Stafford
Jordan, Idaho	Stennis
Long	Stevens
Mansfield	Stevenson
Mathias	Symington
McClellan	Taft
McGee	Thurmond
McIntyre	Tower
Miller	Tunney
Mondale	Weicker
Montoya	Williams
Moss	Young

NAYS—3

Inouye	Metcalf

NOT VOTING—16

Hatfield	Mundt
Humphrey	Muskie
Jackson	Packwood
Kennedy	Talmadge
Magnuson	
McGovern	

Va.

Williams-Javits amendment (No. 878), as amended, was

ILLIAMS. Mr. President, I move to reconsider the vote by amendment was agreed to.

VITS. I move to lay that motion on the table.

tion to lay on the table was agreed to.

RUSKA. Mr. President, I call up my amendment No. 834—

OMINICK. Mr. President, will the Senator from Nebraska have some technical amendments which really do nothing

except redesignate section numbers and delete duplicated mate
They are of no substantive value whatsoever, and I thought if
Senator from Nebraska would withhold, we could probably get
amendments through without any discussion.

Mr. HRUSKA. Mr. President, I yield for that limited purpose, on
stipulation that I do not lose my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMINICK. Mr. President, I send to the desk an amendment
ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 47, beginning with line 19, strike out through line 19 on page 50.
On page 65, line 21, strike out "(q)".
On page 65, line 23, strike out "section 706 (q) through (w)" and inser
lieu thereof: "section 706 (f) through (k)".

Mr. DOMINICK. Mr. President, I can assure my colleagues that th
is nothing of substance in this amendment. It amounts to putting
preceding amendments in line with the remainder of the bill by cha
ing the section numbers, and deleting duplicated language. I am w
ing to have a vote on it right now.

The PRESIDING OFFICER (Mr. TUNNEY). The question is on agree
to the amendment of the Senator from Colorado (Mr. Dominick).

The amendment was agreed to.

Mr. DOMINICK. I thank the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recogni

AMENDMENT NO. 834

Mr. HRUSKA. Mr. President, I call up my amendment No. 834, a
ask that it be made the pending business.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

Delete section 5, beginning on line 20, page 50, and continuing through
3, page 52, and renumber the succeeding sections as appropriate.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD of West Virginia. Mr. President, I suggest the abs
of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that
order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE ON CLOTURE MOTION

Mr. MANSFIELD. Mr. President, it is my understanding that the
tinguished Senator from Nebraska (Mr. Hruska) will have at
one major amendment, possibly two; that there may be other am
ments as well; but so far, the remainder of the week on the pen
measure does not appear too interesting.

It had been thought that perhaps a cloture motion would be
before the Senate tonight and that a vote on cloture would occ
Thursday next. However, in the interest of comity, a different arra

was arrived at, and it is now the understanding of the joint
rship that the cloture motion will be laid before the Senate on
ay and the vote will occur on Tuesday next.
ay I say that so far as I am concerned—and I will sign the cloture
on this time—there will be no more cloture motions. In other
ls, the peak of the pending measure will be arrived at on the next
re motion to be filed on Friday next and to go into operation
r after the Senate convenes on Tuesday next.

* * * * * * *

. MANSFIELD. May I say that I will send out telegrams, along with
istinguished Republican leader, to all Senators. I would express
ope that, come Tuesday next, 99 Senators will be on hand in this
ber. I would also express the hope that there will be rollcall votes
row.

e Senate continued with the consideration of the bill (S. 2515) a
further promote equal employment opportunities for American
ers.

MANSFIELD. May I ask the distinguished Senator from Neb-
(Mr. Hruska); does he have an amendment pending?
HRUSKA. Yes, I have.
MANSFIELD. Would the Senator consider a yea and nay vote on
mendment?
HRUSKA. That would be agreeable.
MANSFIELD. Mr. President, I ask for the yeas and nays on that
dment.
yeas and nays were ordered.
MANSFIELD. Mr. President, in other words, so far as the joint
ship is concerned, we will do our best to see that there are roll-
otes every day this week—tomorrow, Thursday, and Friday.
ators should not be surprised if, cloture lacking, there are live
n calls instead.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to the amendment (numbered 878) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 10, after line 16, add a new subsection reading as follows:

"(q) Notwithstanding any other provision of this title, it shall constitute a defense in any action or proceeding under this title for the employer to show by substantial evidence that between the time of the filing of the charge and the time of the filing of the complaint the employer offered to make an agreement with the Commission satisfying the legal obligations imposed by this title upon the employer with respect to the person by whom or in whose behalf the charge was

Amdt. No. 885

filed, and any court which adjudges or reviews the action or proceeding shall have jurisdiction to determine for itself whether or not such offer was made and to enter judgment accordingly."

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, insert the following between line 10 and line 11:

"(5) In subsection (f), change the period at the end of the subsection to a colon, and add thereafter the following words: '*Provided, however*, That the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person employed to aid him in the execution of the constitutional or legal powers of his office.'."

Renumber section (5) as (6).

Amdt. No. 886

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, insert the following between line 10 and 11:

"(5) In subsection (f), change the period at the end of the subsection to a colon, and add thereafter the following words: '*Provided, however,* That the term "employee" shall not include any persons elected to public office in any State or any political subdivision of any State by the qualified voters thereof.'."

Renumber section (5) as (6).

Amdt. No. 887

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, insert the following between line 10 and line 11:

"(5) In subsection (f), change the period at the end of the subsection to a colon, and add thereafter the following words:

"'*Provided, however*, That the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to advise him in respect to the exercise of the constitutional or legal powers of his office.'."

Renumber section (5) as (6).

Amdt. No. 888

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

ended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 50, between lines 7 and 8, insert a new subsection reading as follows:

"(b) Notwithstanding any other provision of this title, it shall constitute a defense in any action or proceeding under this title for the employer to show by substantial evidence that between the time of the filing of the charge and the time of the filing of the complaint the employer offered to make an agreement with the Commission satisfying the legal obligations imposed by this title upon the employer with respect to the person by whom or in whose behalf the charge was filed, and any court which adjudges

Amdt. No. 889

or reviews the action or proceeding shall have jurisdiction to determine for itself whether or not such offer was made and to enter judgment accordingly."

And reletter subsection (b) on page 50, line 8, as subsection (c); subsection (c) on page 50, line 11, as subsection (d); and subsection (d) on page 50, line 16, as subsection (e).

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

tended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 66, insert the following new section between lines 13 and 14:

"SEC. 13. The amendments made by this Act to title VII of the Civil Rights Act of 1964 shall not be applicable to the employees of States or the political subdivisions of States as long as Congress exempts its employees and the employees of its Members from them"

Renumber SEC. 13 as SEC. 14.

Amdt. No. 890

[From the Congressional Record—Senate, Feb. 16, 1972]

UAL EMPLOYMENT OPPORTUNITIES ACT OF 1971

PRESIDING OFFICER (Mr. Tunney). Under the previous order, hair lays before the Senate the unfinished business, which the will state.

assistant legislative clerk read as follows:

ll (S. 2515) to further promote equal employment opportunities for an workers.

Senate resumed the consideration of the bill.

AMENDMENT NO. 834

PRESIDING OFFICER. The question is on agreeing to the amend- (No. 834) proposed by the Senator from Nebraska (Mr. ı),

BYRD of West Virginia. Mr. President, I suggest the absence of um.

PRESIDING OFFICER. The clerk will call the roll.

second assistant legislative clerk proceeded to call the roll.

BYRD of West Virginia. Mr. President, I ask unanimous con- ıt the order for the quorium call be rescinded.

PRESIDING OFFICER (Mr. Tunney). Without objection, it is so l.

* * * * * *

opy of amendment 834 to S. 2515 may be found on p. 1022.)

Senate continued with the consideration of the bill (S. 2515), o further promote equal employment opportunities for Ameri- kers.

BYRD of West Virginia. Mr. President, I suggest the absence of m.

PRESIDING OFFICER. The clerk will call the roll.

egislative clerk proceeded to call the roll.

IRUSKA. Mr. President, I ask unanimous consent that the order quorum call be rescinded.

PRESIDING OFFICER (Mr. Stevenson). Without objection, it is ed.

IRUSKA. Mr. President, I rise in support of the amendment to ding measure which seeks to delete section 5 from the bill. 5, as written, adds three new subsections to section 707 of the ights Act of 1964, thereby affecting the transfer of the func- d the jurisdiction and the authority of the Attorney General cute "pattern and practice" cases over to the jurisdiction and ority of the EEO Commission.

e say at the outset that, unless there is some occasion developed ore protracted extension of this issue than this Senator can

envision now, I believe it is very likely that we will get to a vote the middle of the afternoon. I have had a brief discussion of t question with the manager of the bill and he appears to be in agre ment with my statement concerning a prompt vote, although he perfectly competent to express himself on that subject and he is pre ent in the Chamber.

Mr. President, section 707 of the Civil Rights Act deals with pa tern and practice cases, cases in which a group or groups might e gage in any practice or activity which would result in the denial or the resistance to the full exercise of the rights and the privileg that are contained in Title VII of the Civil Rights Act of 1964 a those rights that have to do with assuring persons who are employe or who are applicants for employment of no discrimination, on a count of the several grounds upon which discrimination might exercised.

If a situation of that kind appears to exist, the Attorney Gener is authorized to investigate the case and then to prosecute a civil ca And the suit would be brought in the Federal district court. Ho ever, if the Attorney General certifies that it is of general public i terests and requests a three-judge court, a three-judge court will convened by the chief judge of the circuit and will hear the case on expedited basis. Appeal would lie to the Supreme Court direct from that three-judge court. If there is no certificate of general pu lic interest, the case is tried by a regular district court and g through the regular routes of appeal that such cases normally tak

The suits that are involved in this pattern or practice category a a special kind of suits that partake in large measure of a class acti bill that can involve a company with all of its branches, all of i divisions, and all of its affiliates, or they can take a labor union ha ing a membership of tens of thousands of members. They can ta employers and companies and unions in the same proceedings, or, a matter of fact, they may take the form of affecting an entire ind try, so that it would be a class action.

Two examples immediately come to mind in that regard. One had do with an action involving the California-based movie industry, a there, suit was filed and prosecuted as against several companies a some labor unions.

Another instance of that type of industry action arose in Las Veg with the gambling casinos and hotels there. There were 17 hotels a casinos, together with five unions embracing approximately 20,0 positions involved in a single suit. The practice and the discriminati that was practiced there was made the subject of the suit. A dec was entered which had cease and desist and other provisions aimed eliminating those discriminatory practices.

Section 5 of the bill would take all of those functions that ha heretofore been exercised by the Attorney General and assigned him and transfer them over to the Equal Employment Opportun Commission. The Commission would be directed to try those ca under procedures set out in section 706 of the Civil Rights Act.

Mr. President, it is the opinion of this Senator that this bill h been greatly improved by the adoption of the Dominick amendm There are additional views as to how the matter might have been h dled, but by assigning and adjudicating disputes and controver

proper place, namely, the courts, where trial of the case is had, a decree is entered into, and where orders of compliance and mpliance judgments may be taken, seems to me, in my judg-
a great improvement.
o believe that the bill would be further improved by the adop-
f the pending amendment, because there would be the concurrent ent or at least a concurrent jurisdiction residing in the Depart-
of Justice in the cases involving employment discrimination. I usly made a detailed and technical statement setting forth the s for the introduction of this amendment. I would refer inter-
colleagues to page S1544 of the Record of February 9, 1972.
re are a number of reasons why this amendment is an improve-
over the committee provision.
ight assign as the first reason the basic proposition that the At-
General and the Department of Justice already have general ction and general enforcement authority over other types of
hts acts and statutes, so that the Attorney General has jurisdic-
d has authority and litigates in the field of discrimination in
g; education, voting, employment, and many others.
ould be a very singular development indeed if the Attorney l were to be deprived of his jurisdiction to prosecute civil cases, cases arising from the conferring of civil rights to people interests of employment. There is no justification for it that nator can see under the present conditions and the status of the 2515 together with the Dominick amendment.
rst of all we have the Attorney General having the general of enforcing civil rights laws. Second, the Department of Jus-
well equipped to handle such cases. They have the FBI to make gation. They have the U.S. marshals to assist with the enforce-
f the proceedings, and they have the appeals unit in the Civil Division of the Department of Justice which assures nation-
andards and uniformity. In addition they are a part of a great ment with all of its resources. The employment section has a ined corps of lawyers, some 35 in number, with great expertise special field.
have gained a good deal of expertise in this particular kind in addition to the experience that the Department of Justice ned in the prosecution of other types of civil rights cases. And artment has the 93 U.S. Attorneys' offices with their numerous roughout the Nation to assist with these cases. The EEOC duplicate these resources. To transfer 707 authority will be to at in 2 years the EEOC will be able to handle these cases in ssional and effective manner. We have no need to guess when Justice is doing the job very capably at present.
n 5 provides that under this section there shall be transferred ommission "the function of the Attorney General," together ch personnel, property, records, and unexpended balances of iations, allocations and other funds available, held, or used in on with the functions of section 707.
not be done.
ithstanding that provision for transfer, it is not possible to the FBI to the Commission. It would not go. It is impossible to the investigators they have available. It is impossible to

transfer the personnel, as much of the personnel, and especially lawyers, are attached to the Department of Justice and have o duties and commitments. The section is an integral part of the Dep ment and cannot be moved about like a chess piece together with s porting resources.

There is no way of forcing any of the attorneys or the personne go to another agency. Many of the attorneys there are willing to w for the Department of Justice but would not be willing to de their efforts and their time to the work of the Commission.

That is not derogatory to the Commission. It is a matter of p sonal and professional discretion and judgment. It is true that Commission may in due time develop a system of investigators; true that in time the Commission may develop and have an organ tion built up; but it will take time and moreover it would be a dupl tion of what is now taken care of in very good shape under present system.

Another point which would argue in favor of the Department Justice retaining this jurisdiction is that in the field of enforcem and compliance they have gained a good deal of valuable experie in other types of civil rights cases than those which involve only ployment. There would be a continuity of litigation in this field if Attorney General and the Department of Justice retain jurisdict instead of abandoning and negating the past education and expert There would be a continuity of a very fine record to which I s refer in a little while.

Not only has the Department done a very effective job of enf ing section 707, and I would point out that it has been successfu every single case brought to final judgment, but it has acted exp tiously as well. Of the past dozen or so cases filed by the Depart pursuant to its "pattern and practice" authority, every one has b reduced to judgment within 11 months. That is a most excellent enviable record which will be very difficult, if not impossible, for EEOC to duplicate.

It may be 3 years before there would develop within the EEO pipeline of cases which would insure effective enforcement of tion 707 because of the necessity of developing a new staff, perso and procedures for this particular kind of special case.

Furthermore, with the Department of Justice it is possible to velop in an orderly way and in a logical way case law which serve as a valuable precedent. They can do that because they se picture as a whole; they see civil rights, not consisting of sep segments, but consisting of many aspects, including voting, ed tion, housing, and so on, which require a rounding out of prece that can be logically developed in the litigation of pattern and p tice cases.

It would take a long time to develop that machinery and it sh not be engaged in when it would be a duplication and in some wa useless procedure.

The record of the Department of Justice has been a good on As sometimes said, "Well, they have tried only about 70 or 75 ca That is true, but there has been a great deal of progress in thes cases. Let me say for purposes of convenience that the number of is 70. These lawsuits have affected over 275,000 positions directly many more indirectly because of the precedent set.

case record of individual complaints before the EEOC is in
nge of 30,000 a year. They can process only a very small per-
e of them, they investigate some and are able to discard them
l them to be without merit, and so on. That volume of 30,000
s estimated to grow to 40,000 this year, according to Chairman
m Brown of the Commission. When we consider that the De-
ent has 70 lawsuits in the hard form of a court decree, with
ance and enforcement procedure, at the hands of the judge who
the decree, then we know it is a very potent and a very effec-
ece of machinery toward achieving the goals of Title VII of
vil Rights Act.

President, the fact is that the Equal Opportunity Employment
ission does not want this new power, this new authority, to
ite pattern and practice cases. Chairman Brown of the Com-
testified on that subject and he pointed out that because of
vy caseload which is now in the range of 30,000, and which
ly will be 45,000 this coming year, they have more than enough

situation since he gave that testimony has become even greater
re burdensome by way of volume and proceedings because
his bill the Commission will have additional power to bring
court and to prosecute them. Heretofore that was not the

rman Brown testified along that line in the committee even
e caseload was not so burdensome. He said at one point:

ROWN. Mr. Chairman, I certainly feel that the commission has the
ey to handle these matters.
d question at this time whether it has the ability in terms of resources—
nancial resources—or in terms of people.
d be very much against the transfer, as I have indicated in my pre-
xt, of the Office of Federal Contract Compliance responsibility at this

d be against the transfer of Attorney General's right in Title VII at
and also the responsibility of the Civil Service Commission to the

rman Brown went on to state:

the problems, as I have mentioned, is the overwhelming backlog of

es into the figures and then he states:

natter of fact, in the budget which was submitted for fiscal year 1973
ipated some 45,000 new incoming charges of discrimination in fiscal
.

ncludes his testimony on this aspect by stating:

ing those figures into consideration—plus the fact that in some cases
n the advisability of putting some of the provisions in this Commis-
it relates to the Office of Federal Contract Compliance—my position
that I am not in favor of those transfers.

he says "those transfers" he includes that of Title VII.
have a situation here, Mr. President, where the agency itself
want the powers, and certainly, together with all the other
that would be good ground for leaving the power and au-
exactly where it is. It would subserve the right of the employees
public in a more expeditious, more thoughtful, and more stable
ment of the provisions of the bill and Title VII.

These remarks, together with those made on February 9, state reasons why I feel this amendment should be approved.

At the present time, unless there is objection, I yield to the Sen from Florida who has some remarks to make. He has an engage later this afternoon and it would serve his convenience to permit to speak at this time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recogn

Mr. GURNEY. Mr. President, I intend to support the amendmen the distinguished senior Senator from Nebraska (Mr. HRUSKA) w would leave in the Department of Justice authority to bring "p tern and practice" lawsuits rather than make an ostensible transf the authority to the Equal Employment Opportunity Commissio use the word "ostensible" deliberately because I do not belie actual transfer would result if the committee bill is adopted; re "pattern and practice" authority would cease in many impor regards.

S. 2515 would not only withdraw the prosecution of pattern practice cases from the Department of Justice, but would aggra the mistake by eventually removing the adjudicating function f the courts and instead utilizing a proposed administrative trib This action could only hurt potential plaintiffs under Title VI replacing an effective tribunal with an unproven administrativ tity, vulnerable to political pressures, and required to rely upo courts of appeals for enforcement of its decisions. While a di court's decision is admittedly subject to appeal, only about 7 pe of all such decisions are, in fact, appealed. Furthermore, even w appeals are taken, the district court's decision is implem promptly on remand to the district court. In the case of an ad istrative board, however, the final appellate determination o merits may only begin a new round of litigation to resolve dis compliance matters. As a result, as one commentator noted in di ing NLRB cases which follow this procedure:

> . . . the hard cases can run on for years. It was 13 years before the em found to have been unlawfully discharged in the *Mastro Plastics* case co their back pay. Moreover, the Darlington plant closure case was begun i and was not finally closed until this year.
>
> See address to the ABA Labor Law Section Convention of Mr. How Anderson, Senior Editor of Labor Services of the Bureau of National A Inc., 71 LRR at 632 (1967).

The *Mastro Plastics* case is by no means an exception. In Ge Steel against NLRB, almost 7 years have elapsed as that ca moved from the Board to a court of appeals and back again t commence the cycle twice. Currently the case is before the Boa the third time and will undoubtedly require a petition to the of appeals for enforcement. Finally, in Rutter Rex Mfg. Co. a NLRB, the Board issued a decision in 1956 finding the com guilty of unfair labor practices. Now over 15 years later the ca still being litigated—see 194 NLRB No. 6. These loan delays become the trademark of a procedural system in which the ad cative body lacks the power to enforce its orders.

The Department of Justice, on the other hand, in conjunction the courts, has proven their effectiveness in enforcing pattern practice cases.

d Norman, the Assistant Attorney General, Civil Rights Divi-
stified concerning this proposal. In part he said:

ease and desist authority is geared toward individual complaints and
ants. We find it difficult to understand how pervasive practices of
ransfer and promotion which have discriminatory impact can be success-
t in the complaint-oriented administrative procedures, even apart from
stion as to whether housing problems such as those at Cannon Mills
addressed in an administrative proceeding under Title VII.

which illustrates my point is the *Seattle Building Trades* case, styled
tates v. *Ironworkers, Local 86, et al.*, 315 F. Supp. 1202 (W.D. Wash.,
hat suit was filed on October 21, 1969. After discovery, trial on the
as held in February and March of 1970, and on June 16, 1970, effective
s granted by the district court. The relief took effect on June 30, so that
the defendants' appeal is still pending in the court of appeals, the
f discrimination are now employed and are obtaining the benefits of
uit. That suit involved the referral and membership practices of the
st building trades in the Seattle area, and the apprenticeship stand-
dards and practices of three affiliated joint apprenticeship training
es.

urt's decree not only grants specific relief for 135 individual victims
nination but also provides for the reformation of procedures with
referral, membership and selection of apprentices. Again, we ques-
ther this kind of area-wide suit against eight separate defendants
handled in an administrative proceeding. Based on the history of the
Labor Relations Board, we feel quite certain that effective relief
have been obtained administratively in the short period of time in
court was able to address itself to this problem, hold a full-scale
nd grant effective and enforceable relief.

nit that Federal district court judges with their broad experi-
deciding complex legal issues are better equipped than are
rative hearing examiners to deal with large-scale employ-
crimination effectively. Because "pattern and practice" dis-
ion engaged in by an employer or union adversely affects
ial numbers of individuals, it is critical that such aggrieved
als be afforded the most expeditious and readily enforceable
ailable. As noted earlier, such expedition can be more readily
in court because of the built-in delays inherent in the struc-
vided in S. 2515. Of particular significance when dealing with
industrywide discrimination is the power of district courts
jurisdiction in order to grant additional relief. In the *Seattle*
ers case referred to above, the court provided that the parties
urn to the court if the facts required modifying the decree
ate its purpose.

trast, an administrative tribunal could not modify its order
ad been enforced in court without the court's approval or
g a new action and petitioning again for enforcement in
of appeals. The present court system clearly offers the great-
ility in obtaining effective relief quickly in pattern and prac-

, it seems apparent that the vesting of pattern and practice
on in a commission with a cease-and-desist authority would
, in the words of Deputy Assistant Attorney General Nor-
severe curtailment of Federal enforcement efforts in the
ual employment opportunity." The courts have been clearly
e to the legislative mandate in section 707. In fact, courts
formly recognized the urgency which the act requires, and
edited these cases in every way. See, *United States* v. *Gustin-*

Bacon Division, Certain-Teed Prod. Corp., et al., 425 F. 2d 539 (
10 1970) *cert den'd*, —— U.S. ——, (3 (CCH) E.P.D. Para. 8
and *United States* v. *Local 1, Ironworkers*, —— F. 2d —— (C.
1970) (3 (CCH) E.P.D. Para. 8098).

The consequence of adopting S. 2515 would be that on the dat
amendments become effective, with the exception of those "par
and practice" suits already before the courts, all judicial enforce
of Title VII would cease. The victims of discrimination would
lose the protection of the expansive equity powers of the Federal
trict courts. No longer would the decision of the trier of fact be
to retain jurisdiction in order to insure that the appropriate effe
obtained without initiating a new proceeding. Thereafter, the
protections afforded individuals subject to employment discrimina
would be through the cease-and-desist authority of the Commis

I submit, Mr. President, that the transfer of pattern and pra
prosecution functions from the Department of Justice to the E
and the removal of the Federal courts' jurisdiction to hear such
would not strengthen the law—it would cripple it.

As a matter of fact, it is hard for me to understand how the aut
and supporters of this piece of legislation suggest the removal of
power and function from the Department of Justice and from
jurisdiction of the Federal courts. The very discrimination they
aiming against is better hit and tackled and dealt with in the p
tices we have now in the Justice Department than they would be i
new and untried procedure.

I certainly hope the Senate, when we vote on the very fine am
ment of the distinguished senior Senator from Nebraska, wi
the folly of the way the bill is drafted and put back into it the pr
effective practices of letting the Department of Justice and the
handle these discrimination cases.

I yield back the remainder of my time.

Mr. BROCK. Mr. President, will the Senator from Nebraska y

Mr. HRUSKA. We are not under limited time.

Mr. BROCK. Mr. President, I rise in support of the amendme
the Senator from Nebraska. Yesterday the Senate took an ac
in the passage of the Dominick amendment requiring court pr
to protect the rights of all the people in this country, which I t
was an enormous step forward in implementing this bill. Toda
have, I think, an equivalent opportunity.

The bill now before the Senate, S. 2515, provides in section
authority to bring "pattern and practice" lawsuits against empl
will be transferred from the Department of Justice to the Equa
ployment Opportunity Commission. I do not believe that this s
be done.

Our distinguished colleague from Nebraska (Mr. Hruska) ha
troduced a simple amendment which would strike section 5 fro
bill. I intend to support this amendment and urge my colleagues
likewise.

Present law permits the Department of Justice to bring su
Federal courts which will adjudicate all the employment practi
a corporation, union or group of unions, with the relief direc
the underlying policies which are discriminatory or which perp
the effects of past discrimination. Pursuant to this authority, th

at has brought some 70 suits and been successful in all that en finally determined. These 70 suits have involved directly an 275,000 employees and indirectly—by way of precedent—les more.

who criticize the Department for the careful use of its powers his section should consider the larger ramifications of the 70 ich have been brought.

ffectiveness of the pattern and practice program should not be merely by reference to the number of cases filed. Rather, it e judged in terms of wide-scale relief obtained by the Attor-eral which has benefited hundreds and thousands of minority

xample, in one case the Department of Justice prosecuted three panies as class defendants representing the interests of ap-tely 1,500 contractor employers. A favorable decision in this would affect the workers in a whole sector of the economy. ion, as recognized by Chairman Brown of the EEOC.

portance of these suits has largely been the decisions which resulted have set the precedents for subsequent lesser Title VII actions. To s powerful and effective means whereby the courts can interpret and e provisions of Title VII, while at the same time establishing new recedents applicable to other courts and administrative agencies alike, in my judgment, serve to promote the most effective administration mployment.

vious reasons, in order to obtain these dual objectives, the cases are chosen selectively. For instance, in the first 6 months he Department has disposed of 77 matters of which only 11 gated; the 70 "pattern and practice" cases are, I understand, t of sifting through nearly 1,700 matters. The cases prose-the cream that offer the greatest impact upon vast segments nomy.

as been pointedly illustrated by the testimony of Mr. David an, the Deputy Assistant Attorney General for Civil Rights, fed out that:

is of lawsuits . . . filed . . . reflect problems which can be met suc-n a "pattern or practice" case, but which would be very difficult if dealt with in an administrative process. For purposes of illustration, e reference to . . . *Cannon Mills* filed April 8, 1971.

non Mills suit alleged a "pattern and practice" in hiring, transfer-romotions with respect to employment practices, and discriminatory assignment of company-owned housing. The suit pertains to all of lants which employ approximately 24,000 persons.

ent decree which was entered on February 24, 1971 changed the or transfer and promotion for the affected class of black employees, a ling approximately 90 percent of the black employees, and provides ay transfer without loss of seniority to the better-paying, traditionally It also provides the objective criteria for hiring and promotion which in a detailed job description catalog.

m of rental of housing was totally reformed.

the decree calls for reformation of the entire system of hiring, trans-motion; and at the same time deals with the problem of housing

nt of David L. Norman, Deputy Assistant Attorney General Civil sion, Department of Justice, before General Subcommittee on Labor, on Education and Labor, House of Representatives, March 3, 1971.)

nnon Mills case is just one example of how the waves caused le suit and the decision therein spread out to cover an en-

tire industry and, indeed, an entire system of employment practi
This is the type of work done by the Department which is overlo
by its critics. When it is considered that only 20 of these 70 c
have been based on referrals from the EEOC, it can be seen that
record of the agency to which this power would be shifted is no m
of effectiveness when contrasted with the very effective work of
Justice Department.

This is just one of the reasons, Mr. President, why I feel that
tion 707 authority should remain with the Department and the
torney General. It is one of the reasons why I support the pend
amendment.

Mr. President, I yield back the remainder of my time.

Mr. DOLE. Mr. President, I rise to indicate my support for
amendment offered by the distinguished Senator from Nebraska (
Hruska) to the pending bill (S. 2515). As the distinguished Sen
from Nebraska has pointed out, the amendment would delete sec
5 from the EEOC bill which would have the effect of leaving in
Department of Justice the authority to bring pattern-and-prac
lawsuits.

S. 2515 provides that the authority to bring this important c
of lawsuits presently invested in the Attorney General under sec
707 of the Civil Rights Act would be transferred to the Equal E
ployment Opportunity Commission. The pattern-and-practice rem
permits an adjudication of all the employment policies of a corp
tion, union, or group of unions promptly, with the relief addres
to the underlying policies which are discriminatory or which p
petuate the effects of past discrimination.

Contrary to the opinion of the committee which reported this
the desired goal of equal employment opportunity can best be se
by retention of this authority in the Department of Justice. This o
ion is supported by EEOC Chairman Brown, who, in his testim
before the Senate subcommittee on October 4, 1971, stated:

> I feel that such a transfer would not, at this time, be in the best interests of
> Commission and would not promote the most effective administration of T
> VII.

The Attorney General has developed, and is continuing to dev
an expertise in the area of pattern-and-practice lawsuits. The su
of the Attorney General's efforts in pattern-and-practice actions
ably documented by witnesses before the subcommittee. For exam
in opposing the proposed transfer, Congressman Erlenborn no
that—

> Between July, 1965, when Title VII took effect, and September 1, 197
> Civil Rights Division of the Department of Justice filed some 69 or 70 suit
> the basis of Section 707. The Division has had a high degree of succes
> litigating these cases, and principles established in them at the trial or app
> level have been useful to complaining private litigants and to other federal a
> cies. Undoubtedly, one of the reasons for its success is the fact that it
> access to the investigative resources of the Federal Bureau of Invest
> All in all it would seem to me, that an expertise in discriminatory employ
> practice cases has been developed in the Division that is too valuable a
> to lay to waste. (Statement of John N. Erlenborn Before the Labor Su
> mittee of the Senate Laber and Public Welfare Committee on H.R. 17
> 2515 and S. 2617, Proposals to Further Promote Equal Employment Opport
> for American Workers).

expertise is derived not only from experience in the area of
nent discrimination but also from the broad experience ob-
is a result of the exercise of the Attorney General's authority
ecuting "pattern and practice" discrimination in the areas of
, voting, and the related authority vested in the Department
ce to prosecute discrimination in education. Further, in prose-
'pattern and practice" discrimination in employment, the At-
General has available the human resources of a skilled and
group of attorneys who, over the past years, have obtained a
successful litigation record as evidenced by the fact that the
nent of Justice has never lost a concluded employment dis-
tion action.

over, in order to administer its responsibilities under section
e effectively:

ober of 1969, the Civil Rights Division reorganized and created an
nt section . . . so that the attorneys and the supervisory attorneys
ned to that section, which now number about 29, would work exclu-
pattern and practice cases, seeking to achieve equal employment op-
s for everyone. (Statement of David L. Norman, Deputy Assistant
General, Civil Rights Division, Department of Justice, before General
ttee on Labor, Committee on Education and Labor, House of Repre-
March 3, 1971.)

29 attorneys—now increased to 35, I understand—are for the
t young men, who chose to begin their legal careers in the
ent of Justice where they have been trained and supervised.
he tradition in most Government agencies; these men would,
ormal course of events, train those who would follow them
aving Government service. S. 2515 would attempt to trans-
rking unit as if it was composed of machinery—not men.
edly many of these 29 will choose to stay with their present
n the Department and others may leave the Government, but
ent, the traditional process will be disturbed, and a unique
lost. The experience and skill of these attorneys working in
yment section devoted exclusively to "pattern and practice"
coupled with the extensive and unequaled investigative re-
nd experience of the Federal Bureau of Investigation, is not
able commodity.

ritics have erroneously claimed that the Justice Department
lax in fulfilling its responsibility. Pointing to the 70 cases
he Justice Department, the critics have asserted that more
red. Such criticism is superficial and overlooks the inherent
d the scope of pattern and practice litigation. Typically, the
epartment is concerned with repeated or systematic discrimi-
an employer, union, or employment agency. Frequently, a
se will involve numerous facilities or an entire areawide in-
nd will affect several thousand employees. Thus, an analysis
ics from the Justice Department's files shows that in 70
nd practice cases filed, 275,500 employees and well over 242
were involved. As an example, one such case concerned the
ent practices of a trucking company with 8,466 employees
t 22 different sites scattered over the east coast and the Mid-
ther pattern suit attacked the hiring and employment prac-
e Las Vegas resort industry affecting a large number of em-

ployees. A total of about 20,000 employees was involved, plus 17 ho and casinos, and five unions.

In another instance, an employment agency having 10 offices i large midwestern metropolis was the target of a Justice Departm pattern and practice suit.

Also, there have been a number of suits which have challenged practices of many or all of the major building and construction tr unions in an entire metropolitan area. Of necessity, such suits often complex and extensive, requiring the expenditure of vast sources. Clearly it would be a mistake to measure the Departme dedication by the number of suits filed without a clear understa ing of what is involved. Indeed, the foregoing analysis of the sc and impact of the Justice Department's litigation record in the a of equal employment demonstrates that it has been active and vigor in its enforcement responsibilities.

Despite this record, the Justice Department's critics would tra fer responsibility for pattern and practice suits to the Equal Emp ment Opportunity Commission without analyzing the Commissio own performance in this area. Under the current structure of Title V the Commission is supposedly the initiating force which refers ca to the Department of Justice. Since the Commission's sole duty to handle Title VII claims, it would be only reasonable to anticip that the Commission would have discovered and referred a multitu of cases. This is especially true in view of the Commission's po to undertake an extensive investigation of each respondent's pers nel records and policies each time a charge of individual discrim tion is filed. Nevertheless, when the facts are examined, it beco apparent that the Commission, not the Department of Justice, been the laggard. Out of the thousands of cases processed by the Co mission each year, it has, on average, only referred 70 pattern ca a year to the Department of Justice. The Department has, on other hand, prosecuted 70 cases among the hundred considered prosecution during the same period of time. In view of the low p portion of cases of any type that are traditionally tried, this is inde a quality record. This record looks even better when it is discover that of the 70 cases filed, only 20 resulted from EEOC referr according to data supplied by the Department of Justice.

Mr. President, the effective work of the Department of Justice bringing and winning so many important "pattern and practi suits argues very forcefully for the retention of this power in present place. This would be accomplished by the adoption of t Hruska amendment. In order to maintain effective enforcement section 707 of the 1964 Civil Rights Act, I urge the Senate to app the pending amendment.

In conclusion, I would point out again, as the Senator from N braska has, that in the testimony of Chairman Brown of the EE before the Senate subcommittee on October 4, 1971, he stated:

> I feel that such a transfer would not, at this time, be in the best interest the Commission and would not promote the most effective administration Title VII.

I would suggest that the Chairman of the Commission is in a pr good position to know what might be best for the EEOC, and when he suggests that a transfer at this time would not be in

terests of the Commission, it emphasizes the need for the adop-
the so-called Hruska amendment.
o share the opinion of the Senator from Nebraska that the
ey General and some 35 outstanding attorneys in the Civil
Division have developed in expertise in the area of pattern
actice cases. I think this experience should not be lost. There-
support the amendment of the Senator from Nebraska.
d back the remainder of my time.
Williams. Mr. President, the bill that is before the Senate was
ced on September 14 last year. The amendment now being
, offered by the Senator from Nebraska, was introduced and
on January 27 of this year. I mention this to point out that
endment really contemplated the legislation in the form in
he bill was originally introduced back in September.
this measure has been before us, for the last 5 weeks—to some
t be longer—there have been some significant changes, and
y the most significant change was the amendment voted on
ıy, offered by the Senator from Colorado (Mr. Dominick),
lealt with the mechanism and the method of enforcement
e to the Equal Employment Opportunity Commission.
r the bill as introduced, as we all know, the method and
sm was, as it is with other agencies, cease and desist with
iate court review. We had three votes on that issue: two votes
cease and desist and one vote to delete it and establish court
ngs as the method of enforcement.
ignificant thing is, of course, that out of the three votes, the
did change the jurisdiction or the method of enforcement
ıse-and-desist orders through the Equal Employment Oppor-
Commission and its General Counsel to prosecuting the cases

w of yesterday's action, I had thought that in all logic the
from Nebraska might well not call up his amendment, because
to me that it was introduced under different circumstances.
sent circumstances certainly would suggest to me that this
ent is unnecessary, because we now have an Equal Employ-
portunity Commission, assuming the enactment of the leg-
now must go to court. Therefore, this particular method of
orcement presents certain great problems, including duplica-
he possibility—to use a word that has been used here a great
double jeopardy, in the sense that respondent can be ap-
from either side, from the Department of Justice or from
l Employment Opportunity Commission.
er it is double jeopardy or not—it is not in the criminal
arassment is certainly possible if this particular jurisdic-
patterns and practices is not transferred to the agency that
in logic should control the subject matter with which we
ıg in this bill.
atter is before us, and we will have to have a vote on it, al-
without any order for the yeas and nays, there is still time to
it even without unanimous consent, I suggest to the Sena-

USKA. Mr. President, will the Senator yield?
LLIAMS. I yield.

Mr. HRUSKA. Would it be just as relevant and just as pertinent, in view of the totally different picture we now have in the bill since the adoption of the Dominick amendment, that the manager of the bill would withdraw section 5, because there is no duplication, in that the pattern and practice cases are of a different nature than the complaint procedures that are contained in section 706? Section 5 says that all the functions will be transferred to the Commission, and the Commission, in prosecuting pattern and practice cases, must follow the procedures set out in section 706. Section 706, I submit, is a complaint-oriented procedure and is not geared to the handling and the management of pattern and practice cases which are in the nature of class actions.

It seems to me that the manager of this bill would be well advised to eliminate that section, because it is wrong to put into the Commission authority the prosecution of what amounts to class actions. They are not equipped to do it, and particularly are not equipped when they are going to be circumscribed, when they are going to be hemmed in, by a complaint-oriented procedure which is contained in section 706.

Mr. WILLIAMS. I gather that the suggestion is not acceptable.

I was in error earlier. The yeas and nays have been ordered on the amendment.

Mr. HRUSKA. They have been ordered; yes.

Mr. WILLIAMS. I was in error in that regard.

I should like to back up and review just where we are and how we got here, with respect to patterns and practices in equal employment opportunity and this law that deals with discrimination in employment.

Mr. President, at the time Title VII of the Civil Rights Act was enacted, it was felt that the enforcement of violations of that title could be accomplished through voluntary compliance and through conciliation. Many believed that compulsory enforcement powers would only be necessary in those rare instances where recalcitrant and persistent violations were encountered. Therefore, it was decided that enforcement powers in the Department of Justice, to be activated either by the Department on its own initiative or through the recommendations of the EEOC; would be enough to cope with these more severe problems. This anticipation felt in 1964 has proven to be wrong.

We did not anticipate the extent of discrimination which existed at the time we enacted the legislation, nor did we fully understand its nature. We permitted a fatal flaw to be passed into law. But that was in 1964. We have now seen the effects and the extent of the problem. Employment discrimination represents a major widespread practice in the Nation. At the same time, the only Federal machinery available for the enforcement of the provisions of Title VII: the Justice Department has not been able to keep up with the need for extensive litigation in this field. The Department itself has placed employment discrimination low on its list of priorities and, of course, its priority list is long and broad.

During the past 7 years, it has only brought 69 cases under its authority granted in section 707 of the act. This has produced a tremendous gap between the needs and the realities as illustrated by the fact that in fiscal 1970 alone, the EEOC, under the provisions of its recommending powers, recommended that the Justice Department bring

n no less than 78 separate cases. That is, in 1 year, the EEOC, recommendation authority it now has, recommended 78 sepa-es. The total 7-year history of the Department of Justice has history of bringing only 69 cases— less than the EEOC had nded in 1 year. It is obvious from this figure that vast num-persons are not receiving the full measure of justice that we d to provide them when we enacted that landmark legislation, h the inadequacies of that legislation as they have appeared enactment.

viding for this transfer, the committee was nonetheless, very are of the outstanding contribution to the development of Title has been made by the Civil Rights Division of the Justice ent. The complaint is not at all with the quality of the ac-ught—it has been excellent—but, rather, with the number of ty-nine in 7 years is just not sufficient, in terms of the activity eeded in bringing enforcement through the demands of law not be discrimination in employment.

er, we recognized the important reservoir of talent and ex-the Justice Department and provided for a 2-year phase-out torney General's responsibility—a phase-out of this responsi-d a full phase-in to the Equal Employment Opportunity ion.

EOC now will have—under the bill as it is at this moment—on to bring discrimination cases before a Federal district ere will be no difference between the cases that the Attorney an bring under section 707 as a "pattern and practice" charge which the Commission will be able to bring as a result of 's decision to give EEOC court enforcement powers. Frankly, rn and practice section becomes a redundancy in the law. We that the Justice Department and EEOC will cooperate dur-period so that the Commission will have an opportunity to ts ability to handle these cases.

the Senator from Nebraska is wise and correct in his observa-it might take 2 to 3 years for the Commission to be fully We have provided this 2-year transitional period, which does ne estimate of the distinguished Senator from Nebraska. stice Department will be able to maintain the momentum it lished until such time as the Commission assumes sole ility.

nsolidation of the "pattern or practice" jurisdiction of the Department into EEOC will benefit the complainants, the s, and the courts.

benefit the employer by consolidating all authority and for employment discrimination. This will eliminate the of harassment from multiple investigations and will make yer answerable only to the one agency. It will eliminate such as illustrated by the case of Crown Zellerbach Corp. against ates in 1969. In this case, the union and the employer nego-onciliation agreement with the EEOC, after intensive and nvestigation and negotiation. However, subsequently the Federal Contract Compliance entered the picture and then e Department filed suit in the Federal court. These subse-s reopened an area that had already been investigated, and

subjected the company to new investigations and, of course, subsequent suit. This duplication of effort is wasteful—most unnecessarily wasteful. It is not our aim to unnecessarily harass employers or to subject them to inconsistent demands from a variety of Federal agencies.

The complainant will also be benefited by the consolidation of functions for Title VII enforcement in one agency. He will not be able to bring his complaint to the one agency with the full knowledge that his grievance can be remedied through the procedures of the EEOC, and that this agency will investigate the situation, allow the parties to settle their differences, or will institute its own enforcement provisions to resolve the dispute. In this manner, the complainant is assured of a fair and speedy resolution of his problem, and as a general rule will not have to look elsewhere for his remedies.

In closing, Mr. President, I would like to emphasize that the transfer of the pattern-or-practice jurisdiction to the EEOC is an integral part of the basic goal which we are trying to achieve here—the giving of additional meaning to the Civil Rights Act. We cannot allow ourselves to make the same kinds of mistakes today that we made 7 years ago when we passed the Civil Rights Act. Employment discrimination robs the Nation of its full potential and undermines the national goal of social equality and economic stability. To make the mistake in 1964 was understandable. To continue to make the same mistake in 1972, in my judgment, is unforgivable. We must provide the Nation with strong and uniform enforcement of those goals of equal employment which we so clearly established by that significant step that was taken back in 1964.

Mr. President, all the reasons I have cited marshal themselves against this amendment offered by the Senator from Nebraska. I urge rejection of the amendment.

Mr. JAVITS. Mr. President, once again we face the same problem when an amendment comes up, no matter how important it is, with an empty Chamber. I know that Senators are busy, but it gives the impression that nothing very important is happening on the floor of the Senate. I hope very much, in the interesting way we have here, where our voices, in a sense, permeate the walls, because we are informed as to what is going on and what is being debated, whether it is important or not, individual Senators have word sent from the staffs, attachés, and other Senators, so that I hope the word may go out as to the really great importance of this particular amendment.

It ranks in importance with the amendment we adopted yesterday, as it were, settling the basic platform of the bill. It ranks with the refusal to transfer the Office of Federal Contract Compliance. It ranks in importance with the exclusivity of remedies amendment which we voted not to reconsider yesterday.

A pattern or practice suit is, after all, nothing but a broader suit involving more parties in greater depth in terms of length of time, the prevalence of a given practice than an individual suit. It simply is a raising to another degree, another order of magnitude, of the individual suit and, hence, it affects many more people and requires a degree of attention which celebrated cases in any field should have.

The question is whether we should perpetuate, when the entire case for it has been removed, what would be after this bill becomes law

ratic anachronism by giving the power to institute suit to two
where they both concern private parties.
is really the issue.
Department of Justice retains the right to sue in respect of
d municipal agencies. We understand there is a very good
or that because we are dealing with governmental entities
he federal system. But here we are dealing not with those
nent entities but with, as I say, simply another order of magni-
om the order of magnitude of the individual suit, which by
we have taken yesterday, it seems to me, should have abso-
led the fate of this amendment. By our decision yesterday we
EEOC the power to bring suit in big as well as small cases.
ommittee was cognizant of the argument of readiness, that is,
ommission ready to deal with litigation on a major scale. We
h that by delaying the transfer by 2 years.
have taken the real precaution, the sensible precaution of
the operative date of the transfer so as not to load onto the
ion any more immediacy than is necessary. Therefore, as the
ent of Justice is set up for these litigations on the pattern or
asis, let them go ahead with it.
k an even further precaution in giving the President—and
his is a critically important point—the power even to stop the
after the 2 years if, when he looked at the situation, he found
sirable to continue to permit both EEOC and the Justice
ent to bring these cases.
I that by utilizing the reorganization plan technique which is
page 51, lines 6 to 10 in the bill in which we provide that the
is to be made in 2 years of this jurisdiction, "unless the
submits, and neither House of Congress vetoes, a reorganiza-
pursuant to chapter 9, of title 5, United States Code, incon-
th the provisions of this subsection."
—inconsistent with the transfer.
eems to me that we have very carefully and very intelligently
change.
ner point which it seems to me is absolutely decisive is that the
nder the Dominick amendment, has the authority to institute
ne same actions that the Department of Justice does under
nd practice. These are essentially class actions, and if they
or an individual claimant, then they can sue for a group of
.
s to me that this is provided for by the rules of civil procedures
deral courts, and also it is inherent in the amendment which
d. Under those circumstances it seems to me that this amend-
conclusively dealt with, and whatever may have been the
which might have obtained in respect of cease-and-desist
d the desire to retain this jurisdiction in the Department of
ien the Commission was going to proceed by cease-and-desist
her than by suit, has now given way to the fact that the
on can only proceed by suit. And if it proceeds by suit, then it
d by class suit. If it proceeds by class suit, it is in the position
exactly what the Department of Justice does in pattern and
uits.

I have referred to the rules of civil procedure. I now refer specifi to rule 23 of those rules, which is entitled "Class Actions" and w give the opportunity to engage in the Federal court in class actio properly suing parties. We ourselves have given permission to EEOC to be a properly suing party.

Therefore, to sum up this argument, we have first the Commis with the authority to act in exactly the same type of case in whic Department of Justice acts. Second, we have taken away the c and-desist authority and substituted the power to sue which f qualifies the Commission to take precisely the action now taken b Department of Justice.

Third, we have delayed the transfer to deal with the possibili overwork and have even given the President the opportunity to d it further if he wishes to file a reorganization plan at the end of 2-year period which we have provided.

Mr. President, in the area in which the Department of Justice deal with Government entity, we leave the right to sue with them to inhibit the transfer of pattern and practice suits is simply to c two agencies to do the work of one.

If we inhibit that, we risk complete confusion as both the Com sion and the Attorney General can proceed in exactly the same of case.

There is really no reason for it in view of the legal staff and other reasons which the Commission itself would develop.

There is one further point on which I draw again from my experi with respect to the Civil Rights Act of 1964. I have said on a nu of occasions in this debate that that was a compromise and that was given up, especially in respect of the right of seeking a re against discrimination in employment. And one of the things that given up was any enforcement authority or the right to sue by EEOC that we are trying to repeal now. That is why we felt we ha give the Attorney General the power to sue in big cases, in class a cases, and in cases where there was a constant pattern of discrimin directed at individuals with limited resources whom we were relega to the courts and who could hardly be expected to carry such a b and deep case. We are now changing that and giving it back to Commission.

It seems to me that the logical conclusion which follows from th that the authority previously given to the Justice Department longer necessary.

For all of those reasons and with special emphasis upon the that we made the decision yesterday, which it seems to me is absol controlling on this amendment, I believe that the amendment shou rejected.

Mr. HRUSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll

Mr. ALLEN. Mr. President, I ask unanimous consent that the for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I wonder if I might propound a qu to the distinguished Senator from New Jersey and the distingu

from New York jointly. Would the Senator yield for a

ILLIAMS. I do not have the floor.

RESIDING OFFICER. The Senator from Alabama has the floor.

LLEN. I would like to ask the Senators a rhetorical question if not wish to get the floor. I would like to inquire, in view of the entary situation in regard to the bill, since all of the amend- ave been directed toward the committee substitute, whether intention of the managers of the bill after all amendments have red to the substitute to ask for the adoption of the committee e rather than to move to lay that amendment on the table in go back to the bill as introduced. Would the Senator be kind o enlighten the junior Senator from Alabama in that regard?

ILLIAMS. Mr. President, I would say that the Senator from rk and I have not conferred specifically on that. And I would he Senator from New York for an observation.

VITS. Mr. President, my observation on that would be simply he Senator from New Jersey has said, we have not conferred we desire to be the best practice to follow with respect to that r matter. So, we are unable to inform the Senator from to that effect.

d say, as far as I am concerned, that I would hope that I ot do anything or be required to do anything which would compromise the decision of the Senate. In my judgment the is decided upon the issue of the method of enforcement by the ion. And I believe that those who wish to have a bill would nder a duty to proceed in any procedural way in accordance will of the Senate. I will not, in any way that I am conscious bring about a parliamentary situation in which we retread all round. I believe the decision taken yesterday is the decision as tter of policy. I am perfectly willing until we conclude the guided by it.

LEN. Mr. President, is that translated then into saying that committee substitute has been perfected, it is the will of the at the adoption of the committee amendment will be sought?

VITS. No; it cannot be translated into anything but a

t adopt the practice the Senator from Alabama would have I do not know what it means. I am sure I speak for the Sena- New Jersey, also. Therefore, we cannot adopt it. But I believe rs and gentlemen the principle adopted yesterday will be it in whatever parliamentary way it is possible to do so. "yes" means I am buying something I do not know anything I cannot do that.

EN. I am inquiring whether we would throw away the work ate for the last month and table the work of the Senate on the substitute. I am trying to determine if that is what is going ght or if agreement on the committee substitute as finally s to be sought.

ITS. Mr. President, will the Senator yield?

EN. I yield.

ITS. I think the Senator is inferring that we are not going to hat I have said. I say we will stand by it. But I cannot buy

some abstract question of parliamentary procedure which I do know anything about. We have stated the principle we will follow, we will stick by it. That is the best we can do at this moment.

Mr. ALLEN. Very well.

Mr. WILLIAMS. I subscribe to everything the Senator from York has said. The question is answered.

Mr. ALLEN. I am satisfied with the explanation given by the distinguished Senators.

Apparently, in time, they are going to agree on the committee substitute rather than table that and get back to the original bill.

Mr. BROCK. Mr. President, the bill now before the Senate, S. provides in section 5 that authority to bring pattern-and-practice suits against employers will be transferred from the Department Justice to the Equal Employment Opportunity Commission. I do believe that this should be done.

The distinguished Senator from Nebraska (Mr. Hruska) offered a simple amendment which would strike section 5 from the I intend to support this amendment and urge my colleagues to do wise.

Present law permits the Department of Justice to bring suits in F eral courts which will adjudicate all the employment practices corporation, union or group of unions, with the relief directed to underlying policies which are discriminatory or which perpetuate effects of past discrimination. Pursuant to this authority, the De ment has brought some 70 suits and been successful in all that been finally determined. These 70 suits have involved directly than 275,000 employees and indirectly—by way of precedent—m tudes more.

Those who criticize the Department for the careful use of its po under this section, should consider the larger ramifications of th suits which have been brought.

The effectiveness of the pattern-and-practice program should gaged merely by reference to the number of cases filed. Rathe should be judged in terms of wide-scale relief obtained by the Att General which has benefited hundreds and thousands of mino workers.

For example, in one case the Department of Justice prosecuted steel companies as class defendants representing the interests of proximately 1,500 contractor employers. A favorable decision in one case would affect the workers in a whole sector of the eco In addition, as recognized by Chairman Brown of the EEOC:

> The importance of these suits has largely been the decisions which result which have set the precedents for subsequent lesser Title VII actions. To this powerful and effective means whereby the courts can interpret and the provisions of Title VII, while at the same time establishing new judici dents applicable to other courts and administrative agencies alike, would my judgment, serve to promote the most effective administration of equal ment.

For obvious reasons, in order to obtain these dual objectives, the gated cases are chosen selectively. For instance, in the first 6 mont 1971 the Department has disposed of 77 matters of which only litigated; the 70 pattern and practice cases are, I understand, the of sifting through nearly 1,700 matters. The cases prosecuted ar

hat offer the greatest impact upon vast segments of the economy. has been pointedly illustrated by the testimony of Mr. David L. n, the Deputy Assistant Attorney General for Civil Rights, who out that:

nds of lawsuits . . . filed . . . reflect problems which can be met success- a "pattern or practice" case, but which would be very difficult if they lt with in an administrative process. For purposes of illustration, let me erence to . . . *Cannon Mills*, filed April 8, 1971.

nnon Mills suit alleged a "pattern and practice" in hiring, transferring notions with respect to employment practices, and discriminatory rental ument of company-owned housing. The suit pertains to all of Cannon's nich employ approximately 24,000 persons.

nsent decree which was entered on February 24, 1971 changed the stand- transfer and promotion for the affected class of black employees, a class approximately 90 percent of the black employees, and provides that they sfer without loss of seniority to the better-paying, traditionally white lso provides the objective criteria for hiring and promotion which are n a detailed job description catalog.

tem of rental of housing was totally reformed.

l, the decree calls for reformation of the entire system of hiring, transfer otion; and at the same time deals with the problem of housing segre-

nent of David L. Norman, Deputy Assistant Attorney General Civil vision, Department of Justice, before General Subcommittee on Labor, e on Education and Labor, House of Representatives, March 3, 1971.)

nnon Mills case is just one example of how the waves caused gle suit and the decision therein spread out to cover an entire and, indeed, an entire system of employment practices. This is of work done by the Department which is overlooked by its When it is considered that only 20 of these 70 cases have been referrals from the EEOC it can be seen that the record of cy to which this power would be shifted is no model of effec- when contrasted with the very effective work of the Justice ent.

just one of the reasons, Mr. President, why I feel that section ority should remain with the Department and the Attorney It is one of the reasons why I support the pending amend-

VITS. Mr. President, I suggest the absence of a quorum.

RESIDING OFFICER. The clerk will call the roll.

ond assistant legislative clerk proceeded to call the roll.

USKA. Mr. President, I ask unanimous consent that the order norum call be rescinded.

RESIDING OFFICER. Without objection, it is so ordered.

USKA. Mr. President, I have no request for any further time le, and I have no further remarks in which to engage. We are a vote on the amendment.

RESIDING OFFICER. The question is on agreeing to the amend- red by the Senator from Nebraska. The yeas and nays have red, and the clerk will call the roll.

istance legislative clerk called the roll.

NSFIELD (after having voted in the negative). Mr. President, ote I have a pair with the senior Senator from Georgia (Mr.). If he were present and voting, he would vote "yea." If I nitted to vote I would vote "nay." Therefore I withdraw my

Mr. Byrd of West Virginia. I announce that the Senator from N Mexico (Mr. Anderson), the Senator from Florida (Mr. Chiles), Senator from Arkansas (Mr. Fulbright), the Senator from Ala (Mr. Gravel), the Senator from Indiana (Mr. Hartke), the Sena from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. H phrey), the Senator from Washington (Mr. Jackson), the Sena from South Dakota (Mr. McGovern), the Senator from Minne (Mr. Mondale), the Senator from Utah (Mr. Moss), and the Sena from Maine (Mr. Muskie) are necessarily absent.

I further announce that the Senator from Georgia (Mr. Talmad and the Senator from Massachusetts (Mr. Kennedy) are absent official business.

I further announce that, if present and voting, the Senator fr Washington (Mr. Jackson), the Senator from Alaska (Mr. Grav the Senator from Minnesota (Mr. Humphrey), and the Senator fr Iowa (Mr. Hughes) would each vote "nay."

Mr. Griffin. I announce that the Senator from Tennessee (Brock), the Senator from New York (Mr. Buckley), the Senator f Arizona (Mr. Fannin), the Senator from Hawaii (Mr. Fong), the Senator from Ohio (Mr. Taft) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because illness.

The Senator from Kentucky (Mr. Cooper), the Senator from W ming (Mr. Hansen), and the Senator from Alaska (Mr. Stevens) detained on official business.

If present and voting, the Senator from Ohio (Mr. Taft) wo vote "nay."

The result was announced—yeas 33, nays 43, as follows:

[No. 47 Leg.]

YEAS—33

Allen	Eastland	McClellan
Allott	Ellender	Miller
Baker	Ervin	Pearson
Bellmon	Gambrell	Roth
Bennett	Goldwater	Saxbe
Byrd, Va.	Gurney	Smith
Byrd, W. Va.	Hollings	Sparkman
Cotton	Hruska	Stennis
Curtis	Jordan, N.C.	Thurmond
Dole	Jordan, Idaho	Tower
Dominick	Long	Young

NAYS—43

Aiken	Harris	Percy
Bayh	Hart	Proxmire
Beall	Hatfield	Randolph
Bentsen	Inouye	Ribicoff
Bible	Javits	Schweiker
Boggs	Magnuson	Scott
Brooke	Mathias	Spong
Burdick	McGee	Stafford
Cannon	McIntyre	Stevenson
Case	Metcalf	Symington
Church	Montoya	Tunney
Cook	Nelson	Weicker
Cranston	Packwood	Williams
Eagleton	Pastore	
Griffin	Pell	

ENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

ld, against.

NOT VOTING—23

on	Gravel	Mondale
	Hansen	Moss
	Hartke	Mundt
	Hughes	Muskie
	Humphrey	Stevens
	Jackson	Taft
	Kennedy	Talmadge
ht	McGovern	

Ir. Hruska's amendment (No. 834) was rejected.

WILLIAMS. Mr. President, I move to reconsider the vote by the amendment was rejected.

JAVITS. I move to lay that motion on the table.

motion to lay on the table was agreed to.

PRESIDING OFFICER. The Senate will be in order.

SCOTT. Mr. President, may I inquire as to whether we are under led time?

PRESIDING OFFICER. We are not under controlled time.

SCOTT. Then I ask unanimous consent to proceed for 3 minutes her matter.

PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * *

Senate continued with the consideration of the bill (S. 2515) o further promote equal employment opportunities for Ameri-kers.

HOLLINGS. Mr. President, I wish to address some remarks to the mployment opportunities bill. Yesterday, by a vote of 45 to 39, ate accepted the Dominick amendment to the equal employment nities bill. As a sponsor of the original Dominick amendment, as the one that was adopted, I can attest to the fact that this nce has not been easy.

anuary 24 and again on January 26, a similar amendment was l by a narrow 2-vote margin. However, by now accepting this ent and denying cease-and-desist power to the Equal Employ-pportunity Commission, we have guaranteed that the Commis-l not be a special interest group arrogating to itself the roles ator, prosecutor, judge and jury.

r, we have assured that the Commission will be able to turn Federal court for review of its actions. By prevailing for a procedure, we have assured to the employer that he will not nscionably harassed.

importantly, we have guaranteed to minorities an effective of achieving equal job opportunities. And this equal oppor-, after all, what must be accomplished.

President, I ask unanimous consent to have printed in the a letter from the Honorable Arthur M. Williams, Jr., president South Carolina Electric and Gas Co. and a company policy ndum.

being no objection, the material was ordered to be printed in ord, as follows:

SOUTH CAROLINA ELECTRIC & GAS CO.,
Columbia, S.C., February 11, 1972.

HON. ERNEST F. HOLLINGS,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR FRITZ: I am taking the liberty of writing you about a matter with wh I am deeply concerned. Concerned because it involves very deeply the effect operations of this Company, the people of our State and the acts of the Fede Government. Neither you nor I are responsible for what employment patter may have existed over the past decades. Since I have assumed the Presidency this Company—a little over five years ago—we have been in the forefront in tempting to employ qualified members of minorities and have, I believe, achie this goal. In so doing, we have had classes to teach our own employees—whet they were from minority groups or not—basic education qualifications to enal them to enter into apprenticeship programs.

In pursuance of this goal, we have promulgated an Affirmative Action Pl which has been submitted to the Atlanta Office of the General Services Admin tration; as you may know, GSA is a Federal agency appointed by the Executi Branch to monitor equal employment activities in all utility companies. Th plan includes affirmative goals and time tables. GSA has done an on-site inves gation of this plan. This has been buttressed by a Policy Memorandum, a co of which is attached, which states that this Company has "a policy of equ employment opportunity without regard to race, color, religion, sex, or natio origin" and that this policy "is not only morally and legally proper, but it also good business."

During the past four years, more than 35 members of the major minority ra in South Carolina have been promoted into formerly all-white positions. We ha successfully recruited on black college campuses and have promoted many me bers of the major minority group in South Carolina into virtually every type job available. Our minority employment has been increased by over 71 per ce in the last four years. Last year alone, over 29 per cent of our new employe were members of this major minority race. The personnel of this Company actively engaged in, and the Company actively supports, black oriented organiz tions, such as the Urban League. One of our employees has served as a loan executive for the National Alliance of Business.

Last November, EEOC Chairman William Brown invited a long list of utili presidents to testify before his Commission. It has been my experience with t type of hearing that those testifying are subjected to abuse and used as whippi boys—while this is no novel position for me, I did not see where it would ser any useful purpose for me to go into such a capacity. This Company did, how ever, have two representatives at the hearing.

This Company was then issued "A Commissioners Charge" from Chairm Brown, a copy of which is enclosed. In addition to this, we were served wit copy of a request for information which, and I feel you will agree, will not o be burdensome but will be costly to respond to. In these days when business being adjured to hold down prices, it seems to me that it really behooves agen of the Federal Government to not present businesses with forms to fill out wh will involve so much cost—especially when this appears to be duplication of wo already done by another Government agency, the GSA.

Chairman Brown commented in very uncomplimentary terms on the compan who declined (and there were 16) to testify before his hearings. I might add Chairman Brown has made himself even more unavailable. We have attempt to get in touch with him to discuss this matter by phone and planned to send representative to talk with him in person if he would talk with us. So far, have been unable, in spite of sincere and firm attempts, to contact him.

I note that there is presently before the Congress a bill which would g EEOC cease and desist powers and transform it into prosecutor, judge and j Not only is this contrary to the basic concept of American jurisprudence, I think the actions of EEOC in our case have shown how they would misuse any such authority. I hope you will continue to exert every effort to forest such unwarranted power to this agency.

With best personal regards and all good wishes, I am,

Sincerely yours,

ARTHUR M. WILLIAMS, JR.

[Policy Memorandum]

South Carolina Electric & Gas Co.,
Columbia, S.C., May 3, 1971.

ct: Affirmative action plan.

COMPANY POLICY

h Carolina Electric and Gas Company believes that a policy of equal
yment opportunity without regard to race, color, religion, sex, or national
is not only morally and legally proper, but is also good business.
he area served by the Company and from which it draws its employees,
are significant numbers of citizens who, for a variety of reasons, have not
o their maximum productive level. If they can be made more productive,
ill at the same time become greater consumers and better customers for the
ny. Many of these citizens will be reached if all employers, this Company
ed, take affirmative action to insure equal employment opportunity.
Company also recognizes that the employment problems of minority group
rs and women do not end when they have earned jobs. It believes that such
ees will be more efficient and more productive if they are afforded equal
unity on the job and are treated in all respects without regard to race,
eligion, sex, or national origin.

OFFICER RESPONSIBLE

Vice President Employee Relations shall be responsible for implementa-
this Affirmative Action Plan, compliance with all fair employment prac-
es, and communication with outside groups affected by this Plan.

PROBLEM AREAS

Company observes that the number of members of some minority groups or
employed in particular jobs is usually less, but in some cases much greater,
ould be projected from their percentages of the population in the area
by the Company. These jobs can be categorized as follows:
ory 1. Those jobs which a large proportion of minority group members
nen can perform when hired or after minimum training and experience.
ant numbers of minority group members and women now hold such jobs.
roblem will arise if any of these jobs are held by such large numbers of
group members of women that they become considered minority group
e jobs.
ory 2. Those jobs which can be performed only after relatively long peri-
raining or education, and for which only small numbers of minority
embers or women have attempted to qualify.
ory 3. Those jobs which because of their specialized nature, physical con-
danger, or a combination of these factors, have heretofore attracted few
group or female applicants.
ory 4. Those jobs in management which usually require years of experi-
somewhat lower level management positions which until fairly recently
ely been filled by minority group members or women.

OBJECTIVE

ompany's objective in Affirmative Action is to cause greater numbers of
minority group members and women to seek employment or advance-
that the normal workings of a non-discriminatory selection procedure
lt in increasing numbers of such persons being hired for, and advanced
sitions in the Company.

ACHIEVEMENT OF OBJECTIVE

nployee Relations Department will review all Category 1 jobs to deter-
here exists a normal distribution of minority group and female em-
The Vice President Employee Relations will make recommendations to
rtment heads concerned as to how any necessary re-distribution can be
hed with minimum adverse effect on efficiency and morale.

The Employee Relations Department will devise what ever special commun cations program is necessary to encourage greater numbers of minority gro and female employees or potential employees to undertake the education training essential to Category 2 jobs. Recruiting sources which are likely refer qualified minority group or female applicants will be more greatly utiliz Only job related qualifications will be required for such positions. A progra of continuing education coupled with financial incentives for participation the in will be maintained as long as it is needed.

The Employee Relations Department will attempt to discover the specif reasons for low minority group and female interest in Category 3 jobs. A misunderstandings revealed will be removed by careful explanation.

To the extent that the Company fills Category 4 jobs from without its or organization, it will make greater use of recruiting sources which are likely refer qualified minority group members or women. It is recognized that with the Company many minority group members and women may not appear to motivated toward advancement because of the mistaken belief that they will held back because of their minority status or sex. The Company will undertak to seek out those of such employees who may be qualified except for motivatio and consider them for Category 4 jobs and for those positions which are pr requisite to Category 4 jobs.

COMMUNICATION OF POLICY

The Company's policy of equal employment opportunity will be communicat to all employees by appropriate means. The Company will propose the addit of a non-discrimination clause to any collective bargaining agreements wh do not contain such language. All notices and posters relating to the fair em ployment practice laws will be prominently displayed.

The public will be informed of the Company's policy on equal employme opportunity, with particular notice to those organizations which are most like to refer for employment qualified minority group members or women. Oth employers with whom the Company does business will be given particular not of this policy, and sub-contractors will be made aware of any obligations wh they may have under the Executive Order.

AFFIRMATIVE ACTION FILE

The Employee Relations Department will maintain a separate file which w contain copies of all reports, memoranda, and correspondence relating to act under this Plan, including copies of Form EEO 1, copies of communications this policy to internal and external groups, reports of up-grading and distri tion of minority group members and women, the details of recruiting effo directed at increasing the number of qualified minority group and female ap plicants, and information relating to adjustment of selection standards to i crease employment opportunity to all citizens.

INTERNAL REPORTING

As often as necessary, but not less than annually, the Vice President of Em ployee Relations will report to the Executive Committee on progress in Affirm tive Action. He will be prepared to explain and suggest remedies for any failu to achieve the objective of the Plan.

ARTHUR M. WILLIAMS, JR.,
President

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
ATLANTA DISTRICT OFFICE,
Atlanta, Ga., January 26, 197

Re TAT2-0748.

Mr. H. W. WALDON,
Vice President, Employee Relations,
South Carolina Electric & Gas Co., Columbia, S.C.

DEAR MR. WALDON: As we agreed during our telephone conversation on Fr day (1-21-72), I am taking this opportunity to serve you with a copy of above captioned charge by mail. Kindly acknowledge receipt by completing enclosed form entitled "Acknowledgment of Service" and return same to at this office in the enclosed self addressed return envelope.

n attempt to move expeditiously in this proceeding, I am enclosing a com-
outline of information and/or documentation that I will need to review
y. Please develop this material immediately and forward it to me in
a. As I suggested to you during our conversation, it is hoped that review
materials requested will allow us to determine a course of on-site inves-
n.

se know that I am at your service and if you have further questions
ing this matter do not hesitate to call me in Atlanta at (404)526-6068.
ain,

Sincerely yours,

H. A. HUGGINS,
Equal Employment Officer.

OUTLINE OF INFORMATION AND DOCUMENTATION

GENERAL

st of all employees of the Company since January 1, 1969. This list
reflect specifically the following about each:
me and address.
ce and sex.
te of hire.
itial job to which hired.
tial salary or rate of pay.
tial department to which assigned.
subsequent personnel changes such as promotion, transfer, demotions,
es,[1] discharges, rehires and reprimands (in each change please indicate
and "to").
plete organizational chart of the Company showing staff, departments
-departmental work units and number if used.

RECRUITMENT

itten policy on recruitment.
ne, position title, race of each member constituting a recruitment team.
rces of all recruitments.
ne and description of each position recruited for.
ne of all persons employed through the recruitment program since Jan-
1969 reflect the race and sex of each and the specific position for which
l.

HIRING AND PLACEMENT

itten policy on hiring and placement.
e and description of all jobs and positions used by the Company since
1, 1969.
icate the pass of promotability and/or seniority lines of progression for
and position listed in response to item No. 2.
ne and title of all job vacancies within the Company since January 1,

of the applications for employment for all persons hired since Janu-
69.
of the applications for employment for all applicants rejected and
n for rejection since January 1, 1969
of each testing instrument used and accompanying validation studies.
es all test and results administered to the applicants listed in response
and 6.

PROMOTION AND TRANSFER

of Company's written policy on promotion and transfer.
es of all seniority lists used to determine promotability or other em-
atus changes.
es of all bids placed for employee status changes such as promotions,
etc. This information should reflect the reason(s) for rejection in each
the bidder was rejected.
of the work history record for each employee promoted or rejected for
since January 1, 1969.

---

s.

TRAINING

1. Name, race, sex, religion, job title of all persons assigned to and received the benefit of a Company administered training program since January 1, 1969. The information should include the following:
a. Job for which trained.
b. Criteria by which selected.
c. Evaluated results of training for each person participating.
d. Copy of the work history record for each.
2. Name and description of all training programs used by the company January 1, 1969. Please state the requirements for each.
3. The same information requested in item No. 1 for persons requesting training who were denied.

TERMS AND CONDITIONS

1. Copy of Company rules and regulations setting down the terms and conditions of employment.
2. Company policies on the following:
a. Overtime.
b. Sick Leave.
c. Annual Leave.
d. Leave of Absence.
e. Maternity Leave.
3. Description of Company's disciplinary system and how it is administered.

LAYOFF, RETENTION AND RECALL

1. Name, race, sex and seniority of all persons subjected to layoff since January 1, 1969 reflecting the following:
a. Date of layoff:
b. Date of Recall.
c. Reason for Layoff.
2. Complete description of the Company's policy on layoff and recall.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION VS. SOUTH CAROLINA ELECTRIC & GAS COMPANY

Re: Charge No(s) TAT2-0748

ACKNOWLEDGEMENT OF SERVICE

The undersigned hereby certifies that on _____, 1972, he was served by Certified Mail a copy of the foregoing Charge alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964.

This _____ day of _____, 1972.

_____ _____

_____ _____

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C.

COMMISSIONER'S CHARGE: TAT2-0748

Pursuant to Title VII of the Civil Rights Act of 1964, I charge the following employer and union with unlawful employment practices:

South Carolina Electric and Gas Company, 328 Main Street, Columbia, South Carolina, and IBEW Local 772, Columbia, South Carolina.

I have reasonable cause to believe that the above employer and union are within the jurisdiction of the Equal Employment Opportunity Commission and have violated and continue to violate Section 703 (a) (c) and (d) of the Civil Rights Act of 1964 by discriminating against Negroes and females on the basis of race and sex with respect to recruitment, hiring, job assignment, promotion, training, compensation, representation and other terms and conditions of employment:

1. Respondent employer discriminatorily refuses or fails to recruit and hire Negroes and females in the same manner it recruits and hires Caucasians and males.

The company employs a total of 2207 employees. Of these, 285 (12.9%) are
es. The population of Columbia is estimated to be 40% Negro.
The company employs 339 (15.4%) females.
espondent employer discriminatorily places Negroes and females in lower
and traditionally relegated jobs.
f 1030 blue collar jobs, Negroes hold 248 (24.1%). Of 1,157 white collar
Negroes hold 17 (1.5%). All three laborers and twenty service workers
ack.
f 537 clerical and office workers, 310 (57.7%) are females. There is only
le in the blue collar category.
espondent employer discriminatorily excludes and/or restricts Negroes
igh-paying positions and/or jobs above the blue collar level.
espondent employer discriminatorily excludes and/or restricts females
igher-paying positions and/or jobs above the office and clerical level.
espondent employer discriminatorily limits and restricts Negroes and
s in certain job categories.
espondent employer discriminatorily maintains segregated departments
ing to race and sex.
espondent employer discriminatorily fails to provide Negroes and females
ual training opportunities.
espondent employer discriminatorily fails to provide Negroes and females
ual job opportunities and promotions afforded other employees.
espondent union discriminatorily fails to represent Negroes and females
ame basis as Caucasian males.
espondent employer and union have further discriminated against Negroes
ales in all policies and practices, like, related to, or growing out of the
practices enumerated above.
lass aggrieved includes, but is not limited to all persons who have been
tinue to be or might be or might be adversely affected by the unlawful
s complained of herein.

_____,
Commissioner.

Hollings. Mr. President, this letter and memorandum will
e some of the harassment which has taken place and which, of
I do not condone.

the second session of this Congress convened on January 18,
erwhelming majority of the Senate's time has been occupied
e consideration of the equal employment opportunity bill.
the type of harassment described by Mr. Williams which has
d me and caused me to oppose the Commission's having judicial
Accordingly, I have consistently supported amendments to
which would deny to the Commission a broad, blank check of
power. Allowed the free rein of the original bill, the Com-
would have become a champertous and surreptitious volun-
pproval of the Dominick amendment, in my view, has given the
ssion a reasonable and effective means of carrying out their
presenting their findings to an impartial, judicial tribunal.
President, I must now act in good faith by voting for final pas-
annot deny the fact that the Equal Employment Opportunity
sion to date has been ineffective in protecting equal oppor-
. I cannot deny that the Commission's authority must be beefed
I cannot deny that equal job opportunities for our minorities
guaranteed. The bill now carries this guarantee with it.
ngly, it is now time for the Senate to approve the legislation.

* * * * * *

enate continued with the consideration of the bill (S. 2515)
to further promote equal employment opportunities for
n workers.

The PRESIDING OFFICER (Mr. Beall). Under the previous order the Senate will now return to the consideration of the unfinished business, which the clerk will state.

The assistant legislative clerk read as follows: A bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. BYRD of West Virginia. Mr. President, I take the floor to announce that there will be no additional rollcall votes today.

I yield to the distinguished senior Senator from North Carolina (Mr. Ervin), so that he may lay before the Senate an amendment and make it the pending question for consideration on tomorrow.

Mr. ERVIN. Mr. President, on behalf of the distinguished Senator from Alabama (Mr. Allen) and myself, I call up amendment No. 888 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 33, insert the following between line 10 and line 11:

"(5) In subsection (f), change the period at the end of the subsection to a colon, and add thereafter the following words:

"'*Provided, however*, That the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to advise him in respect to the exercise of the constitutional or legal powers of his office.'"

Renumber section (5) as (6).

Mr. BYRD of West Virginia. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent—and I have cleared this request with the distinguished manager of the bill (Mr. Williams), the distinguished author of the amendment (Mr. Ervin), and the distinguished Senator from New York (Mr. Javits)—that time on the pending amendment, No. 888, offered by Mr. Ervin, be limited to 2 hours; that the time on the amendment begin to run tomorrow at the time the Chair lays before the Senate the unfinished business; that the time on the amendment be equally divided between the mover of the amendment (Mr. Ervin) and the manager of the bill (Mr. Williams); and that time on any amendment to the amendment, debatable motion, appeal, or point of order be limited to 20 minutes, to be equally divided between the mover of such proposal and the manager of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. It is the intention of the distinguished Senator from North Carolina to ask for the yeas and nays tomorrow.

Mr. ERVIN. May I inquire what time the Senate will convene tommorrow?

Mr. BYRD of West Virginia. At 12 o'clock.

ERVIN. The reason I was asking, I had a hearing scheduled for
ck. Mr. President, I do not care to debate this question this after-
xcept to make one or two observations.
is an exceedingly important amendment. The bill defines a State
olitical subdivision of a State as employers for the first time in
ory of legislation of this kind. It defines an employee as one who
oyed by an employer. The dictionary states that any person or
which employs another, usually for wages or a salary, is an
er. Under these provisions, no one is excepted. In other words,
is broad enough in its present form to cover Governors of
State supreme court justices, State legislators, and so forth.
eport states:

tion was raised in committee concerning the application of Title VII in
of a Governor whose cabinet appointees or close personal aides are
om one political party. The committee's intention is that nothing in the
be interpreted to prohibit such appointments on the basis of discrimina-
ccount of race, color, religion, sex, or national origin. That intention is
in section 703(h) and 706(w) of the law.

ner words, this would give the Federal courts jurisdiction to
as to what motive a Governor had in selecting men for his
who would give him advice on his constitutional and legal
r if a Governor was actuated in any extent in the selection of an
or if the people were actuated in any extent in the election of a
fficial, so that the Commission could come in and remove that
fficial from officeor that adviser from office and dictate who
e employed in his place.
ectfully submit that that is going too far, for Congress to em-
n executive agency at the Federal level to tell the Governor of
, or the people for that matter, whom they can elect Governor,
me court justice, or State legislator, or what officials shall be
o advise the Governor as to his constitutional and legal duties.
resident, it is absurd for a Federal agency to be able to say to
ho its Governor, State officials, or advisers shall be. I respect-
ggest that if Congress is not going to make itself ridiculous,
dment should be agreed to.
ll argue the amendment more tomorrow.
ETCALF. Mr. President, will the Senator from North Carolina

VIN. I am happy to yield to my good friend from Montana.
ETCALF. Once upon a time, we had a Postmaster General who
at political adviser to the President. Jim Farley was such an

, we have in the Department of Justice an Attorney General
aving to run a political campaign for his President. He first
Attorney General and now he leaves it.
appens in that sort of situation?
VIN. If that was done at the State level, and the attorney gen-
an appointee of the Governor, EEOC could come in and tell
rnor that he could not have that attorney general to advise
e law, that he would have to take someone the EEOC picked
ad.
ETCALF. How could we keep such an Attorney General who
and says, "Well, I am going to be Attorney General for

awhile," but when the next election campaign comes up, he sa "I am going back into campaigning operations." How can we preve that?

Mr. ERVIN. We cannot prevent anything at the State level. T EEOC——

Mr. METCALF. I am trying to prevent something at the Fede level.

Mr. ERVIN. In the old days, I thought that a Postmaster Gene was the appropriate person to advise the President, because he d not have anything else to do except to read the Postal Guide.

Mr. METCALF. We had a lot of appointments but——

Mr. ERVIN. This bill does not deal with it at the Federal level. deals with it at the State level.

Mr. METCALF. I was wondering what happens when we have Attorney General who comes in at the Federal level, after he h been working at a campaign level and gets appointed Attorney G eral, and then after 2½ years or 3 years he moves it back into campaign.

Mr. ERVIN. Mr. President, I am trying to get for the Gover of a State the same authority to pick out his attorney general as President has to pick out his Attorney General or campaign manag

Mr. WILLIAMS. Mr. President, I should like to ask the Sena one or two questions just to see if there is a way to describe the sc and the limits of the amendment. Certainly it is clear that an elec official at the State or municipal level should not be covered in a way by this bill as an employee.

Mr. ERVIN. The Senator is correct. However, I feel that he covered now.

Mr. WILLIAMS. It says "as an employee." Frankly, I do not und stand the terminology. It says that the term "employee" shall include any person elected to a public office in a State or poli subdivision of any State by the qualified voters thereof.

Mr. ERVIN. Mr. President, under the Civil Rights Act of 1964, employee is defined in substance as one who is employed by an e ployer. This is just to put an exception to that provision and ma it clear that the term "employee" is not to be construed as including elected official or a person chosen by the elected official to advise h as to his constitutional and legal duties.

I think that the point the Senator is driving at is that this is narrowly drawn to make certain that the only persons covered by bill at a State or local level are elected officials and the people advise them as to their constitutional and legal powers. It would be covered by the bill those people who merely carry out the direct It would only exclude elected officials and those who give advice as to how they should carry out their legal and constitut duties, and not those who actually carry them out as administra officials.

Mr. WILLIAMS. It would certainly be the Governor's attorney g eral, for example.

Mr. ERVIN. The Senator is correct.

Mr. WILLIAMS. The Governor of the State of New Jersey has p sonal counsel. This would cover that particular officer or individu

ERVIN. The Senator is correct. However, it would not exclude
on who merely carries out the advice which the elected official
receive from those who advise him.
WILLIAMS. Mr. President, in other words that would be the law
and the law assistants of the personal counsel. The Governor
or would not be included within this term.
ERVIN. We are getting into a rather gray area there.
WILLIAMS. I wanted to see if we could find where the clear
and the ambiguous area.
ERVIN. They would be excluded from this exclusion or this
on, because the only person excluded besides the elected offi-
the person who advises him. I chose that word advisedly. It
be the person who would advise him in regard to his legal or
utional duties. It would not just be a law clerk The Attorney
l picks his own employees.
WILLIAMS. Mr. President, I have an instinctively favorable re-
to this particular exemption or exclusion under the law. How-
am glad that we are going until tomorrow, because some of
biguity can be worked out before I commit myself to it.
ERVIN. Mr. President, I really think that makes a bad bill a
ss obnoxious, because I do not think the author of this bill ever
d to cover elected officials, those elected by the duly qualified
However, I fear that they have covered them by the breadth
nguage.
y own county we have a board of commissioners appointed
people. They run the county affairs. They choose for themselves
adviser, a county attorney. I think they ought to be allowed
se that attorney without any restrictions whatsoever, because a
ought to know who he relies on for advice as to the duties of
. This would exclude the attorney, but not any other Govern-
county official, such as clerks or secretaries or people like that.
AVITS. Mr. President, will the Senator yield?
RVIN. I yield.
AVITS. Mr. President, I would like to point out for the Record
have said at page 11 of the report:

tion was raised in the Committee concerning the application of Title
e case of a Governor whose cabinet appointees and close personal aides
n from one political party. The Committee's intention is that nothing in
should be interpreted to prohibit such appointments unless they are
discrimination because of race, color, religion, sex or national origin.
ntion is reflected in sections 703(h) and 706(w) of the law.

ntally, that should be 706(g) and not (w).
we turn to that section, we find that the prohibition in the law
o with one who was refused employment, suspended, or dis-
for any reason other than discrimination on account of race,
ligion, sex, or national origin, or in violation of section 704.
ink it would not be unlawful to refuse employment or to dis-
r suspend anyone on grounds other than discrimination. We
nind that that was a protective provision.
ver, if we look at the term "employee," which is found at the
ge 49 of the report, it says:

m "employee" means an individual employed by an employer.

So I think we have covered the person elected to office.

Mr. ERVIN. I cannot find it. I wish the Senator would point it o to me.

Mr. JAVITS. Well, we will examine it carefully. If we have not do so, we will. However, we have defined an employee as a person e ployed by an employer. I do not think that any elected public offic is considered to be a person employed by an employer.

Mr. ERVIN. The first section strikes out the exclusion. All of t would make the State an employer. According to the definition j read, he would be employed by an employer, and the State is an e ployer and the Governor is employed by the State.

Mr. JAVITS. The operative word is "employee." And I do not belie that the courts construe an elected official as being employed by State. However, we will check into it very carefully. I agree with t statement of the Senator from New Jersey. We will check this ca fully overnight.

What disturbs me is the ambit of the words:

Or any person chosen by such officer to advise him in respect to the exercis the constitutional or legal powers of this office.

It seems to me that we have to look into the matter. When I was torney general of New York, I had some 500 employees, some 200 whom were lawyers and some 300 of whom were various functionar stenographers, subpena servers, researchers, and so forth.

I would like to have overnight to check into what would be t status of that rather large group of employees.

I realize that the Senator is seeking to confine it to the higher offic in a policymaking or policy advising capacity.

In all deference to the Senator and in the interest of everyone, wh ever the decision is going to be, we should go carefully over this ma ter, as to whether the term "employee" really encompasses any elec official. I do not believe it does. We should go over the ambit of t exemption. I do not think there is any big argument about the fir If we want to put in words showing what we think it means, I wou not have any quarrel about that.

I do think that the Senator will certainly expect to examine ca fully how deep you go when you say "any person chosen by such offi to advise him in respect to the exercise of the constitutional or le powers of his office."

I thank the Senator.

Mr. ERVIN. This is a question to which I am sure the Senator fr New York and the Senator from New Jersey will give attentio think this is a crucial question. I believe the bill in its present for susceptible to an interpretation which would cover Governors. The S preme Court has expressly held that a State is a group of free p sons—not three but free people—occupying a certain territory organized for the purpose of goverment under a written constitu They could not elect a Governor under that wording.

I thank the Senator.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

HRUSKA. Mr. President, I ask unanimous consent that the order quorum call be rescinded.

PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * *

UNANIMOUS-CONSENT AGREEMENT UNDER CLOTURE MOTION

BYRD of West Virginia. Mr. President, having been informed by tinguished manager of the pending bill (Mr. Williams) that a to invoke cloture will be offered on Friday, the day after tomor- am authorized by the majority leader to ask unanimous consent ne under the rule, on the motion to invoke cloture, begin run- 11:15 a.m. on Tuesday next.

PRESIDING OFFICER. Is there objection? Without objection, it is red.

BYRD of West Virginia. Mr. President, I ask unanimous consent 1 hour of time under the rule, on the motion to invoke cloture sday next, be equally divided between and controlled by the dis- ied Senator from North Carolina (Mr. Ervin) and the distin- manager of the bill (Mr. Williams).

PRESIDING OFFICER. Without objection, it is so ordered.

BYRD of West Virginia. Mr. President, I ask unanimous consent amendments to the bill which are at the desk at the time the ory quorum call under rule XXII begins on Tuesday next be red qualified as having been read so as to meet the requirements XXII.

PRESIDING OFFICER. Without objection, it is so ordered.

GRIFFIN. Mr. President, will the distinguished majority whip

YRD of West Virginia. I yield.

GRIFFIN. With reference to all amendments at the desk at the quorum call being qualified, I always like to have it understood Record that that does not change the requirement that those ents must be germane, if that is the understanding of the ma- hip.

YRD of West Virginia. May I say to the distinguished minority at that was my understanding and it was my intention. It was tion that the request would go only to that requirement which th the reading of such amendments.

PRESIDING OFFICER. That is the understanding of the Chair.

RIFFIN. I thank the Senator.

[From the Congressional Record—Senate, Feb. 17, 1972]

UAL EMPLOYMENT OPPORTUNITIES ACT OF 1971

AMENDMENTS NOS. 896 THROUGH 902

dered to be printed and to lie on the table.)

Williams (for himself and Mr. Javits) submitted seven amend- intended to be proposed by them jointly to the bill (S. 2515) to r promote equal employment opportunities for American s.

* * * * * *

ACTING PRESIDENT pro tempore. Under the previous order, the lays before the Senate the unfinished business, which will be

egislative clerk read as follows:

(S. 2515) to further promote equal employment opportunities for Amer- kers.

Senate proceeded to consider the bill.

ACTING PRESIDENT pro tempore. The pending amendment is , by the Senator from North Carolina (Mr. Ervin), on which a time limitation of 2 hours, with 20 minutes on any amendment amendment, motions, points of order, or appeals.

yields time?

QUORUM CALLS—YEAS AND NAYS ORDERED

AVITS. Mr. President, I ask unanimous consent that I may sug- absence of a quorum, with the time to be charged equally each side.

ACTING PRESIDENT pro tempore. Without objection, it is so or-

AVITS. I suggest the absence of a quorum.

ACTING PRESIDENT pro tempore. The clerk will call the roll.

gislative clerk proceeded to call the roll.

YRD of West Virginia. Mr. President, I ask unanimous consent order for quorum call be rescinded.

'RESIDING OFFICER (Mr. Tunney). Without objection it is so

RVIN. Mr. President, I ask for the yeas and nays on amendment

eas and nays were ordered.

RESIDING OFFICER. Who yields time?

YRD of West Virginia. Mr. President, I suggest the absence of n, with the same understanding as governed the previous quo-

RESIDING OFFICER. Without objection, it is so ordered, and the l call the roll.

The legislative clerk proceeded to call the roll.

Mr. Byrd of West Virginia. Mr. President, I ask unanimous cons that the order for the quorum call be rescinded.

The Presiding Officer (Mr. Weicker). Without objection, it is ordered.

Mr. Ervin. Mr. President, I yield myself 20 minutes.

The Presiding Officer. The Senator from North Carolina is rec nized for 20 minutes.

Mr. Ervin. Mr. President, the distinguished Senator from Alaba and I have introduced an amendment which provides that the te "employee" as set forth in the original act of 1964 and as modi by the pending bill shall not include any person elected to pu office in any State or political subdivision of any State by the qualif voters thereof, or any person chosen by such person to advise hir respect to the exercise of the constitutional or legal powers of office.

The Constitution was written to create a federal system of g ernment. It was designed to allot to the Federal Government cer enumerated powers which would enable it to exercise the necess functions of a central government for all the States and to reserv the States all the powers of government. And certainly one of powers of government that was reserved to the States by the 1 amendment was the power of a State to select its own officers and own employees, because if the Federal judiciary could tell the St whom it can have for its officers and whom it can have for its employ the Federal judiciary becomes the real ruler of the people of the St and really, in the ultimate analysis, imposes its will upon the State a its people.

Title VII of the Civil Rights Act of 1964 defines an employee any person employed by an employer. That is the gist of the definit of "employee" in the original act, which is not disturbed in this parti lar respect by the bill.

The bill, by amending the definition of "employer" as set forth the Civil Rights Act of 1964, declares that a State and the politi subdivisions of a State shall constitute employers within the mean of the act.

The definition of an employer is that an employer is an individual concern which employs some individual to do something, usually a salary or wages. And the definition of an employee under the ac an individual who is employed by an employer.

Manifestly the Governor of a State or the duly elected State cials, including the members of the State legislature, are emplo of the State within the meaning of this bill in its present state. A the clerk of court of a county and the board of commissioners of county, where they have a system of county government such as have in North Carolina, and the sheriff of a county are the employ of the county, which is a political subdivision of the State.

In my mind it is a monstrous proposal that Federal judges sh have to lay aside their judicial knitting in order to embark upo course of action which is essentially supervising who shall be the cers and the employees of a State or of the political subdivision State.

ef Justice Salmon P. Chase declared in the celebrated case of against White that the Constitution and all of its provisions o an indestructible Union composed of indestructible States. know of no way in which Congress can more effectively de- he States than for Congress to vest in the Federal judiciary or other Federal department or agency, the power to select the and employees of the State and its political subdivisions.

hat case Chief Justice Chase defined what a State is. I think it enable us to understand what is raised by this amendment by finition of a State. In the case of Texas against White, Chief Chase gave this definition as the definition of what a State is:

te, in the ordinary sense of the Constitution, is a political community of izens, occupying a territory of defined boundaries, and organized under rnment sanctioned and limited by a written constitution, and established consent of the governed. It is the union of such states, under a common tion, which forms the distinct and greater political unit, which that tion designates as the United States, and makes of the people and hich compose it one people and one country.

salient part of the definition is that a State is a community of izens. I would have to say that if Congress takes away from mmunity of free citizens the right to elect their own officials and heir own employees that those citizens cease to be free and subjected to the control of the Federal Government.

uld not have been concerned to much about the question raised amendment had it not been for some recent decisions of the he Court of the United States.

Constitution expressly provides that Congress shall pass no bill nder and that the Federal Government, acting through any hree departments, shall not deprive any person of his life, or property without due process of law.

when the Federal Government deprives any people or any f people of the right to elect their own officials and select their ployees, it is clearly depriving them of liberty within the pur- the due process clause.

ave had what to my mind constitutes two monstrous decisions Supreme Court of the United States during these last years, in he Supreme Court upheld provisions of the Voting Rights 1965. That act was clearly a bill of attainder because it con- States and their officials and their people of violating the 15th ent without giving them any judicial trial; in other words, it ngressional condemnation of guilt on the part of the State and als and its people. On that basis Congress suspended the un- constitutional powers of the State and its officials and its o prescribe a literacy test as a qualification for voting.

what is a bill of attainder? In this case it is a legislative dec- of guilt which inflicts punishment or denies rights to any ed individual or any individuals which can be identified. So here an exercise of what I have said illustrates how we have ubstantial part of our national sanity because of the constant n about racial balance in this country.

ess passed a bill of attainder condemning the States, which ily acted through their elected officials, of violating the 15th ent. When the case of South Carolina against Katzenbach

raised that point we had what I conceive to be a monstrous deci
namely, that the provision of the Constitution which forbids Con
to pass a bill of attainder does not apply to States, and since State
only act through their officers, and since States are nothing in
world but a community of individuals, this amounted to a holding
Congress can condemn all State officials and all the people of a S
of violating the Constitution without affording them a judicial tri
determine their guilt.

To my mind, the men who drafted and ratified the provision of
Constitution which states Congress shall pass no bill of attainde
tended to protect against bills of attainder all States and all hu
beings within the borders of the States, and all individuals whic
ercise governmental power on the part of States.

When Congress passed the Voting Rights Act of 1965, it conv
the States and their election officials of violating the 15th amend
by a formula which was cleverly designed to deprive of their cons
tional rights seven Southern States, either in whole or in part, a
exclude from its coverage every other State of this Union. It did
by a formula of what they call the triggering device. It said that a
State would be adjudged guilty of violating the 15th amendment if
than 50 percent of the people of voting age had failed to vote f
presidential candidate in the 1964 general election.

I respectfully submit that that provision, which raised a pres
tion, violated the due process clause of the fifth amendment. I say
because it has been held times without number that a legislative
violates the due process clause when it creates a presumption w
which the fact presumed has no reasonable or rational relations
the fact proved.

Now, mind you, this triggering device or formula by which this
of attainder was inflicted upon the States and their people and
officials did not require that it be shown that the people who di
vote belonged to any particular race. It was on that basis that the
gress convicted these seven Southern States and parts of Stat
violating the 15th amendment, which provides that the right of
person to vote shall not be abridged or denied on account of race—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ERVIN. Mr. President, I yield myself 10 more minutes.

As far as the statute was concerned, every person who failed to
could have been a white man, and yet it was passed on the theory
it showed that black people had been denied the right to vote in
States on account of their race. So there was no rational relatio
between the facts certified by the Bureau of the Census and the c
cate of the Attorney General, which, incidentally, where not re
able in the courts, and the fact presumed.

If it had been applied to any individual—and it was appli
election officials and it was applied to all the people of the Sta
a basis for denying them their constitutional rights—it clearly w
have been a violation of the due process clause of the fifth amend

Then, there is another principle of law under the due process
of the fifth amendment, and that is, it violates that clause for the
gress to raise a presumption of guilt on the basis of facts for whi
person presumed or the State presumed guilty was not responsi

y that those States were convicted by judicial declaration of guilt
se in those particular States it was certified by the Bureau of the
s that less than 50 percent of the persons of voting age residing
se States had failed to vote for a presidental candidate in 1964.
were not found guilty on the basis of a certificate of the Attorney
al or a finding of the Bureau of the Census that less than 50 per-
f the persons of voting age residing in them were not registered.
ifestly, under our system of government a State can register
person of voting age within its borders, but it has no way, under
ws, to compel him to go out and vote on election day. And so
resumption, for that reason, based on the certificates showing
hat less than 50 percent of the persons of voting age in those
States had not voted, constituted another violation of the due
s clause.

t was called to the attention of the Supreme Court of the United
in South Carolina against Katzenbach. Mind you, the people
l by that act were the State election officials, who certainly were
beings, because we do not have robots for election officials in any
States, and the people who were deprived of the power to exercise
onstitutional rights under that bill were the people of the com-
es which constituted the States. The States themselves are com-
of individuals. A State does not exist apart from its individuals
officials. All of its officials and all of its citizens are human
and are persons. Yet the Supreme Court, in South Carolina
Katzenbach, laid down the monstrous position that the facts
ed had no rational relationship to the facts proved was not a
ion to the States or the people or the election officials of those
because a State is not a person within the meaning of the due
clause of the fifth amendment.

is a monstrous decision, because if that were true, Congress
ass a law, any day it wished to, abolishing the States, or con-
g the officials of the State by a bill of attainder and sentencing
death without trial and without an opportunity to be heard,
an opportunity to say a mumbling word in their behalf.

people say, Congress would not act in such an arbitrary man-
hat. Well, I think the Congress acted in a very arbitrary man-
n it passed the Voting Rights Act of 1965. I think it acted
ven more arbitrary manner when it amended that act and
d that those seven States or portions of the States should re-
ndemned by the judicial declaration of guilt, notwithstanding
d been an intervening presidential election and notwithstand-
t they would have been freed from the operation of the act
ame formula had been applied to the election in 1968 as had
plied to the election in 1964.

er words, Congress said to the seven Southern States, "Though
repentance, you cannot repent unless you continue to be some-
the nature of a conquered province, which cannot exercise
titutional rights and which cannot even pass a law having
test relationship to an election without first getting the permis-
a Federal official, the Attorney General, or getting a decree
one court on the face of the earth, the District Court of the
of Columbia, where they always have a panel of judges which

would not acquit a Southern State of anything in a case having ra overtones, as has been proved in the case of the county of Gast my State, where everyone in North Carolina knows that there been no discrimination against voting on account of race within memory of any living human being.

There is another thing handed down in this decision of South Ca lina against Katzenbach which I think is abhorrent to any fed system of government. The Supreme Court of the United States held, in the case of Coyle, that every State in the Union is entitle stand on equality with every other State of the Union, that the rig and the powers of all the States of the Union are equal. So when contention was made by South Carolina, quite rightly, that the Vot Rights Act of 1965 made two different classes of States in this Un and reduced the seven Southern States or portions of the seven Sou ern States to an inferior status and denied them the right to exer constitutional powers which all the other States were permitted to ex cise, the Supreme Court handed down another ruling which can be described as monstrous. It held that the doctrine of the equality the States applied only at the precise moment when a State was mitted to the Union, and that thereafter States could be made une in respect to their legal and constitutional rights and obligations.

The Presiding Officer. The Senator's additional 10 minutes h expired.

Mr. Ervin. I yield myself 5 more minutes.

In other words the Constitution, as interpreted in the case of So Carolina against Katzenbach, is adjudged, in effect, to provide Congress has the right to make as many different varieties of St as there are varieties of anxious people.

Well, I thought that decision was pretty bad, but that sam contained a provision that outlawed the literacy test of the Stat New York, which required that any person, to be qualified to in any election, Federal or State, in New York, should be literat the English language, and so, to enfranchise people who spoke Sp ish who had come from Puerto Rico, Congress put an amendme the Voting Rights Act of 1965 which nullified the State literacy of New York, which had been adjudged valid by the courts, and w was shown by the case of Lassiter against Board of Electors of Nor ampton County, N.C., to be in perfect compliance with the e protection clause of the 14th amendment.

Congress not only did that, but it established another law in p of the New York literacy test, which New York clearly had the r to establish under the equal protection clause of the 14th amend because it applied in like manner to all the people in New York. Court held that Congress not only could nullify a valid law of State, but that it could pass a law to take its place, which Con was forbidden to pass by the second section of the first article, first section of the second article, and the 17th amendment.

That was going pretty far. It takes a certain amount of ju and intellectual gymnastics to reach such an absurd conclusio that. The majority of the Court, however, reached it, and they re it by a process of reasoning without parallel in the decisions of Supreme Court, which was inconsistent with scores and scores of Supreme Court decisions.

Court reached the strange conclusion that when Congress under-
exercise its power under section 5 of the 14th amendment to
a State from denying any person within its borders the equal
on of the laws, the Court lost its power—the Supreme Court
United States lost its power—to determine whether the State
nulled by the act of Congress was a valid law within the pur-
the equal protection clause of the 14th amendment, and that
y thing that the Supreme Court could do in that kind of a
n was to determine whether the act of Congress—whether con-
or inconsistent with the equal protection clause, whether or
bidden by three other sections of the Constitution——

PRESIDING OFFICER. The Senator's 5 additional minutes have

ERVIN. I yield myself 5 more minutes. Would have the effect, in
ire, of preventing the State affected from violating the equal
on clause.

was not a scintilla of testimony that Spanish-speaking people
discriminated against intentionally under this law, but the
ld that regardless of whether or not the New York literacy
a valid law under the first section of the 14th amendment, the
ould have to uphold that law because this would give the
Ricans political power, and their political power would enable
keep New York State thereafter from depriving them of the
otection of the laws.

are some very caustic comments on this decision by one of the
constitutional scholars in this country, Alexander M. Bickel,
Law School. These remarks are set forth in the Supreme Court
for 1966, on pages 95 through 101.

erring to this decision of the Supreme Court, which was a de-
a divided court, Professor Bickel pointed out the fallacy of
ment that this would prevent New York from violating the
otection clause in the future—the political power they gave to
to Ricans, in violation of what had always been the correct
ation of the equal protection clause of the 14th amendment.

ument is superficially attractive. But suppose Congress decided that
eighteen-year-olds or residents of New Jersey are being discriminated
New York. The decision would be as plausible as the one concerning
peaking Puerto Ricans. Could Congress give these groups the vote?
ss may freely bestow the vote as a means of curing other discrimina-
h it fears may be practiced against groups deprived of the vote, essen-
use of this deprivation and on the basis of no other evidence, then
othing left of state autonomy in setting qualifications for voting. The
proves too much. The Court relied on Marshall's famous pronounce-
the end be legitimate, let it be within the scope of the constitution,
eans which are appropriate, which are plainly adapted to that end,
not prohibited, but consist with the letter and spirit of the constitu-
onstitutional." The Court duly emphasized appropriateness, and ad-
a given end, but it de-emphasized altogether too much Marshall's
the means chosen must also not be prohibited, and must "consist with
nd spirit of the constitution."

he Supreme Court used a quotation from John Marshall, and
f this quotation from John Marshall's opinion must have
hn Marshall to turn over in his grave. I say this because John
s judgment said the end must be legitimate. It was not legit-
Congress to prescribe a literacy test in New York. He said:

Not only must it be legitimate, but also, it must be within the scope of Constitution.

What Congress did in outlawing the New York literacy test was outside the scope of the Constitution.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. I yield myself 3 additional minutes.

Marshall said, in the third place, that the means chosen must not be prohibited. Yet, the means chosen by Congress in outlawing the literacy test did not come within the meaning of Chief Justice Marshall's statement, which was cited to uphold it, in three respects. The end was not legitimate, it was not within the scope of the Constitution, and it was forbidden by three separate provisions of the Constitution.

Why do I lay emphasis upon these decisions? If bills of attainder can be passed against States, if States can be deprived of their people and their officials of their constitutional rights without due process of law, then any kind of bill Congress passes about States is perfectly valid. So Congress now can pass a bill like this one, that says that a Federal judge can remove a Governor from office—this is not what it says expressly, but what it means—or other elected official of a State or county from office, if that Federal judge finds that the voters of that State elected that Governor because they preferred a man of his race or a man of his religion or a man of his national origin or a person of his sex, rather than a person of some other race or religion or national origin or sex.

Having seen some of the decisions of some Federal judges in late days—such as the decision of Judge Robert Merhige in Richmond, Va., a short time ago—I have lost my capacity to be surprised by a decision of a Federal judge.

For that reason, I offer this amendment, in collaboration with my good friend, the distinguished Senator from Alabama, to make certain that Federal judges cannot remove elected State and county officials from office or tell them whom they have to have as their selections to advise them with respect to their constitutional and legal responsibilities. To my mind, it would be intolerable for a Federal judge to say to the Governor of a State or to a board of county commissioners that they had to take a legal adviser selected by a Federal judge rather than one selected by themselves.

Mr. President, I ask unanimous consent that the discussion in the Supreme Court review of 1966 on the case of Katzenbach against Morgan and the dissenting opinion in that case be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[No. 847, Argued April 18, 1966.—Decided June 13, 1966*]

KATZENBACH, ATTORNEY GENERAL, ET AL. *v.* MORGAN ET UX.

APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Appellees, registered voters in New York City, brought this suit to challenge the constitutionality of § 4(e) of the Voting Rights Act of 1965 to the extent that the provision prohibits enforcement of the statutory requirement for literacy in English as applied to numerous New York City residents from Puerto

*Together with No. 877, *New York City Board of Elections* v. *Morgan et ux.*, also on appeal from the same court.

ause of that requirement, had previously been denied the right to vote. 4(e) provides that no person who has completed the sixth grade in a chool, or an accredited private school, in Puerto Rico in which the lan- instruction was other than English shall be disfranchised for inability or write English. A three-judge District Court granted appellees declara- injunctive relief, holding that in enacting § 4(e) Congress had exceeded rs. *Held:* Section 4(e) is a proper exercise of the powers under § 5 of teenth Amendment, and by virtue of the Supremacy Clause, New York's literacy requirement cannot be enforced to the extent it conflicts with p. 646–658.

ough the States have power to fix voting qualifications, they cannot do ry to the Fourteenth Amendment or any other constitutional provision.

ngress' power under § 5 of the Fourteenth Amendment to enact legisla- ibiting enforcement of a state law is not limited to situations where law has been adjudged to violate the provisions of the Amendment ngress sought to enforce. It is therefore the Court's task here to deter- whether New York's English literacy requirement as applied violates l Protection Clause, but whether § 4(e)'s prohibition against that re- is "appropriate legislation" to enforce the Clause, *Lassiter* v. *North- lection Bd.*, 360 U.S. 45, distinguished. Pp. 648–650.

tion 5 of the Fourteenth Amendment is a positive grant of legislative horizing Congress to exercise its discretion in determining the need for e of legislation to secure Fourteenth Amendment guarantees. The test loch v. *Maryland*, 4 Wheat. 316, 421, is to be applied to determine congressional enactment is "appropriate legislation" under § 5 of the h Amendment. Pp. 650–651.

tion 4(e) was enacted to enforce the Equal Protection Clause as a o secure nondiscriminatory treatment by government for numerous cans residing in New York, both in the imposition of voting qualifica- the provision of administration of governmental services. Pp. 652–653. ngress had an adequate basis for deciding that § 4(e) was plainly that end. Pp. 653–656.

tion 4(e) does not itself invidiously discriminate in violation of the endment for failure to extend relief to those educated in non-American ls. A reform measure such as § 4(e) is not invalid because Congress e gone further than it did and did not eliminate all the evils at the . Pp. 656–658.

p. 196, reversed.

General Marshall argued the cause for appellants in No. 847. With him ef were *Assistant Attorney General Doar*, *Ralph S. Spritzer*, *Louis F. St. John Barrett* and *Louis M. Kaudcr.*

ankin argued the cause for appellant in No. 877. With him on the brief *an Redlich* and *Seymour B. Quel.*

vins argued the cause and filed a brief for appellees in both cases.

Iernandez Colon, Attorney General, argued the cause and filed a brief mmonwealth of Puerto Rico, as *amicus curiae*, urging reversal.

Coon, Assistant Attorney General, argued the cause for the State of as *amicus curiae*, urging affirmance. With her on the brief were *Louis tz*, Attorney General, and *Ruth Kessler Toch*, Acting Solicitor General.

TICE BRENNAN delivered the opinion of the Court.

ses concern the constitutionality of § 4(e) of the Voting Rights Act That law, in the respects pertinent in these cases, provides that no

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text of § 4(e) is as follows:

gress hereby declares that to secure the rights under the fourteenth amend- rsons educated in American-flag schools in which the predominant classroom is other than English, it is necessary to prohibit the States from conditioning vote of such persons on ability to read, write, understand, or interpret any e English language.

person who demonstrates that he has successfully completed the sixth primary ublic school in, or a private school accredited by, any State or territory, the Columbia, or the Commonwealth of Puerto Rico in which the predominant nguage was other than English, shall be denied the right to vote in any te, or local election because of his inability to read, write, understand, or y matter in the English language, except that in States in which State law t a different level of education is presumptive of literacy, he shall demonstrate successfully completed an equivalent level of education in a public school in, school accredited by, any State or territory, the District of Columbia, or rwealth of Puerto Rico in which the predominant classroom language was English." 79 Stat. 439, 42 U.S.C. § 1973b(e) (1964 ed., Supp. 1).

person who has successfully completed the sixth primary grade in a public sch
in, or a private school accredited by, the Commonwealth of Puerto Rico in wh
the language of instruction was other than English shall be denied the right
vote in any election because of his inability to read or write English. Appell
registered voters in New York City, brought this suit to challenge the consti
tionality of § 4(e) insofar as it *pro tanto* prohibits the enforcement of the e
tion laws of New York[2] requiring an ability to read and write English as
condition of voting. Under these laws many of the several hundred thousand
York City residents who have migrated there from the Commonwealth of Pue
Rico had previously been denied the right to vote, and appellees attack § 4
insofar as it would enable many of these citizens to vote.[3] Pursuant to § 14(
the Voting Rights Act of 1965, appellees commenced this proceeding in
District Court for the District of Columbia seeking a declaration that § 4(e
invalid and an injunction prohibiting appellants, the Attorney General of
United States and the New York City Board of Elections, from either enfo
or complying with § 4(e).[4] A three-judge district court was designated, 28 U.S
§§ 2282, 2284 (1964 ed.). Upon cross motions for summary judgment, that c
one judge dissenting, granted the declaratory and injunctive relief appe
sought. The court held that in enacting § 4(e) Congress exceeded the po
granted to it by the Constitution and therefore usurped powers reserved to

[2] Article II, § 1, of the New York Constitution provides, in pertinent part:
"Notwithstanding the foregoing provisions, after January first, one thousand n
hundred twenty-two, no person shall become entitled to vote by attaining majori
naturalization or otherwise, unless such person is also able, except for physical disa
to read and write English."
Section 150 of the New York Election Law provides, in pertinent part:
". . . In the case of a person who became entitled to vote in this state by attai
majority, by naturalization or otherwise after January first, nineteen hundred
two, such person must, in addition to the foregoing provisions, be able, except for p
disability, to read and write English. A 'new voter,' within the meaning of this
is a person who, if he is entitled to vote in this state, shall have become so entit
or after January first, nineteen hundred twenty-two, and who has not already v
a general election in the state of New York after making proof of ability to rea
write English, in the manner provided in section one hundred sixty-eight."
Section 168 of the New York Election Law provides, in pertinent part:
"1. The board of regents of the state of New York shall make provisions for the gi
literacy tests.
"2. . . . But a new voter may present as evidence of literacy a certificate or di
showing that he has completed the work up to and including the sixth grad
approved elementary school or of an approved higher school in which English is the l
of instruction or a certificate or diploma showing that he has completed the work
and including the sixth grade in a public school or a private school accredited
Commonwealth of Puerto Rico in which school instruction is carried on predo
in the English language or a matriculation card issued by a college or univers
student then at such institution or a certificate or a letter signed by an offici
university or college certifying to such attendance."
Section 168 of the Election Law as it now reads was enacted while § 4(e) w
consideration in Congress. See 111 Cong. Rec. 19376–19377. The prior law re
successful completion of the eighth rather than the sixth grade in a school in
the language of instruction was English.

[3] This limitation on appellees challenge to § 4(e), and thus on the scope of our
does not distort the primary intent of § 4(e). The measure was sponsored in the S
by Senators Javits and Kennedy and in the House by Representatives Gilbert and Ry
of New York, for the explicit purpose of dealing with the disenfranchisement
segments of the Puerto Rican population in New York. Throughout the congression
it was repeatedly acknowledged that § 4(e) had particular reference to the Puerto
population in New York. That situation was the almost exclusive subject of dis
See 111 Cong. Rec. 11028, 11060–11074, 15666, 16235–16245, 16282–16283, 19192
19375–19378; see also Voting Rights, Hearings before Subcommittee No. 5 of the
Committee on the Judiciary on H.R. 6400, 89th Cong., 1st Sess., 100–101, 420–421
(1965). The Solicitor General informs us in his brief to this Court, that in all p
the practical effort of § 4(e) will be limited to enfranchising those educated in Puerto
schools. He advises us that, aside from the schools in the Commonwealth of Puer
there are no public or parochial schools in the territorial limits of the United S
which the predominant language of instruction is other than English and which w
generally been attended by persons who are otherwise qualified to vote save for
lack of literacy in English.

[4] Section 15(b) provides, in pertinent part:
"No court other than the District Court for the District of Columbia . . . shall
jurisdiction to issue . . . any restraining order or temporary or permanent in
against the . . . enforcement of any provision of this Act or any action of any
officer or employee pursuant hereto." 79 Stat. 445, 42 U.S.C. § 1973*l*(b) (1964 ed.). S

The Attorney General of the United States was initially named as the sole defendan
New York City Board of Education was joined as a defendant after it publicly
its intention to comply with § 4(e). It has taken the position in these proceedings
§ 4(e) is a proper exercise of congressional power. The Attorney General of the S
New York has participated as *amicus curiae* in the proceedings below and in this
arguing § 4(e) be declared unconstitutional. The United States was granted
intervene as a defendant, 28 U.S.C. § 2403 (1964 ed.); Fed. Rule Civ. Proc. 24(a)

y the Tenth Amendment. 247 F. Supp. 196. Appeals were taken directly
Court, 28 U.S.C. §§ 1252, 1253 (1964 ed.), and we noted probable juris-
382 U.S. 1007. We reverse. We hold that, in the application challenged
cases, § 4(e) is a proper exercise of the powers granted to Congress
the Fourteenth Amendment[5] and that by force of the Supremacy Clause,
I, the New York English literacy requirement cannot be enforced to the
at it is inconsistent with § 4(e).

the distribution of powers effected by the Constitution, the States estab-
ifications for ...ting for state officers, and the qualifications established
lates for voting for members of the most numerous branch of the state
e also determine who may vote for United States Representatives and
Art. I, § 2; Seventeenth Amendment; *Ex parte Yarbrough*, 110 U.S. 651,
of course, the States have no power to grant or withhold the franchise
ions that are forbidden by the Fourteenth Amendment, or any other
of the Constitution. Such exercises of state power are no more immune
nitations of the Fourteenth Amendment than any other State action.
al Protection Cause itself has been held to forbid some state laws that
he right to vote.[6]

lorney General of the State of New York argues that an exercise of
nal power under § 5 of the Fourteenth Amendment that prohibits the
nt of a state law can only be sustained if the judicial branch determines
ate law is prohibited by the provisions of the Amendment that Congress
enforce. More specifically, he urges that § 4(e) cannot be sustained as
te legislation to enforce the Equal Protection Cause unless the judi-
des—even with the guidance of a congressional judgment—that the
n of the English literacy requirement prohibited by § 4(e) is forbidden
nal Protection Clause itself. We disagree. Neither the language nor
§ 5 support such a construction.[7] As was said with regard to § 5 in
Virginia, 100 U.S. 339, 345, "It is the power of Congress which has been
Congress is authorized to *enforce* the prohibitions by appropriate legis-
ne legislation is contemplated to make the amendments fully effective."
tion of § 5 that would require a judicial determination that the enforce-
he state law precluded by Congress violated the Amendment, as a con-
sustaining the congressional enactment, would depreciate both con-
resourcefulness and congressional responsibility for implementing the
nts.[8] It would confine the legisative power in this context by the insig-

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5. The Congress shall have power to enforce, by appropriate legislation, the
f this article.

efore unnecessary for us to consider whether § 4(e) could be sustained as an
power under the Territorial Clause, Art. IV, § 3; see dissenting opinion of
wan below, 247 F. Supp., at 204; or as a measure to discharge certain treaty
of the United States, see Treaty of Paris of 1898, 30 Stat. 1754, 1759; United
rter, Articles 55 and 56; Art. I, § 8, cl. 18. Nor need we consider whether
l be sustained insofar as it relates to the election of federal officers as an
ongressional power under Art. I, § 4, see *Minor* v. *Happersett*, 21 Wall. 162,
States v. *Classic*, 313 U.S. 299, 315; Literacy Tests and Voter Requirements
and State Elections, Hearings before the Subcommittee on Constitutional
he Senate Committee on the Judiciary on S.480, S. 2750, and S. 2979, 87th
ss., 302 306, 311 (1962) (brief of the Attorney General); nor whether § 4(e)
stained, insofar as it relates to the election of state officers, as an exercise of
al power to enforce the clause guaranteeing to each State a republican form
nt, Art. IV, § 4; Art. I, § 8, cl. 18.

Virginia Board of Elections, 383 U.S. 663; *Carrington* v. *Rash*, 380 U.S. 89.
ted States v. *Mississippi*, 380 U.S. 128; *Louisiana* v. *United States*, 380 U.S. 145.
r v. *Northampton Election Bd.*, 360 U.S. 45; *Pope* v. *Williams*, 193 U.S. 621.
inor v. *Happersett*, 21 Wall. 162; cf. *Burns* v. *Richardson*, *ante*, p. 73, at 92;
Sims, 377 U.S. 533.

historical evidence suggesting that the sponsors and supporters of the
were primarily interested in augmenting the power of Congress, rather than
y, see generally Frantz, Congressional Power to Enforce the Fourteenth
Against Private Acts, 73 Yale L. J. 1353, 1356 1357; Harris, The Quest for
56 (1960); tenBrock, The Antislavery Origins of the Fourteenth Amend-
7 (1951).

Howard, in introducing the proposed Amendment to the Senate, described
ct affirmative delegation of power to Congress," and added:
on Congress the responsibility of seeing to it, for the future, that all the
the amendment are carried out in good faith, and that no State infringes
persons or property. I look upon this clause as indispensable for the reason
imposes upon Congress this power and this duty. It enables Congress, in
tes shall enact laws in conflict with the principles of the amendment, to
legislation by a formal congressional enactment." Cong. Globe, 39th Cong.,
66, 2768 (1866).

ment of § 5's purpose was not questioned by anyone in the course of the
k, The Adoption of the Fourteenth Amendment 138 (1908).

nificant role of abrogating only those state laws that the judicial branch prepared to adjudge unconstitutional, or of merely informing the judgment the judiciary by particularizing the "majestic generalities" of § 1 of the Amendment. See *Fay* v. *New York*, 332 U.S. 261, 282–284.

Thus our task in this case is not to determine whether the New York literacy requirement as applied to deny the right to vote to a person who fully completed the sixth grade in a Puerto Rican school violates the Protection Clause. Accordingly, our decision in *Lassiter* v. *Northampton Bd.*, 360 U.S. 45, sustaining the North Carolina English literacy requirement in all circumstances prohibited by the first sections of the Fourteenth Fifteenth Amendments, is inapposite. Compare also *Guinn* v. *United States* U.S. 347, 366; *Camacho* v. *Doe*, 31 Misc. 2d 692, 221 N. Y. S. 2d 262 (1958) 7 N. Y. 2d 762, 163 N. E. 2d 140 (1959); *Camacho* v. *Rogers*, 199 F. Supp. 155 S. D. N. Y. 1961). *Lassiter* did not present the question before us here: W regard to whether the judiciary would find that the Equal Protection Clause nullifies New York's English literacy requirement as so applied, could Co prohibit the enforcement of the state law by legislation under § 5 of the teenth Amendment? In answering this question, our task is limited to deter whether such legislation is, as required by § 5, appropriate legislation to e the Equal Protection Clause.

By including § 5 the draftsmen sought to grant to Congress, by a s provision applicable to the Fourteenth Amendment, the same broad powe pressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18." The classi lation of the reach of those powers was established by Chief Justice Mars *McCulloch* v. *Maryland*, 4 Wheat. 316, 421:

"Let the end be legitimate, let it be within the scope of the constitutio all means which are appropriate, which are plainly adapted to that end, are not prohibited, but consist with the letter and spirit of the constitution constitution." [10]

Ex parte Virginia, 100 U.S. at 345–346, decided 12 years after the adop the Fourteenth Amendment, held that congressional power under § 5 ha same broad scope:

"Whatever legislation is appropriate, that is, adapted to carry out the the amendments have in view, whatever tends to enforce submission to th hibitions they contain, and to secure to all persons the enjoyment of p equality of civil rights and the equal protection of the laws against State or invasion, if not prohibited, is brought within the domain of congres power." *Strauder* v. *West Virginia*, 100 U.S. 303, 311; *Virginia* v. *Rives*, 1 313, 318. Section 2 of the Fifteenth Amendment grants Congress a similar to enforce by "appropriate legislation" the provisions of that amendment we recently held in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 326, that basic test to be applied in a case involving § 2 of the Fifteenth Amendment same as in all cases concerning the express powers of Congress with rela the reserved powers of the States." That test was identified as the one for in *McCulloch* v. *Maryland*. See also *James Everard's Breweries* v. *Day*, 26 545, 558–559 (Eighteenth Amendment). Thus the *McCulloch* v. *Maryland* ard is the measure of what constitutes "appropriate legislation" under § Fourteenth Amendment. Correctly viewed, § 5 is a positive grant of legi power authorizing Congress to exercise its discretion in determining whet what legislation is needed to secure the guarantees of the Fourteenth Amen

We therefore proceed to the consideration whether § 4 (e) is "appropria lation" to enforce the Equal Protection Clause, that is, under the *McC Maryland* standard, whether § 4 (e) may be regarded as an enactment to the Equal Protection Clause. Congress explicitly declared that it enacted whether it is not prohibited by but is consistent with "the letter and spirit constitution." [10]

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[9] In fact, earlier drafts of the proposed Amendment employed the "necessary proper" terminology to describe the scope of congressional power under the A See Lindbrook, The Antislavery Origins of the Fourteenth Amendment 187, 190 (1 substitution of the "appropriate legislation" formula was never thought to be fect of diminishing the scope of this congressional power. See e. g., Cong. Cong. 1st Sess., App. 85 (Representative Bingham, a principal draftsman Amendment and the earlier proposals).

[10] Contrary to the suggestion of the dissent, *post*, p. 668, § 5 does not grant Con to exercise discretion in the other direction and to enact "statutes so as in effe equal protection and due process decisions of this Court." We emphasize that power under § 5 is limited to adopting measures to enforce the guarantees to th

e can be no doubt that § 4(e) may be regarded as an enactment to enforce
al Protection Clause. Congress explicitly declared that it enacted § 4(e)
ire the rights under the fourteenth amendment of persons educated in
in-flag schools in which the predominant classroom language was other
iglish." The persons referred to include those who have migrated from
mmonwealth of Puerto Rico to New York and who have been denied the
vote because of their inability to read and write English, and the Four-
Amendment rights referred to include those emanating from the Equal
on Clause. More specifically, § 4(e) may be viewed as a measure to secure
Puerto Rican community residing in New York non-discriminatory treat-
government—both in the imposition of voting qualifications and the pro-
r administration of governmental services, such as public schools, public
and law enforcement.

n 4(e) may be readily seen as "plainly adapted" to furthering these aims
Equal Protection Clause. The practical effect of § 4(e) is to prohibit New
m denying the right to vote to large segments of its Puerto Rican com-
Congress has thus prohibited the State from denying to that community
that is "preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U.S. 356.
s enhanced political power will be helpful in gaining nondiscriminatory
t in public services for the entire Puerto Rican community.[11] Section 4(e)
enables the Puerto Rican minority better to obtain "perfect equality of
ts and the equal protection of the laws." It was well within congressional
to say that this need of the Puerto Rican minority for the vote war-
ederal instrusion upon any state interests served by the English literacy
ent. It was for Congress, as the branch that made this judgment, to assess
h the various conflicting considerations—the risk or pervasiveness of the
ation in governmental services, the effectiveness of eliminating the state
n on the right to vote as a means of dealing with the evil, the adequacy
bility of alternative remedies, and the nature and significance of the
ests that would be affected by the nullification of the English literacy
ent as applied to residents who have successfully completed the sixth
n Puerto Rican school. It is not for us to review the congressional resolu-
ese factors. It is enough that we be able to perceive a basis upon which
ress might resolve the conflict as it did. There plainly was such a basis
rt § 4(e) in the application in question in this case. Any contrary con-
ould require us to be blind to the realities familiar to the legislators.[12]
ult is no different if we confine our inquiry to the question whether § 4(e)
ly legislation aimed at the elimination of an invidious discrimination in
ng voter qualifications. We are told that New York's English literacy
nt originated in the desire to provide an incentive for non-English
immigrants to learn the English language and in order to assure the
t exercise of the franchise. Yet Congress might well have questioned, in
the many exemptions provided,[13] and some evidence suggesting that
played a prominent role in the enactment of the requirement,[14] whether

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grants Congress no power to restrict, abrogate, or dilute, these guarantees.
example, an enactment authorizing the States to establish racially segregated
education would not be as required by § 5 a measure "to enforce" the Equal
Clause, since that clause of its own force prohibits such state laws.

mes Everard's Breweries v. *Day*, *supra*, which held that, under the Enforce-
se of the Eighteenth Amendment, Congress could prohibit the prescription of
g malt liquor for medicinal purposes even though the Amendment itself only
the manufacture and sale of intoxicating liquors for beverage purposes. Cf.
ttled principle applied in the *Shreveport Case* (*Houston, E. & W. T. R. Co.*
tates, 234 U.S. 342), and expressed in *United States* v. *Darby*, 312 U.S. 100, 118,
power of Congress to regulate interstate commerce "extends to those activities
which so affect interstate commerce or the exercise of the power of Con-
it as to make regulation of them appropriate means to the attainment of a
end . . ." Accord, *Atlanta Motel* v. *United States*, 379 U.S. 241, 258.

g., 111 Cong. Rec. 11061, 11062, 11065–11066, 16240; Literacy Tests and Voter
its in Federal and State Elections, Senate Hearings, n. 5, *supra*, 507–508.
incipal exemption complained of is that for persons who had been eligible to
January 1, 1922. See n. 2, *supra*.

vidence consists in part of statements made in the Constitutional Conven-
onsidering the English literacy requirement, such as the following made by
of the measure: "More precious even than the forms of government are the
lities of our race. While those stand unimpaired, all is safe. They are ex-
single danger, and that is that by constantly changing our voting citizenship
e wholesale, that valuable and necessary infusion of Southern and Eastern
aces. . . . The danger has begun. . . . We should check it." III New York State
nal Convention 3012 (Rev. Record 1916).

id., at 3015–3017, 3021–3055. This evidence was reinforced by an understanding
ural milieu at the time of proposal and enactment, spanning a period from 1915

these were actually the interests being served. Congress might have also q tioned whether denial of a right deemed so precious and fundamental in society was a necessary or appropriate means of encouraging persons to l English, or of furthering the goal of an intelligent exercise of the franch Finally, Congress might well have concluded that as a means of furthering intelligent exercise of the franchise, an ability to read or understand Spani as effective as ability to read English for those to whom Spanish-language n papers and Spanish-language radio and television programs are avai ab inform them of election issues and governmental affairs.[16] Since Congress m took to legislate so as to preclude the enforcement of the state law, and i in the context of a general appraisal of literacy requirements for voting *South Carolina* v. *Katzenbach*, *supra*, to which it brought a specially infe legislative competence,[17] it was Congress' prerogative to weigh these comp considerations. Here again, it is enough that we perceive a basis upon w Congress might predicate a judgment that the application of New York's El literacy requirement to deny the right to vote to a person with a sixth g education in Puerto Rican schools in which the language of instruction was than English constituted an invidious discrimination in violation of the E Protection Clause.

There remains the question whether the congressional remedies adop § 4(e) constitute means which are not prohibited by, but are consistent wi letter and spirit of the constitution." The only respect in which appellees tend that § 4(e) fails in this regard is that the section itself works an inv discrimination in violation of the Fifth Amendment by prohibiting the en ment of the English literacy requirement only for those educated in Americ schools (schools located within United States jurisdiction) in which the guage of instruction was other than English, and not for those educat schools beyond the territorial limits of the United States in which the lan of instruction was also other than English. This is not a complaint that Cong in enacting § 4(e), has unconstitutionally denied or diluted anyone's right but rather that Congress violated the Constitution by not extending the effected in § 4(e) to those educated in non-American-flag schools. We need pause to determine whether appellees have a sufficient personal interest t § 4(e) invalidated on this ground, see generally *United States* v. *Raines* U.S. 17, since the argument, in our view, falls on the merits.

Section 4(e) does not restrict or deny the franchise but in effect extend franchise to persons who otherwise would be denied it by state law. Thus we not decide whether a state literacy law conditioning the right to vote on a

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to 1921—not one of the enlightened eras of our history. See generally Chafee, Fre In the United States 102, 237, 269, 282 (1954 ed.). Congress was aware of this See, *e.g.*, Literacy Tests and Voter Requirements in Federal and State Elections, Hearings, p. 5, *supra*, 507–513; Voting Rights, House Hearings, p. 3, *supra*, 508–5

[15] Other States have found ways of assuring an intelligent exercise of the fran of total disenfranchisement of persons not literate in English. For example, in H where literacy in either English or Hawaiian suffices, candidates' names may be pri both languages, Hawaii Rev. Laws § 11-38 (1968 Supp.); New York itself al vides assistance for those exempt from the literacy requirement and are literat language, N.Y. Election Law § 169; and, of course, the problem of assuring the gent exercise of the franchise has been met by those States, more than 30 i that have no literacy requirement at all, see *e.g.*, Fla. Stat. Ann. §§ 97.061, 101.051 (form of personal assistance); New Mexico Stat. Ann. §§ 3-2-11, 3-3-13 (per sistance for those literate in no language), §§ 3-3-7, 3-3-12, 3-2-41 (1953) (ball instructions authorized to be printed in English or Spanish). Section 4(e) preclude resort to these alternative methods of assuring the intelligent exer the franchise. True, the statute precludes, for a certain class, disenfranchisement Limits the States' choice of means of satisfying a purported state interest. But have held that the States can be required to tailor carefully the means of satisfy legitimate state interest when fundamental liberties and rights are threatened. *Carrington* v. *Rash*, 380 U.S. 89, 96; *Harper* v. *Virginia Board of Elections*, 383 U.S. 670; *Thomas* v. *Collins*, 323 U.S. 516, 529–530; *Thornhill* v. *Alabama*, 310 U.S. 88 *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152–153, n. 4, *Mcure* v. 262 U.S. 390, and Congress is free to apply the same principle in the exercise powers.

[16] *See, e.g.*, 111 Cong. Rec. 11060–11061, 15666, 16235. The record in this case affidavit describing the nature of New York's two major Spanish-language newsp dailies and one weekly, and its three full-time Spanish-language radio stations and from those who have campaigned in Spanish-speaking areas.

[17] See, *e.g.*, 111 Cong. Rec. 11061 (Senator Long of Louisiana and Senator Yonng (Senator Holland), drawing on their experience with voters literate in a lang than English. See also an affidavit from Representative Willis of Louisiana ex the view that on the basis of his thirty years' personal experience in politics "formed a definite opinion that French-speaking voters who are illiterate in generally have as clear a grasp of the issues and understanding of the candidates people who read and write the English language."

tain level of education in an American-flag school (regardless of the of instruction) discriminates invidiously against those educated in non-flag schools. We need only decide whether the challenged limitation on effected in § 4(e) was permissible. In deciding that question, the prin- calls for the closest scrutiny of distinctions in laws *denying* fundamen-, see n. 15, *supra*, is inapplicable: for the distinction challenged by ap- presented only as a limitation on a reform measure aimed at eliminating g barrier to the exercise of the franchise. Rather, in deciding the consti- propriety of the limitations in such a reform measure we are guided by iar principles that a "statute is not invalid under the Constitution be- ight have gone farther than it did." *Roschen* v. *Ward*, 279 U.S. 337, 339. islature need not "strike at all evils at the same time." *Semler* v. *Dental* s, 294 U.S. 608, 610, and that "reform may take one step at a time, g itself to the phase of the problem which seems most acute to the legis- d." *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.

by these principles, we are satisfied that appellees' challenge to this in § 4(e) is without merit. In the context of the case before us, the nal choice to limit the relief effected in § 4(e) may, for example, re- ress' greater familiarity with the quality of instruction in American- ls,[18] a recognition of the unique historic relationship between the Con- the Commonwealth of Puerto Rico,[19] an awareness of the Federal Gov- acceptance of the desirability of the use of Spanish as the language of n in Commonwealth schools,[20] and the fact that Congress has fostered couraging migration from the Commonwealth to the States.[21] We have on to determine in this case whether such factors would justify a stinction embodied in a voting-qualification law that denied the fran- ersons educated in non-American-flag schools. We hold only that the on relief effected in § 4(e) does not constitute a forbidden discrimina- these factors might well have been the basis for the decision of Con- "no farther than it did."

efore conclude that § 4(e)), in the application challenged in this case, iate legislation to enforce the Equal Protection Clause and that the of the District Court must be and hereby is *Reversed*.

TICE DOUGLAS joins the Court's opinion except for the discussion, at 8, of the question whether the congressional remedies adopted in § 4(e) means which are not prohibited by, but are consistent with "the letter of the constitution." On that question, he reserves judgment until such is presented by a member of the class against which that particular tion is directed.

TICE HARLAN, whom MR. JUSTICE STEWART joins, dissenting.*

as its purpose may be thought by many, I do not see how § 4(e) of Rights Act of 1965, 79 Stat. 439, 42 U.S.C. § 1973b(e) (1964 ed. Supp. sustained except at the sacrifice of fundamentals in the American con- system—the separation between the legislative and judicial function undaries between federal and state political authority. By the same nk that the validity of New York's literacy test, a question which the iders only in the context of the federal statute, must be upheld. It will analytical clarity if I discuss the second issue first.

THE CARDONA CASE (No. 673)

presents a straightforward Equal Protection problem. Appellant, a d citizen of New York, sought to register to vote but was refused because she failed to meet the New York English literacy qualifica- ting eligibility for the franchise.[1] She maintained that although she ead or write English, she had been born and educated in Puerto Rico erate in Spanish. She alleges that New York's statute requiring satis- an English literacy test is an arbitrary and irrational classification

111 Cong. Rec. 11060–11061.
ruder, The Commonwealth Status of Puerto Rico, 15 U. Pitt. L. Rev. 1 (1953).
111 Cong. Rec. 11060–11061, 11066, 11073, 16235. See Osuna, A History of Puerto Rico (1949).
111 Cong. Rec. 16235; Voting Rights, House Hearings, n. 3, *supra*, 362. See t of 1917, 39 Stat. 953, conferring United States citizenship on all citizens of

nion applies also to *Cardona* v. *Power*, *post*, p. 672.]
nent portions of the New York Constitution, Art. II, § 1, and statutory pro- produced in the Court's opinion, *ante*, pp. 644–645, n. 2.

that violates the Equal Protection Clause at least as applied to someone like herself, is literate in Spanish.

Any analysis of this problem must begin with the established rule of law the franchise is essentially a matter of state concern. *Minor* v. *Happers* Wall. 162; *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, subject only t overriding requirements of various federal constitutional provisions dealing the franchise, *e. g.*, the Fifteenth, Seventeenth, Nineteenth, and Twenty-f Amendments,[2] and, as more recently decided, to the general principles o Fourteenth Amendment. *Reynolds* v. *Sims*, 377 U.S. 533; *Carrington* v. *Rash* U.S. 89.

The Equal Protection Clause of the Fourteenth Amendment, which alone cerns us here, forbids a State from arbitrarily discriminating among dif classes of persons. Of course it has always been recognized that nearly all lation involves some sort of classification, and the equal protection test ap by this Court is a narrow one: a state enactment or practice may be struck under the clause only if it cannot be justified as founded upon a rational and missible state policy. See, *e. g.*, *Powell* v. *Pennsylvania*, 127 U.S. 678; *Lind Natural Carbonic Gas Co.*, 220 U.S. 61; *Walters* v. *City of St. Louis*, 347 U.S. It is suggested that a different and broader equal protection standard appl cases where "fundamental liberties and rights are threatened," see *ante*, p note 16; dissenting opinion of DOUGLAS, J., in *Cardona*, *post*, pp. 676–677, would require a State to show a need greater than mere rational policy to j classifications in this area. No such dual-level test has ever been articula this Court, and I do not believe that any such approach is consistent wi purposes of the Equal Protection Clause, with the overwhelming weight thority, or with well established principles of federalism which under Equal Protection Clause.

Thus for me, applying the basic equal protection standard, the issue i case is whether New York has shown that its English-language literacy reasonably designed to serve a legitimate state interest. I think that it has

In 1959, in *Lassiter* v. *Northampton Election Bd.*, *supra*, this Court deal substantially the same question and resolved it unanimously in favor legitimacy of a state literacy qualification. There a North Carolina literacy test was challenged. We held that there was "wide scope" for qualifications of this sort. 360 U.S., at 52. Dealing with literacy tests gen the Court there held:

"The ability to read and write . . . has some relation to standards des to promote intelligent use of the ballot. . . . Literacy and intelligence are ously not synonymous. Yet in our society where newspapers, periodicals and other printed matter canvass and debate campaign issues, a State mig clude that only those who are literate should exercise the franchise. . . . said last century in Massachusetts that a literacy test was designed to an 'independent and intelligent' exercise of the right of suffrage. *Stone* v 159 Mass. 413, 414, 34 N. E. 521. North Carolina agrees. We do not sit ment on the wisdom of that policy. We cannot say, however, that it is allowable one measured by constitution standards." 360 U.S., at 51–53.

I believe the same interests recounted in *Lassiter* indubitably point upholding the rationality of the New York voting test. It is true that the here is not so simply drawn between literacy *per se* and illiteracy. Ma alleges that she is literate in Spanish, and that she studied American and government in United States Spanish speaking schools in Puerto Ri alleges further that she is "a regular reader of the New York City Sp language daily newspapers and other periodicals, which . . . provide tionately more coverage of government and politics than do most Eng guage radio broadcasts in New York which provide full treatment of mental and political news. It is thus maintained that whatever may validity of literacy tests *per se* as a condition of voting, application of test to one literate in Spanish, in the context of the large and politically Spanish speaking community in New York serves no legitimate interest, and is thus an arbitrary classification that violates the Equal Pr Clause.

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[2] The Fifteenth Amendment forbids denial or abridgement of the franchise "on race, color, or previous condition of servitude"; the Seventeenth deals with election of members of the Senate; the Nineteenth provides for equal suffrage for the Twenty-fourth outlaws the poll tax as a qualification for participation in elections.

gh to be sure there is a difference between a totally illiterate person who is literate in a foreign tongue, I do not believe that this added tiates the constitutionality of the New York statute. Accepting appel- egations as true, it is nevertheless also true that the range of material to a resident of New York literate only in Spanish is much more han what is available to an English-speaking resident, that the busi- national, state, and local government is conducted in English, and that ons, amendments, and offices for which candidates are running listed allot are likewise in English. It is a so true that most candidates, those campaigning on a national or statewide level, make their speeches h. New York may justifiably want its voters to be able to understand s directly, rather than through imprecise translations or summaries in a limited number of Spanish news media. It is noteworthy that the Government requires literacy in English as a prerequisite to naturaliza- State. 239, 8 U.S.C. § 1423 (1964 ed.), attesting to the national view portance as a prerequisite to full integration into the American political y. Relevant too is the fact that the New York English test is not com- t it is fairly administered,[4] and that New York maintains free adult classes which appellant and members of her class are encouraged to iven the State's legitimate concern with promoting and safeguarding gent use of the ballot, and given a'so New York's long experience with ss of integrating non-English-speaking residents into the mainstream an life, I do not see how it can be said that this qualification for s unconstitutional. I would uphold the validity of the New York statute, federal statute prevents that result, the question to which I now turn.

II

The Morgan Cases (Nos. 847 and 877)

ses involve the same New York suffrage restriction discussed above, allenge here comes not in the form of a suit to enjoin enforcement of statute, but in a test of the constitutionality of a federal enactment —

is described in McGovney, The American Suffrage Medley 63 (1949) as fol- examination is based upon prose compositions of about ten lines each, prepared unel of the State Department of Education, designed to be of the level of read- sixth grade. . . . These are uniform for any single examination throughout e examination is given by school authorities and graded by school superintend- chers under careful instructions from the central authority, to secure uni- grading as nearly as is possible." The 1943 test, submitted by the Attorney ew York as representative, is reproduced below:

New York State Regents Literacy Test

(To be filled in by the candidate in ink)

ame here_____
First name Middle initial Last name

ddress here_____

te here_____
Month Day Year

and then write the answers to the questions
many times as you need to.

ative branch of the National Government is called the Congress of the United ress makes the laws of the Nation. Congress is composed of two houses. ouse is called the Senate and its members are called Senators. There are 96 the upper house, two from each State. Each United States Senator is elected f six years. The lower house of Congress is known as the House of Repre- he number of Representatives from each state is determined by the popula- state. At present there are 435 members of the House of Representatives. entative is elected for a term of two years. Congress meets in the Capitol at

rs to the following questions are to be taken from the above paragraph.
ny houses are there in Congress?
es Congress do?
the lower house of Congress called?
ny members are there in the lower house?
g is the term of office of a United States Senator?
ny Senators are there from each state?
long a period are members of the House of Representatives elected?
city does Congress meet?

no allegation of discriminatory enforcement, and the method of examina- 3, *supra*, makes unequal application virtually impossible. McGovney has *supra*, at 62, that "New York is the only state in the Union that both has eading requirement and administers it in a manner that secures uni- pplication throughout the state and precludes discrimination, so far as is hu- ble." See *Camacho* v. *Rogers*, 199 F. Supp. 155–160.

nney's Consolidated Laws of New York Ann., Education Law § 4605. See gen- ook of Adult Education in the United States 455–465 (Knowles ed. 1960).

which declares that "to secure the rights under the fourteenth amendm
persons educated in American-flag schools in which the predominant clas
language was other than English, it is necessary to prohibit the States fro
ditioning the right to vote of such persons on ability to read, write, understa
interpret any matter in the English language." Section 4(e) of the Voting R
Act of 1965. Section 4(e) declares that anyone who has successfully complet
grades of schooling in an "American-flag" school, in which the primary lan
is not English, shall not be denied the right to vote because of an inabil
satisfy an English literacy test.[6] Although the statute is framed in general t
so far as has been shown it applies in actual effect only to citizens of Pu
Rican background, and the Court so treats it.

The pivotal question in this instance is what effect the added factor
congressional enactment has on the straight equal protection argument
with above. The Court declares that since § 5 of the Fourteenth Amendm
gives to the Congress power to "enforce" the prohibitions of the Amendme
"appropriate" legislation, the test for judicial review of any congressional
mination in this area is simply one of rationality; that is, in effect, was Con
acting rationally in declaring that the New York statute is irrational? Alth
§ 5 most certainly does give to the Congress wide powers in the field of de
remedial legislation to effectuate the Amendment's prohibition on arbitrary
action, *Ex parte Virginia*, 100 U. S. 339, I believe the Court has confused the
of how much enforcement power Congress possesses under § 5 with the di
issue of what questions are appropriate for congressional determinatio
what questions are essentially judicial in nature.

When recognized state violations of federal constitutional standards
occurred, Congress is of course empowered by § 5 to take appropriate rem
measures to redress and prevent the wrongs. See *Strauder* v. *West Virgini*
U.S. 303, 310. But it is a judicial question whether the condition with w
Congress has thus sought to deal is in truth an infringement of the Consti
something that is the necessary prerequisite to bringing the § 5 power into
at all. Thus, in *Ex parte Virginia*, *supra*, involving a federal statute makin
federal crime to disqualify anyone from jury service because of race, the C
first held as a matter of constitutional law that "the Fourteenth Amend
secures, among other civil rights, to colored men, when charged with cri
offenses against a State, an impartial jury trial, by jurors indifferently sel
or chosen without discrimination against such jurors because of their c
100 U.S., at 345. Only then did the Court hold that to enforce this prohib
upon state discrimination, Congress could enact a criminal statute of the
under consideration. See also *Clyatt* v. *United States*, 197 U.S. 207, susta
the constitutionality of the antipeonage laws, 14 Stat. 546, now 42 U.S.C. §
(1964 ed.) under the Enforcement Clause of the Thirteenth Amendment.

A more recent Fifteenth Amendment case also serves to illustrate this di
tion. In *South Carolina* v. *Katzenbach*, 383 U.S. 301, decided earlier this Ter
held certain remedial sections of this Voting Rights Act of 1965 constitut
under the Fifteenth Amendment, which is directed against deprivations
right to vote on account of race. In enacting those sections of the Voting R
Act the Congress made a detailed investigation of various state practices
had been used to deprive Negroes of the franchise. See 383 U.S., at 308-3
passing upon the remedial provisions, we reviewed first the "voluminous le
tive history" as well as judicial precedents supporting the basic congress
finding that the clear commands of the Fifteenth Amendment had been infr
by various state subterfuges. See 393 U.S., at 309, 329-330, 333-334. Givi
existence of the evil, we held the remedial steps taken by the legislature
the Enforcement Clause of the Fifteenth Amendment to be a justifiable ex
of congressional initiative.

Section 4(e), however, presents a significantly different type of congress
enactment. The question here is not whether the statute is appropriate rem
legislation to cure an established violation of a constitutional comman
whether there has in fact been an infringement of that constitutional co
that is, whether a particular state practice or, as here, a statute is so ar
or irrational as to offend the command of the Equal Protection Clause

[6] The statute makes an exception to its sixth-grade rule so that where state law
vides that a different level of education is presumptive of literacy," the appli
show that he has completed "an equivalent level of education" in the foreign
United States school.

[7] Section 5 of the Fourteenth Amendment states that "The Congress shall hav
to enforce, by appropriate legislation, the provisions of this article."

enth Amendment. That question is one for the judicial branch ultimately rmine. Were the rule otherwise, Congress would be able to qualify this constitutional decisions under the Fourteenth and Fifteenth Amendments, e those under other provisions of the Constitution, by resorting to con- ial power under the Necessary and Proper Clause. In view of this Court's in *Lassiter*, *supra*, that an English literacy test is a permissible exercise supervision over its franchise, I do not think it is open to Congress to e effect of that decision as it has undertaken to do by § 4(e). In effect rt reads § 5 of the Fourteenth Amendment as giving Congress the power e the *substantive* scope of the Amendment. If that indeed be the true f § 5, then I do not see why Congress should not be able as well to exercise discretion" by enacting statutes so as in effect to dilute equal protection process decisions of this Court. In all such cases there is room for reason- n to differ as to whether or not a denial of equal protection or due process urred, and the final decision is one of judgment. Until today this judg- s always been one for the judiciary to resolve.

ot mean to suggest in what has been said that a legislative judgment of incorporated in § 4(e) is without any force whatsoever. Decisions on s of equal protection and due process are based not on abstract logic, mpirical foundations. To the extent "legislative facts" are relevant to l determination, Congress is well equipped to investigate them, and such ations are of course entitled to due respect.[8] In *South Carolina* v. *Katz- supra*, such legislative findings were made to show that racial discrimi- n voting was actually occurring. Similarly, in *Heart of Atlanta Motel, nited States*, 379 U.S. 241, and *Katzenbach* v. *McClung*, 379 U.S. 294, rt upheld Title II of the Civil Rights Act of 1964 under the Commerce here again the congressional determination that racial discrimination rly defined group of public accommodations did effectively impede inter- mmerce was based on "voluminous testimony," 379 U.S., at 253, which put before the Congress and in the context of which it passed remedial n.

such factual data provide a legislative record supporting § 4(e)[9] by howing that Spanish-speaking citizens are fully as capable of making decisions in a New York election as are English-speaking citizens. Nor e any showing whatever to support the Court's alternative argument e) should be viewed as but a remedial measure designed to cure or gainst unconstitutional discrimination of other varieties, *e.g.*, in "public ublic housing and law enforcement," *ante*, p. 652, to which Puerto Rican s might be subject in such communities as New York. There is simply ative record supporting such hypothesized discrimination of the sort we erto insisted upon when congressional power is brought to bear on ionally reserved state concerns. See *Heart of Atlanta Motel*, *supra*; *rolina* v. *Katzenbach*, *supra*.

ve have here not a matter of giving deference to a congressional estimate, its determination of legislative facts, bearing upon the validity *vel non* ute, but rather what can at most be called a legislative announcement gress believes a state law to entail an unconstitutional deprivation of tection. Although this kind of declaration is of course entitled to the ectful consideration, coming as it does from a concurrent branch and is knowledgeable in matters of popular political participation, I do e it lessens our responsibility to decide the fundamental issue of whether e state enactment violates federal constitution rights.

ssing the deference we should give to this kind of congressional expres- licy, it is relevant that the judiciary has always given to congressional s a presumption of validity. *The Propeller Genesee Chief* v. *Fitzhugh*, 443, 457–458. However, it is also a canon of judicial review that state re given a similar presumption. *Butler* v. *Commonwealth*, 10 How. 402, hever way this case is decided, one statute will be rendered inoperative or in part, and although it has been suggested that this Court should what more deference to Congress than to a state legislature,[10] such a

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erally Karst, Legislative Facts in Constitutional Litigation, 1960 The Supreme ew 75 (Kurland ed.); Alfange, The Relevance of Legislative Facts in Constitu- 114 U. Pa. L. Rev. 637 (1966).

ere no committee hearings or reports referring to this section, which was in- om the floor during debate on the full Voting Rights Act. See 111 Cong. Rec. 6, 16234.

ayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 tev. 129, 154–155 (1893).

simple weighing of presumptions is hardly a satisfying way of resolving a ma
that touches the distribution of state and federal power in an area so sensit
as that of the regulation of the franchise. Rather it should be recognized t
while the Fourteenth Amendment is a "brooding omnipresence" over all st
legislation, the substantive matters which it touches are all within the prima
legislative competence of the States, Federal authority, legislative no less th
judicial, does not intrude unless there has been a denial by state action
Fourteenth Amendment limitations, in this instance a denial of equal protecti
At least in the area of primary state concern a state statute that passes c
stitutional muster under the judicial standard of rationality should not be p
mitted to be set at naught by a mere contrary congressional pronouncem
unsupported by a legislative record justifying that conclusion.

To deny the effectiveness of this congressional enactment is not of course
disparage Congress' exertion of authority in the field of civil rights; it is simp
to recognize that the Legislative Branch like the other branches of federal
thority is subject to the governmental boundaries set by the Constitution.
hold, on this record, that § 4(e) overrides the New York literacy requirem
seems to me tantamount to allowing the Fourteenth Amendment to swallow
State's constitutionally ordained primary authority in this field. For if Congr
by what, as here, amounts to more *ipse dixit* can set that otherwise permiss
requirement partially at naught I see no reason why it could not also substit
its judgment for that of the States in other fields of their exclusive prima
competence as well.

I would affirm the judgments in each of these cases.[11]

III. Katzenbach v. Morgan

The third case of the term to pass on the Voting Rights Act of 1965, *Katz
bach* v. *Morgan*,[70] upheld § 4(e), giving the right to vote to Spanish-speak
Puerto Ricans in New York. It was decided together with a companion ca
Cardona v. *Power*,[71] which had arisen and been disposed of in the New Y
courts before the enactment of the Voting Rights Act of 1965. The Supreme Co
vacated and remanded the *Cardona* case, without deciding constitutionality un
the Fourteenth Amendment of the requirement of the New York law that vote
be literate in English. (Justices Douglas and Fortas, dissenting would have h
it unconstitutional.)[72] So § 4(e) of the Voting Rights Act, which forbids a st
to condition the vote of a person educated in an American-flag school on
ability to read and understand the English language, came to judgment on
assumption that the constitutionality of literacy in English as a condition on t
right to vote is an open question under the Fourteenth Amendment.

The Court, Mr. Justice Brennan writing, began by restating a point made
South Carolina v. *Katzenbach*, namely, that Congress is empowered by § 2 of
Fifteenth Amendment and § 5 of the Fourteenth to enact legislation appropri
to those constitutional provisions. Such legislation may reach into the affa
of the states further and differently than the Amendments themselves, appl
by the courts without the aid of implementing legislation, would necessar
do.[73] This much is obvious enough. But in enacting appropriate legislation
it up to Congress to define the substance of what the legislation must be app
priate to? If something is not an action of a state denying or abridging the ri
of citizens of the United States to vote, on account of race, color, or previ
condition of servitude, may Congress say that it is, and thus reach it by legis
tion? If something is not an irrational classification by a state, may Congr
say that it is and that it violates the Equal Protection Clause, and thus re
it by legislation? Of course, Congress may amass evidence and add the weight
its views, and thus affect, and affect powerfully, the Court's judgment of
applicability of the Fifteenth and Fourteenth Amendments. But may Congr

[11] A number of other arguments have been suggested to sustain the constitutionality
§ 4(e). These are referred to in the Court's opinion, *ante*, pp. 646–647, n. 5. Since su
such arguments are rendered superfluous by the Court's decision and none of them
considered by the majority, I deem it unnecessary to deal with them save to say that
my opinion none of those contentions provides an adequate constitutional basis
sustaining the statute.

[70] 384 U.S. 641 (1966).

[71] 384 U.S. 672 (1966).

[72] *Id.* at 675.

[73] See 383 U.S. at 325–27.

those Amendments, any more than under, for example, the Commerce determine the allocation of functions between federal and state govern- and the extent of its own powers? May it determine, not what means propriate to the enforcement of the Fourteenth and Fifteenth Amend- or to the discharge of the function conferred by the Commerce Clause, content of the Amendments and of that clause?

e questions did not arise in *South Carolina* v. *Katzenbach*, where only propriateness of the means chosen by Congress was at issue. But in *bach* v. *Morgan* the Court did answer these questions. For it rested its ion that § 4(e) is constitutional at least in part on a holding that § 5 of urteenth Amendment empowered Congress to act, whether or not, in the nt of the Court, the requirement of literacy in English may be regarded scrimination forbidden by the Equal Protection Clause. It was urged, e Court, "that § 4(e) cannot be sustained as appropriate legislation to the Equal Protection Clause unless the judiciary decides—even with lance of a congressional judgment—that the application of the English requirement prohibited by § 4(e) is forbidden by the Equal Protection itself. We disagree."[74] To the extent that the Court, in this branch cision, purported to re'y on evidence of the intent of the framers of rteenth Amendment, the sufficient reply that can be made is James A. 's to John A. Bingham in the House, nearly a century ago. My colleague, rfield, "can make but he cannot unmake history."[75] Nothing is clearer e history of the Fourteenth Amendment than that its framers rejected n of an open-ended grant of power to Congress to meddle with conditions he states so as to render them equal in accordance with its own notions. the framers chose to write an amendment empowering Congress only inequalities put into effect by the states. Hence the power of Congress to play only when the precondition of a denial of equal protection of by a state has been met. Congress' view that the precondition has been ld be persuasive, but it cannot be decisive. That is the history of the But perhaps the Court meant to override history in order to bring e Fourteenth Amendment into harmony with some general premise of titutional system.

hile Congress must be allowed the widest choice of means in the dis- f its function, the general premise of *Marbury* v. *Madison*,[77] and of *h* v. *Maryland*[78] also, is that Congress does not define the limits of its ers. It belongs, rather, to the Court, exercising the function of judicial o do so. When it applies the dormant Commerce Clause to the states, it protects federal instrumentalities from taxation by the states, the ts as a surrogate of Congress, and Congress, therefore, has the last n a few other areas—taxation and spending for the general welfare xclusion of aliens has been thought to be another—the Court, finding ards to guide the exercise of judicial review, has abandoned the func- the function has not yet been abandoned across the board. Whatever, ld be the reasons for abdicating judicial review in this area of the

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S. at 648.

d in Bickel, *The Original Understanding and the Segregation Decision*, 69 EV. 1, 60, n. 115 (1955).

at 32–40; HARRIS, THE QUEST FOR EQUALITY 34–50 (1960). The argument in *ngressional Power To Enforce the Fourteenth Amendment against Private Acts*, J. 1353 (1964), is not really to the contrary. See 73 YALE L.J. at 1358–59.

ch 137 (1803).

at, 316 (1819).

own, *The Open Economy: Justice Frankfurter and the Position of the Judiciary*, J. 219, 221 (1957); FREUND, THE SUPREME COURT OF THE UNITED STATES, 92.

But in a letter to Senator Robert F. Kennedy, dated May 17, 1965, which r relied on in the course of debate on § 4(e), Professor Freund wrote: "It greed, for example, that if a State were to deny the franchise to Catholics or to f Protestants, the classification could be struck down by Congress or the er the 14th amendment's guarantee of equal protection of the laws. The courts e sole responsibility in this area. Just as Congress may give a lead to the courts Commerce Clause in prohibiting certain kinds of state regulation or taxation, s Congress may expressly prohibit certain forms of taxation of Federal instru- , whether or not the courts have done so of their own accord, so in implement- h and 15th amendments Congress may legislate through a declaration that cer- of classification are unreasonable for purposes of the voting franchise." 111 11062, 89th Cong., 1st Sess. (May 20, 1965). But surely the analogy between the functions of the Court and the Congress in the areas of state taxation and of interstate commerce and of state taxation of federal instrumentalities, hand, and the area of the Fourteenth Amendment, on the other, is too readily rofessor Freund in this letter.

Fourteenth Amendment, where it has been traditionally dominant? Cert
no general presumption of our constitutional system counsels any such abdica

There is a second branch to the Court's decision in *Katzenbach* v. *Mo*
which is subtler and more interesting. Congress, said the Court, may not
considered the New York requirement of literacy in English as itself a viol
of the Fourteenth Amendment. Rather Congress may have been concerned
evidence of discriminatory treatment of the Puerto Rican community at
hands of New York public agencies. The Court was able to adduce no evid
of such discrimination, either out of the materials that were before Con
or independently of those materials.[*] But perhaps, with some stretching,
presumption of constitutionality should make up for this lack of evidence.[*]
argument then proceeds in this fashion. Instead of directly attacking the disc
nation practiced against the Puerto Ricans, as it could plainly have done u
the Fourteenth Amendment, Congress decided to reach it indirectly. It sec
the vote for the Puerto Rican community, in the belief that its political p
would then enable that community to ensure non-discriminatory treatment
itself. The vote is thus seen as a means of enforcing the Fourteenth Am
ment, not as itself the end of the congressional action, and Congress is no
the position of having undertaken to determine the substance of Fourte
Amendment rights. Congress is merely presumed to have established f
showing that those rights, as judicially defined, have been or may be denied,
of choosing a suitable remedy:[**]

"It was for Congress, as the branch that made this judgment, to assess
weigh the various conflicting considerations -the risk of pervasiveness of
discrimination in governmental services, the effectiveness of eliminating the s
restriction on the right to vote as a means of dealing with the evil, the adequa
availability of alternative remedies, and the nature and significance of the s
interests that would be affected by the nullification of the English literacy
quirement as applied to residents who have successfully completed the sixth gr
in a Puerto Rican school. It is not for us to review the congressional resol
of these factors. It is enough that we be able to perceive a basis upon which
Congress might resolve the conflict as it did."

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[*] The only item of relevant evidence cited (but not quoted, or even paraphra
the Court is the following letter received in 1962 by the Subcommittee on Constitu
Rights of the Senate Committee on the Judiciary, and incorporated in the re
hearings the subcommittee held in the course of that year on literacy tests and other
qualifications. The letter, dated at New York, April 16, 1962, is signed, Gene Cr
It is short, and the gist of it needs to be quoted in full:

"The fact of disenfranchisement of these citizens [Puerto Ricans in New York
erates to make them subject to all kinds of abuses and denials of the equal pro
of the law. More serious than this, a fifth column type of activity has arisen
governmental agencies and among elected public officials in respect to the distr
Puerto Ricans.

"In the week of January 2 to 9, 1962, the employees of Flower Hospital went on
they are mostly Puerto Ricans earning $35 to $40 per week, approximately 35
people were beaten and arrested. In this same week the mayor of New York
his wages $10,000. On January 17th the General Sessions Court announced that
require probationers who don't speak English to learn English, as the lack of
was the cause of their problems. I could write volumes on the cruelty, brutal
der, mayhem and general abuse delivered upon the disfranchised Spanish speak
zens in New York by the various agencies of our Government, all of which is
due to their disfranchisement. Having no vote, they have no representation and n
of redress.

"The English literacy requirement is an instrument of racist policies of the
of New York, and it is used to circumvent the U.S. Constitution. It is more
its application in the State of New York because it has driven its racist po
underground, than in Southern States where segregation has long been a way
and may be fought in the open in the American way. Literacy Tests and Voter
in Federal and State Elections. Hearings before the Subcommittee on Co
Rights of the Committee on the Judiciary on S. 480, S. 2750, and S. 2979, 87th
2d Sess. 507–08 (1962).

A statement in 1965 to a subcommittee of the House Committee on the Ju
Herman Badillo, a leading Puerto Rican politician and now Borough President
Bronx, objected to passage of what was to become § 4 (e), but nowhere charg
[illegible] services or by any public agencies in New York against Puerto
See Voting Rights: Hearings before Subcommittee No. 5 of the Committee on
[illegible] House of Representatives, 89th Cong., 1st Sess. 508, 17 (19
The [illegible] however would be considerable. It would amount, to
[illegible] to a leap from a presumption buttressed by data, even if data
[illegible] of the facts asserted but only to establish that responsible
[illegible] and hold the opinions which are disclosed." Prince, 08
[illegible] Congress and see also 87–89 (1941) to a presumption
one, puts the party attacking constitutionality to the task of proving a negative

[**] 384 U.S. at 653

argument is superficially attractive. But suppose Congress decided that
or eighteen-year-olds or residents of New Jersey are being discriminated
in New York. The decision would be as plausible as the one concerning
h-speaking Puerto Ricans. Could Congress give these groups the vote? If
ss may freely bestow the vote as a means of curing other discriminations,
it fears may be practiced against groups deprived of the vote, essentially
of this deprivation and on the basis of no other evidence, then there
ing left of state autonomy in setting qualifications for voting. The argu-
roves too much. The Court relied on Marshal's famous pronouncement:
end be legitimate, let it be within the scope of the constitution, and all
which are appropriate, which are plainly adapted to that end, which are not
ted, but consist with the letter and spirit of the constitution, are constitu-
s" The Court duly emphasized appropriateness, and adaptation to a given
t it deemphasized altogether too much Marshall's caveat that the means
must also not be prohibited, and must consist with the letter and spirit
constitution."

PRESIDING OFFICER. The Senator's time has expired.
ERVIN. I yield the floor.
WILLIAMS. Mr. President I suggest the absence of a quorum, on
e.
PRESIDING OFFICER. The clerk will call the roll.
second assistant legislative clerk proceeded to call the roll.
WILLIAMS. Mr. President, I ask unanimous consent that the
or the quorum call be rescinded.
PRESIDING OFFICER. Without objection, it is so ordered.
yields time?
WILLIAMS. I yield myself 5 minutes.
President, my understanding of the amendment offered by the
from North Carolina leads me to the conclusion that it has
As I understand it, I am certain it will be acceptable, but I
like to have it clarified to make sure that my understanding is
. First, State and local governments are now included under the
employers. The amendment would provide for the purposes
bill and for the basic law, that an elected individual is not an
e and, therefore, the law could not cover him. The next point
the elected official would, in his position as an employer not be
and would be exempt in the employment of certain individuals.
we get to the inquiry of the Senator from New York (Mr.
yesterday as the ambit of that employment by the elected
But let me back up here to say that I certainly subscribe, and
y reasons, to the exclusion of the elected official at the State
l governing level. His test comes at the polls rather than under
f this nature. I think that is certainly sufficient test as to pro-
n the undertaking of his office, in view of the people that have
ortunity to select him for elected office. For another reason, I
hink he should not be in a position to have unwarranted and
sible charges made against him. Again, his test would be at the

econd degree relates to other people who are covered. That is
the purpose of the amendment, to exempt from coverage those
chosen by the Governor or the mayor or the county supervisor,
r the elected official is, and who are in a close personal relation-
l an immediate relationship with him. Those who are his first

t. at 421.

line of advisers. Is that basically the purpose of the Sen amendment?

Mr. ERVIN. I would say to my good friend from New Jersey that is the purpose of the amendment. I feel that those elected officials are legal advisers or who are personal assistants or legal adviser to how he should exercise his constitutional, legal rights and resp bilities, should also be exempt. That is the purpose of the amend yes.

Mr. WILLIAMS. That is my understanding. As to the degree, certa it would cover those who are in a Governor's cabinet, his cabinet offi They would be included in the group of personal assistants; is that correct?

Mr. ERVIN. That is what is intended by this amendment, plus immediate legal advisers, because no Governor today can get along discharge the many duties imposed upon him by his office with having someone to lean on for advice, counsel, and so forth.

Mr. WILLIAMS. But it is not the intention of the Senator's am ment to go to the employees of the personal advisers to the el officials; is that not correct?

Mr. ERVIN. This amendment would not do that. That is not intention. I would like to do that, but I do not think I could pers the Senate to adopt an exclusion of that kind. It is not its purpo go to the employees of the personal assistants or to the legal advise

Mr. WILLIAMS. Well, I am happy to hear that that is the inten I accept that in principle and feel it would not be at variance or in violation of the thrust, the scope, or the purposes of legislation.

I shall yield in a moment to the Senator from New York Javits), but first would like to say to the Senator from North Car in order to make crystal clear what we have been discussing, would like to offer an amendment to do exactly what we have just discussing, as an amendment to the Senator's amendment.

Mr. ERVIN. The Senator from New York has shown me wha proposes to do, and I would like to modify my amendment to in his suggestion, provided I can get unanimous consent to do so. the yeas and nays on the amendment have already been ordered.

I would propose to accept the suggestion offered by the Se from New Jersey and the Senator from New York for a change phraseology of my amendment so that the amendment would re follows:

On page 33, insert the following between line 10 and line 11:

"(5) In subsection (f), change the period at the end of the subsecti colon, and add thereafter the following words:

"'*Provided, however*, That the term "employee" shall not include any elected to public office in any State or political subdivision of any State qualified voters thereof, or any person chosen by such officer to be a [illegible], or an immediate adviser in respect to the exercise of the consti or legal powers of the office.'"

Renumber section (5) as (6).

If that is agreeable to the Senator from New Jersey and the S from New York, I should like to modify my amendment accord

Mr. JAVITS. Mr. President, I trust that it will be satisfactory I join with the Senator from New Jersey (Mr. Williams) in the posal. However, I want to be sure that we have no difference of op as to what it means.

night tell the distinguished Senator from North Carolina (Mr. n) that I was not troubled by the word "constitutional" but by l powers.". He would be, as a lawyer, too. Because all that means pertaining to the functions of his office—and all his powers are , of course, so we wanted to be sure of the ambit of ". . . any person n to be a personal assistant, or an immediate adviser. . . ."

the Senator will bear with me for a moment, I should like to say, understand those difficulties, that I hope I will not be construed as didactic. I do not mean that at all. That is, eight persons only, ot one more person—anything like that. We are talking about the of magnitude. I have no desire to argue about the fine points of particular appointment, but generally speaking we consider a nal assistant as being a secretary or, as I have, an administrative ant, a legislative aide, and then a mayor may have four assistants. that is what we would understand a personal assistant to be. retary," of course, is an accurate designation. He may have two e secretaries. Important people have more than one.

other thing, the immediate advisers, I was thinking more in of a cabinet, of a Governor who would call his commissioners net, or he may have a cabinet composed of three or four executive s, or five or six, who would do the main and important things. s what I would define those things expressly to mean.

at troubled me yesterday was the idea of getting down to the gritty," as I explained to the Senator the "many assistants." I was Attorney General, I employed 500 people. Of those 500 s, perhaps on the outside 20 would be personal assistants or im- e advisers, but the other 480 would be persons who might be nts in charge of a particular function, or something like that. f we understand each other on that score, this is entirely satis- y to me. Do I understand correctly, then, that we agree on this?

ERVIN. Yes. In other words, I think that the change that has ade makes it clear. I recognize that language sometimes is dif- o write, so that it may properly express the ideas intended to be sed. However, the suggested change would, I think, express our ve in accordance with what the Senator would expect.

JAVITS. I thank the Senator.

ERVIN. Mr. President, I ask unanimous consent that the Senator Alabama and I be permitted to modify my amendment so as to n with the change.

PRESIDING OFFICER. Without objection, the amendment is ac- gly modified.

ERVIN. Mr. President, I thank the Senator from New York and ator from New Jersey. I think this improves the bill.

WILLIAMS. Mr. President, I am glad that we have arrived at this ious and fair understanding of the matter.

President, I ask unanimous consent that the two sections follow- amendment be renumbered to conform to the numbers that follow.

PRESIDING OFFICER. Does the Senator from New Jersey also ask ous consent that line 12 "Renumber section (5) as (6)", be ?

WILLIAMS. Yes.

PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I have no further comments. I yi back the remainder of my time.

Mr. ERVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, I ask unanimous consent that the or for the quorum call be rescinded and yield back the remainder of t time.

The PRESIDING OFFICER. All time has been yielded back. The quest is on agreeing to the amendment, as modified, of the Senator fr North Carolina and the Senator from Alabama. The yeas and na have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from N Mexico (Mr. Anderson), the Senator from California (Mr. Cranston the Senator from Alaska (Mr. Gravel), the Senator from Oklaho (Mr. Harris), The Senator from Indiana (Mr. Hartke), the Sena from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Hu phrey), the Senator from Washington (Mr. Jackson), the Sena from South Dakota (Mr. McGovern), the Senator from Utah (M Moss), the Senator from Maine (Mr. Muskie), the Senator fr Georgia (Mr. Gambrell) are necessarily absent.

I further announce that the Senator from Idaho (Mr. Church), t Senator from South Carolina (Mr. Hollings), the Senator from Mas chusetts (Mr. Kennedy), the Senator from Virginia (Mr. Spong), a the Senator from Georgia (Mr. Talmadge) are absent on official bu ness.

I further announce that, if present and voting, the Senator fr South Dakota (Mr. McGovern) would vote "nay."

I further announce that, if present and voting, the Senator fr Washington (Mr. Jackson), the Senator from Minnesota (Mr. Hu phrey), the Senator from Iowa (Mr. Hughes), and the Senator fr Georgia (Mr. Cambrell), would each vote "yea."

Mr. SCOTT. I announce that the Senators from Vermont (Mr. Ai and Mr. Stafford), the Senators from Kentucky (Mr. Cook and M Cooper) and the Senator from Alaska (Mr. Stevens) are absent attend the meetings of the Canadian Interparliamentary Union.

The Senator from Oklahoma (Mr. Bellmon), the Senator fr Colorado (Mr. Dominick), the Senator from Hawaii (Mr. Fong), t Senator from Michigan (Mr. Griffin), the Senator from Oregon (M Packwood) and the Senator from South Carolina (Mr. Thurmo are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent becaus illness.

If present and voting, the Senator from Colorado (Mr. Domini and the Senator from South Carolina (Mr. Thurmond) would e vote "yea."

The result was announced—yeas 69, nays 2, as follows:

[No. 49 Leg.]

YEAS—69

Allen, Allott, Baker, Bayh, Beall, Bennett, Bentsen, Bible, Boggs, Br Brooke, Buckley, Burdick, Byrd, Va., Byrd, W. Va., Cannon, Case, Chiles, Cl Curtis, Dole, Eagleton, Eastland.

r, Ervin, Fannin, Fulbright, Goldwater, Gurney, Hansen, Hatfield,
nouye, Javits, Jordan, N.C., Jordan, Idaho, Long, Mansfield, Mathias,
, McGee, McIntyre, Metcalf, Miller, Mondale, Montoya.
Pastore, Pearson, Pell, Percy, Proxmire, Randolph, Ribicoff, Roth,
hweiker, Scott, Smith, Sparkman, Stennis, Stevenson, Symington, Taft,
nney, Weicker, Williams, Young.

NAYS—2

agnuson.

NOT VOTING—29

Anderson, Bellmon, Church, Cook, Cooper, Cranston, Dominick, Fong,
Gravel, Griffin, Harris, Hartke, Hollings, Hughes, Humphrey, Jackson,
McGovern, Moss, Mundt, Muskie, Packwood, Spong, Stafford, Stevens,
Thurmond.

Ervin-Allen amendment (No. 888), as modified, was agreed

RESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 890

LEN. Mr. President, I call up amendment No. 890, which is
the distinguished Senator from North Carolina (Mr. Ervin)
nd I ask that it be stated.

ESIDING OFFICER. The amendment will be stated.

endment was read as follows:

66, insert the following new section between lines 13 and 14:
The amendments made by this Act to Title VII of the Civil Rights
1 shall not be applicable to the employees of States or the political
s of States as long as Congress exempts its employees and the employ-
lembers from them."
r SEC. 13 as SEC. 14.

NSFIELD. Mr. President, I ask for the yeas and nays on the
mendment.

s and nays were ordered.

NSFIELD. Mr. President, I suggest the absence of a quorum,
nderstanding that the Senator from Alabama does not lose
o the floor.

ESIDING OFFICER. Without objection, it is so ordered. The
call the roll.

ond assistant legislative clerk proceeded to call the roll.

NSFIELD. Mr. President, I ask unanimous consent that the
he quorum call be rescinded.

ESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

NSFIELD. Mr. President, with the approval of the sponsor of
ment and the manager of the bill, I ask unanimous consent
be a time limitation of 2 hours on the pending amendment,
be equally divided, 1 hour each to the distinguished Senator
ama (Mr. Allen) and the distinguished chairman of the
, the Senator from New Jersey (Mr. Williams).

ESIDING OFFICER. Is there objection? Without objection, it is
.

NSFIELD. And on any amendment or motion thereto, a limi-
) minutes, the time to be equally divided in the same fashion.

The PRESIDING OFFICER. Is there objection? Without objection so ordered.

Mr. ALLEN. Mr. President——

The PRESIDING OFFICER. Will the Senator from Alabama inf the Chair as to how much time he yields himself?

Mr. ALLEN. I yield myself such time as I may require.

The purpose of this amendment is to provide that the provisio the bill, insofar as they affect the employees of States or political divisions of the States, shall not become applicable until the la made to apply alike to Members of Congress and the employe Members of Congress.

Under the existing law, the EEOC does not have jurisdiction the employees of States, counties, cities, and the agencies of the St counties, and cities; but under the bill as it now stands, the cove by EEOC is to be extended to some 10 million employees of St counties, and city governments.

However, the authors and proponents of the bill have seen f provide that in the provisions of the present bill, jurisdiction by EEOC shall not extend to the employees of the Congress or to employees of the Members of the House of Representatives or t employees of the Members of the Senate.

Mr. President, it occurs to the junior Senator from Alabama we should not put the employees of States, counties, and cities u the EEOC without at the same time making the provisions of the applicable also to the employees of both Houses of Congress and various offices of both Houses of Congress and the employees of Members of both Houses.

If it is good for the States, why should it not be equally good the employees of the Senate, employees of the House of Repres tives, employees of the Members of the Senate, and employees of Members of the House?

Mr. President, I do not feel that the law should be applicab States, counties, and cities, and I feel that this is just another inst of the further encroachment by the Federal Government on the po of local government.

If it is to be extended to States, counties, and cities, why sho not also be made applicable to all of us and the employees of bodies? There must be some merit in the bill, since it is appar supported by a majority of the Members of the Senate, as the vo the various amendments would indicate.

So the purpose of this amendment would be to provide that s as the employees of the House and Senate and of the Members o two bodies are not covered by the bill, then the employees of S counties, and cities shall not be covered. It puts them all on the basis. It treats the Federal employees to which I have alluded same basis as State, county, and city employees.

So it would seem to the junior Senator from Alabama that would indeed be an equitable amendment. It would be an amen that would improve the bill. It still would not make it a good bi

This agency was created in 1964 as an agency of conciliat agency that would seek to investigate and conciliate charges o criminatory employment practices of various employers. I when it was originally enacted into law it provided that it wo

le only to employers employing as many as 100 people. That has gone down, under the provisions of the law, progressively n I believe to 50, and presently to 25.

rse, the bill seeks to carry on with the creeping—or galloping, lease—onward march of Federal bureaucracy, so that by now, e provisions of the bill as it now stands, it provides coverage w of all employers in this country who employ as many as ns.

r. President, it is going to bring many small businesses under tive provisions of this law for the first time. There are tens of ls—in fact, millions—of employees who would be brought e coverage of the law for the first time, if this bill should aw.

pany that employs as few as 15 employees is not one of the h companies that many Members of Congress are seeking fur- gulate from time to time.

re small businesses. And, Mr. President, I submit that small s in this country are literally being driven to the wall by ureaucracy redtape, by heavy taxes, by investigations, and sment, and I predict that there will be hundreds of small s that will close their doors and cease to engage in business t of the activities and the harassment by the so-called Equal ent Opportunity Commission.

een indicated by the proponents of the bill that this is a bill d end or outlaw discrimination. That is hardly correct. It is gainst the law to discriminate in employment practices. This loes not change the basic law one bit. It does not make any an employer—or, if the bill should pass, a State, county, or iscriminatory practice unless it is already a discriminatory It does not add to the definition of what is a discriminatory nt practice.

w remains the same. It merely makes tens of millions of addi- ple subject to the provisions of this law. It brings in for the every educational institution in this country—every college, ersity, every private school, every church-supported school. every high school and every elementary school would be r the first time under the provisions of this bill if it should law. There are literally millions of such employees.

sident, I would hate to turn the employment practices of related school, or any school for that matter, over to the let them take over the employment practices of a college rsity. Where is academic freedom? If the EEOC is going the employment practices of our schools, how are such in- o survive?

sident, some effort is made to make an exception in the igious educational institutions insofar as such an institution on its religious activities. But, Mr. President, all activities h-supported school are not necessarily of a religious nature. h mathematics, philosophy, history, English, literature, t Mr. President, under this bill, if the bill becomes law— e it does not—the EEOC could control the selection by a ted school of any person with regard to instruction in these s.

A church-supported school might like to have all of its faculty bers of one religious denomination. That would not be permitte der the terms of the bill now pending before the Senate. It w be possible, as the distinguished Senator from North Carolin pointed out, for the EEOC to require a Presbyterian church-re school to employ a Mohammedan for the purpose of teaching subject other than religion. That would certainly be unfair to s church-supported school. I point this out merely as one illustr of the hardships, the injustices, that would be possible under th

Mr. President, the Senate has been discussing the provisio this bill for some days. I submit that some good has come out o discussion. I do not know to what extent Members of the Senate been informed, because there have not been to many present to the debate. I assume most Senators read the Congressional Re at the end of each day to see what did take place and what was on the floor of the Senate.

But the discussion has been constructive. As the bill was origi introduced, it provided that the EEOC would have cease-and- powers. What does that mean? It means that in addition to be conciliation agency, in addition to receiving complaints, investig complaints, filing charges on those complaints with itself, trying charges, and reaching decisions, it could then issue an order w would be enforceable, so that one Federal bureau would hav power to be the judge, the jury, the prosecutor, and I assum enforcement officer, all rolled into one.

Several votes were taken on an amendment which would el that provision and require the EEOC, after receiving the compl investigating them I assume, and seeking to conciliate them, to g the Federal court to prove its charges. The Senate on more tha occasion voted down that principle; but, Mr. President, the d continued.

The purpose of any extended debate, I assume, is not mer hold up the proceedings for the purpose of obstructionism. Fa it. The purpose of an extended debate that is worth engaging to alert the country about what is going on in the Senate, wh under consideration in the Senate, what the Senate is about t and to say, "Stop. You must not do that until the country is h from." That is what happened with this debate. When the co began to be heard from, the amendment providing for court en ment of decisions with regard to alleged discriminatory employ practices was adopted.

On two occasions, the Senate, in its wisdom, saw fit to vote cloture motions which were filed for the purpose of ending th tended debate in the Senate; so the debate has continued. Mr. P dent, it is interesting to note the timing of a cloture motion. A ture motion is always voted on, as Senators know, not the nex after filing, but the next day plus one, as the rule provides. By h that knowledge, the proponents of the cloture effort can contr time at which the cloture motion is voted on.

The last time we voted on cloture, the would be President Senate—and there are quite a number—were all absent but o this time it has been announced that the cloture motion is go be filed not today, not yesterday, but tomorrow. What is the s

that? The significance is that, not meeting Saturday, we would Monday but would vote Tuesday. That will give the various tial candidates, all of whom favor cutting off free debate in ite—every single one of them—an opportunity to be here in next Tuesday. Mark my words.

r. President, I am hopeful that cloture will be voted down esday. I commend the distinguished majority leader, the from Montana (Mr. Mansfield), for his attitude with regard lebate and commend him for his policies as he guides the because there could not be a fairer leader of the Senate than inguished Senator from Montana (Mr. Mansfield). He is vote for cloture the next time it comes up for a vote. But nced that the next cloture vote is going to be the last cloture if cloture is not invoked, this bill is dead.

resident, why take up the time of the Senate in conferring an agency that has not had this power for more than 7 years? ot have that power when it was brought into being. It has l that power. With as much as the U.S. Senate has to do why e spend all that time discussing the measure? They already e 32,000 cases on their docket. They estimate that they are have 45,000 more cases filed the next year, and they are falling l the time. Yet, they are reaching out to get more power and isdiction. Although their original function was to seek to , it is now being turned into enforcement. Throw conciliahe window. Let us enforce our will on those subject to our on.

sident, I am not surprised at this agency seeking more power. nguished Senator from New Jersey (Mr. Williams) said, to a question I propounded to him some days ago, that e next 2 or 3 years it is anticipated that the employees of C will double in number from the present 1,000 employees

l hazard the opinion that that is probably a conservative that they are going to double in size in the next 2 or 3 years. an agency seeking to double in size, seeking to become more , seeking to have more jurisdiction, seeking to have more r the lives of our people; but here is an opportunity on the he Members of the U.S. Senate to call a halt at least one ouble the size of a Federal agency. People complain to each m sure, about the high cost of government, about the fact lministration exceeds its request, and the debt limit is raised llion, that we will soon go up to that, that we operated for years with a total deficit of around $83 billion. But here we pportunity to stop at least one Federal agency in its tracks, e mushrooming of one agency. We do not get that oppor- y often. These agencies just expand, expand, and expand ie a law unto themselves. They enjoy an autonomy of their ngly beyond the power even of the highest in the executive its.

President, we must stand firm when this Commission comes Senate again. We will not be taking any power away from but will be leaving it where it has been for the past 7 years. hey feel they have been doing a good job, because they have

never failed to come in each year to ask for appropriations to ca their work—more money each time, of course.

So, Mr. President, if we can hold firm on the next cloture v vote, we can defeat the bill and leave the EEOC where it has a been, as a conciliation agency as between employers and employ covered lines of business and industry.

Mr. President, I ask unanimous consent that I may yield th at this time to the distinguished Senator from Arkansas (Mr bright) for not to exceed 30 minutes and that that time not be ch against the time that has been allotted to me on this amendment

The PRESIDING OFFICER (Mr. Weicker). Is there objection t request of the Senator from Alabama?

Mr. BYRD of West Virginia. Mr. President, reserving the ri object—and I do not intend to object—I believe I understand cor that the distinguished manager of the bill will yield time to th ator from Arkansas (Mr. Fulbright).

Mr. WILLIAMS. Mr. President, I know the importance of the ment the Senator from Arkansas (Mr. Fulbright) is about to I believe it is important that it be made and I am yielding suc as he needs from the time remaining to me on this amendment pending before the Senate.

Mr. ALLEN. I thank the Senator from New Jersey.

Mr. FULBRIGHT. I thank the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from Arkansas (Mr. bright) is recognized for 30 minutes.

BUSING

Mr. FULBRIGHT. Mr. President, the article published in the Wa ton Post of February 16 by Mr. William Raspberry, entitled "M Busing: A Waste," is one of the most thoughtful and perceptiv ments about this very troublesome problem that I have seen. Th no one better qualified to discuss this subject than Mr. Raspberry I commend his comments to all my colleagues and ask una consent to have the article printed in the RECORD.

There being no objection, the article was ordered to be prin the RECORD, as follows:

MASSIVE BUSING: A WASTE

(By William Raspberry)

If this weren't an election year, it just might be possible to do so rational about school integration and busing.

But not only is it an election year; it is also a year in which all sorts of in all parts of the country and of all political persuasions are expressi strong misgivings about the prospects of massive busing for the purpose integration of public schools.

And with that kind of mandate, you can count on the politicians to s duty—and overdo it. Already presidential candidate Jackson is pushing of choice." Haven't we heard that one before?

Others are talking up constitutional amendment.

It's a bit of an embarrassment, all things considered, but I happen with Vice President Agnew on this one. I agree with him that massiv solely for purposes of racial integration is a waste. And I agree with h tion to a constitutional amendment as the way to end the waste.

The artificial separation of people, in schools or out, based on their wrong. It is, for one thing, psychologically destructive of the minority who are separated out.

o send black children chasing to hell and gone behind white children is ong and psychologically destructive. It reinforces in white children what- ial superiority feelings they may harbor, and it says to black children y are somehow improved by the presence of white schoolmates.
avorite nightmare is of all the white people in the country moving to and all the black children in the country following them in an endless uses.
ration is a noble goal. But there comes a time when thoughtful men with Joseph Alsop: "Is it really worth it?"
ite people, either because they wish to avoid contact with black people or other reason, choose to move far from where most black people live, how ake sense—in terms of education or common sense—to send black kids after them?
ne point, it becomes obvious that there must be a cheaper way to achieve which is the education of our children.
ven the goal gets confused. Some of the advocates of massive busing, it me, are being guided by the wrong ideal.
start off with the assumption that in melting-pot America, racial integra- good thing. But they take the melting pot metaphor altogether too liter- l it becomes their goal to make every classroom of every school (and ock of every neighborhood) an accurate cross-section of the makeup of population.
would like to put us all into that metaphorical melting pot and ladle out portions of homogenized American to fill every schoolroom, workroom g room in the country.
what's so ideal about mathematically precise distribution of human What's so inherently evil about a block in which all the homeowners (or om in which all the pupils) happen to be black? Or white?
no brief for a return to the lie of separate but equal. It is an appeal nal priorities, a plea that we make the test of a school whether it does ools are supposed to do—educate our children.
oth evil and illegal to say to a child: You cannot attend this school t is a white school. But how much better is it to say: You must attend ol because it is integrated and we need you for racial balance?
al is a situation in which race is irrelevant to assignment. Preoccupa- mathematical precision, unfortunately, is not the way to achieve that

constitutional amendments, please. The effort that route would require bound to make too many of us feel that we were solving the problem ion in a pluralistic society. It would in fact solve nothing at all, except us to where we were the day before yesterday.
e President was right again when he said:
that there is almost a Pavlovian reaction. Whenever a subject becomes troversial, you must turn to a constitutional amendment. I think these capable of being handled within the normal statutory framework and onal framework of our existing Constitution."
y if we deal with the situation and stop looking for new ways to run.

* * * * * *

enate continued with the consideration of the bill (S. 2515), further promote equal employment opportunities for Ameri- ers.

ILLIAMS. Mr. President, a parliamentary inquiry.
RESIDING OFFICER. The Senator will state it.
ILLIAMS. What is the time remaining?
RESIDING OFFICER. The Senator from New Jersey has 20 min- ining, and the Senator from Alabama has 27 minutes.
ILLIAMS. Mr. President, I note that a great deal of the time used by the Senator from Alabama following the calling up nendment has dealt with his broad general disagreement with ation before us, and then, in greater detail, with specific parts islation that is before us and has been before us here in the or the entire period since the Senate reconvened for this ses- ongress.

As I heard the Senator's statement, a great deal of it dealt wi
inclusion within the provisions of this bill of employers of 15 or
or labor unions with 15 or more members. This, of course, was a
arrived at after debate, after discussion, after conciliation, and
after negotiation which raised the number from 8 to 15. The fig
was in the bill as it was brought to the Senate, and after this p
of debate and conciliation, we arrived at the figure of 15, which
overwhelmingly approved by the Senate.

The other part of the legislation the Senator dealt with wa
coverage of State and local government employees. There is no
to revisit that debate now, because that, too, was fully debated a
amendment offered, and agreed to, and again by an overwhel
vote in the Senate the coverage of employees of State and local go
ments was retained.

I say the vote was overwhelming. It was overwhelming in a
degree. The vote was 59 to 16 to resist the effort to delete that cov
from the bill before us. But this debate thus far has been a revisit
of the bill generally and these areas specifically.

I think perhaps there is some suggestion in the amendment o
Senator from Alabama—though he did not deal with this to
degree—of seeking comparability between the Federal Govern
and the State governments. I would point out to the distingu
Senator from Alabama that we do cover State employees and mu
pal employees, and we in this legislation do cover Federal empl

There are exemptions. If we are looking towards comparabil
would just say to the Senator from Alabama that by action hel
afternoon, and in the clearest way, on an amendment offered b
Senator from North Carolina, joined in, I believe, by the Senator
Alabama, which was debated and discussed, in agreement on the
poses, the Senator from New York and I offered an acceptable am
ment to that amendment, and as a result of that, we have agreed
the elected State Senators in all of the States from Alabama to W
ming are not covered in their selection of their personal advisers

I suggest that what the Senator is saying is that what has
applied to the State Senators in Alabama should not apply to
U.S. Senator from Alabama. For the life of me, I cannot see wh
inconsistency is built into the proffered amendment of the Se
from Alabama.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS. I have been reminded that my time is running
and I am happy to yield to the Senator from New York.

Mr. JAVITS. I thank my colleague. I shall not take very long

Mr. President, there are two reasons why this amendment sho
defeated. The first is that we voted on the question of exempti
retaining under this bill employees of State and local govern
and the Senate, by a vote, I believe, of 59 to 16, voted to keep t
the bill. At that time, the condition of the bill was exactly wha
now with respect to congressional employees. So that is the first r
The Senate has decisively passed upon that issue.

Second, Mr. President, and very importantly, we have just a
to an amendment which would exempt personal assistants or imm
advisers of State legislators, and we went to great pains to defi
In general, the employment of assistants to Members of Congr
Members of the Senate would fall, in the main, perhaps not en
but in the main, within this kind of definition.

er those circumstances, Mr. President, it would be anomalous to
n the clock back and reverse our earlier vote.
hose reasons, Mr. President, we believe this is just another way
ig to reargue the issue which has already been decided so deci-
ov the Senate, to wit, the inclusion of employees of State and
its of government, and that therefore the amendment should be
.

RESIDING OFFICER. Who yields time?
JAVITS. Mr. President, yielding myself just 1 more minute,
make one point clear, it is to be noted that those employees of
ss or congressional agencies, in the competitive service, as it is
which would include employees of the General Accounting
nd the Printing Office, and perhaps some other housekeeping
es, are included within the ambit of the bill as it now stands.
seems to me that the network of issues now has been worked
rely through the amendment last decided, that of Senator
nd through the decision of the Senate to keep in the State and
ployees.
ose reasons, the amendment should be rejected.
RESIDING OFFICER. Who yields time?
LLEN. I yield 5 minutes to the distinguished Senator from
arolina.
RVIN. Mr. President, this amendment is entirely different from
ndment which has just been adopted. Amendment No. 888,
as been adopted, applies only to the elected officials of States
tical subdivisions of States and to their personal advisers.
endment applies to Members of Congress. This would provide
provisions of these amendments shall not apply to any State
mployees as long as Congress exempts employees of Congress
employees of Members of Congress from the coverage of this

ioned several days ago, with great reluctance, that I find, as
o and fro across the country, that people are losing a great
onfidence—I use that word for lack of a better word—in Con-
ause Congress passes laws that apply to other men but will
the laws applicable to themselves.
this bill, the Congress of the United States would be exempt
coverage of this bill. When Congress persists in exempting
n the coverage of this bill, it is emulating the doctor who pre-
edicine for his patients but would not take it himself. This
nt would say that what is sauce for the State goose is sauce
essional gander. It would say that no State employees at any
l be brought under the coverage of this bill until "Doctor"
takes the same medicine that he is trying to prescribe for the
l local subdivisions of government.
the Senate should adopt this amendment and show that what
s good for the State goose is also good for the congressional

ESIDING OFFICER. Who yields time?
LEN. I yield back the remainder of my time.
LIAMS. I yield back the remainder of my time.
LEN. Mr. President, have the yeas and nays been ordered?
ESIDING OFFICER. The yeas and nays have been ordered.
ITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator Alabama. On this question the yeas and the nays have been ord and the clerk will call the roll.

The assistant legisative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Mexico (Mr. Anderson), the Senator from Indiana (Mr. Bayh Senator from California (Mr. Cranston), the Senator from Missis (Mr. Eastland), the Senator from Alaska (Mr. Gravel), the Se from Oklahoma (Mr. Harris), the Senator from Michigan (Mr. H the Senator from Indiana (Mr. Hartke), the Senator from Iowa Hughes), the Senator from Minnesota (Mr. Humphrey), the Se from Washington (Mr. Jackson), the Senator from North Car (Mr. Jordan), the Senator from South Dakota (Mr. McGovern Senator from Montana (Mr. Metcalf), the Senator from Utah Moss), and the Senator from Maine (Mr. Muskie) are neces absent.

I further announce that the Senator from Virginia (Mr. Spong Senator from Georgia (Mr. Talmadge), the Senator from M chusetts (Mr. Kennedy), the Senator from South Carolina (Mr. lings), and the Senator from Idaho (Mr. Church) are abse official business.

I further announce that, if present and voting, the Senator South Dakota (Mr. McGovern) and the Senator from Washi (Mr. Jackson) would each vote "nay."

Mr. SCOTT. I announce that the Senators from Vermont (Mr. A and Mr. Stafford), the Senators from Kentucky (Mr. Cook an Cooper), and the Senator from Alaska (Mr. Stevens) are abs attend the meetings of the Canadian Interparliamentary Union.

The Senator from Oklahoma (Mr. Bellmon), the Senator from York (Mr. Buckley), the Senator from Colorado (Mr. Dominick Senator from Hawaii (Mr. Fong), the Senator from Arizona Goldwater), the Senator from Michigan (Mr. Griffin), the Se from Oregon (Mr. Packwood), and the Senator from South Ca (Mr. Thurmond) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent beca illness.

On this vote, the Senator from South Carolina (Mr. Thurmo paired with the Senator from Colorado (Mr. Dominick). If p and voting, the Senator from South Carolina would vote "yea" a Senator from Colorado would vote "nay."

The result was announced—yeas 21, nays 44, as follows:

[No. 50 Leg.]

YEAS—21

Allen, Baker, Bennett, Brock, Byrd, Va., Cotton, Curtis, Ellender, Ervin, Fulbright, Gambrell, Gurney, Hansen, Hruska, Long, McClellan, Spa Stennis, Tower, Young.

NAYS—44

Beall, Bentsen, Bible, Boggs, Brooke, Burdick, Byrd, W. Va., Cannon,
iles, Dole, Eagleton, Hatfield, Inouye.
Jordan, Idaho, Magnuson, Mansfield, Mathias, McGee, McIntyre, Miler,
Montoya, Nelson, Pastore, Pearson, Pell, Percy.
ire, Randolph, Ribicoff. Roth, Saxbe, Schweiker, Scott, Smith, Stevenson,
n, Taft, Tunney, Weicker, Williams.

NOT VOTING—35

Anderson, Bayh, Bellmon, Buckley, Church, Cook, Cooper, Cranston,
, Eastland, Fong.
ter, Gravel, Griffin, Harris, Hart, Hartke, Hollings, Hughes, Humphrey,
Jordan, N. C., Kennedy.
ern. Metcalf, Moss, Mundt, Muskie, Packwood, Spong, Stafford, Stevens,
e, Thurmond.

. ALLEN's amendment (No. 890) was rejected.
AVITS. Mr. President, I move to reconsider the vote by which
dment was rejected.
ILLIAMS. Mr. President, I move to lay that motion on the table.
otion to lay on the table was agreed to.
RESIDING OFFICER (Mr. Fannin). The Senator from North
is recognized.
RVIN. Mr. President, I yield to the Senator from Virginia (Mr.
xcept that before I yield, I would like to observe that the last
very interesting. It shows that Dr. Congress is not willing to
medicine which Dr. Congress prescribes to the people of this
In other words, what is sauce for the State and local officials
ce for the congressional gander.

* * * * * *

enate resumed the consideration of the bill (S. 2515) a bill to
promote equal employment opportunities for American

AMENDMENT NO. 809

RVIN. Mr. President, on behalf of the distinguished Senator
bama and myself, I call up amendment No. 809.
ESIDING OFFICER. The amendment will be stated.
sistant legislative clerk read as follows:

33, line 24, strike out the word "religious".

RVIN. This amendment would make section 702 of the Civil
ct of 1964, as amended at the bottom of page 33 of this bill,
llows:

This title shall not apply to an employer with respect to the employ-
ens outside any State, or to a religious corporation, association, educa-
tution, or society with respect to the employment of individuals of a
religion to perform work connected with the religion to perform work
with the carrying on by such corporation, association, educational
or society of its activities.

r words, the amendment would exempt religious corpora-
ciations, and societies from the application of this act inso-
right to employ people of any religion they see fit is con-
hat is the only effect of this amendment.
r words, this amendment is to take the political hands of
of the institutions of God, where they have no place to be.

I do not care to debate this amendment this afternoon. I thou
perhaps, since it is snowing so hard and it will be difficult for
ployees of the Senate and others to get home, if the majority le
will pardon the suggestion, that this would be an appropriate tim
quit for the day.

Mr. MANSFIELD. Mr. President, I agree with the distinguished S
tor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous cons
that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Calendar No. 412

CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

nded to be proposed by Mr. WILLIAMS (for himself and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 58, line 4, after "Senate" insert the following: 'for a term of five years".

On page 58, line 9, strike out the word "members" and nsert in lieu thereof the word "member".

Amdt. No. 896

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. WILLIAMS (for himself and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: On page 50, before line 20, insert the following:

SEC. 4A. The fifth sentence of section 706(f)(1) of the Civil Rights Act of 1964, as amended by the previous section, is amended to read as follows: "Upon timely application, the court may, in its discretion, permit the General Counsel, or the Attorney General in a case involving a government, government agency, or political subdivision, to intervene in such civil action if he certifies that the case is of general public importance."

Amdt. No. 897

Calendar No. 412

CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1972
Ordered to lie on the table and to be printed

AMENDMENT

ıded to be proposed by Mr. WILLIAMS (for himself and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 32, line 5, strike out "1971", and insert in lieu thereof "1972".

Amdt. No. 898

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. WILLIAMS (for himself and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 60, line 9, beginning with the word "powers" strike out through the word "the" on line 12.

Amdt. No. 899

Calendar No. 412

CONGRESS
D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1972
Ordered to lie on the table and to be printed

AMENDMENTS

ded to be proposed by Mr. WILLIAMS (for himself and Mr. AVITS) to S. 2515, a bill to further promote equal employ- ent opportunities for American workers, viz:

On page 59, in the matter to be inserted after line 22, rike out in lines 22 and 23 on page 3 of amendment num- ered 797 the following: "the issuance of complaints, the rosecution of such complaints before the Commission," and sert in lieu thereof the following: "the filing of complaints".

On page 59, in the matter to be inserted after line 22, rike out beginning after the period on line 7 through the eriod on line 14 on page 4 of amendment numbered 797.

Amdt. No. 900

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1972

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. WILLIAMS (for himself and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 56, beginning with line 15, strike out through the period in line 19.

Amdt. No. 901

Calendar No. 412

CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1972
Ordered to lie on the table and to be printed

AMENDMENT

nded to be proposed by Mr. WILLIAMS (for himself and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 52, line 1, beginning with the comma, strike out through the word "thereof" on line 3.

Amdt. No. 902

[From the Congressional Record—Senate, Feb. 18, 1972]

L EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

PRESIDING OFFICER. Under the previous order the Chair lays the Senate for its consideration the unfinished business which tated.

ssistant legislative clerk read as follows:

ar No. 412, S. 2515, a bill to further promote equal employment oppor- or American workers.

YRD of West Virginia. Mr. President, I suggest the absence of n.

RESIDING OFFICER. The clerk will call the roll.

econd assistant legislative clerk proceeded to call the roll.

VILLIAMS. Mr. President, I ask unanimous consent that the r the quorum call be rescinded.

RESIDING OFFICER. Without objection, it is so ordered.

uestion before the Senate is amendment No. 809 to S. 2515.

CLOTURE MOTION

VILLIAMS. Mr. President, on behalf of myself and 50 other I will in a moment offer a motion pursuant to rule XXII to loture on S. 2515 that is presently the pending business in this e leadership on both sides supports this motion. A constitu- ajority of the Senate signed the motion.

e now in the fifth week of debate on this measure. We have had n 30 rollcall votes on amendments to this bill. We debated cement procedure for 4 weeks and finally resolved that issue ay last.

that it is clear from the desultory tone of the debates since day that the Senate is merely marking time until we can end to debate on this bill. I know that a large majority of the ants this bill passed.

notion for cloture will be voted on next Tuesday afternoon. that it is incumbent upon each and every one of the Members nate who believes in the cause of equal employment oppor- be present and to vote on this measure. It will be, I hope, a emonstration to our minorities and women that effective as- an be provided to end job discrimination in our society.

esident, this issue has been fully and completely debated. I f my colleagues to join with me on Tuesday to end this debate S. 2515.

TS. Mr. President, will the Senator yield?

LLIAMS. I am happy to yield.

TS. Mr. President, the Senator from New Jersey (Mr. Wil- d I are presenting this cloture motion to the Senate with the

feeling that every conceivable area in respect of this measure has n
been explored. The amendments have been dealt with in substance,
once but more than once in most instances, and the time has now co
to vote. If our constitutional system cannot under these circumstan
gear itself up to acting instead of talking further then, indeed, we
in some constitutional crisis.

Also, Mr. President, we have gone very far in the number of Sena
who have signed the cloture motion. Only 16 Senators are required
a cloture motion. Designedly the Senator from New Jersey and I
out to get 51 signatures of Senators, a constitutional majority.

I know I express our joint gratitude to all who joined with us
cause we wanted to demonstrate how conclusively is this sentiment
the part of the Senate, the constitutional majority, that the time
come to vote.

Even now no amendment will be cut off. Any amendment at
desk would be qualified by a suitable unanimous consent up to
vote, and thereafter Members will have an opportunity to have ame
ments voted on, every Member having an hour.

I regret the form the bill has now, but nonetheless it is the wil
the Senate and if we wish the will of the Senate to be expressed
voting on this matter we must be willing to accept it after full
fair debate, as it is. I am fully cognizant of that and on other occas
I have defended vigorously the will of the Senate in conference, e
though I might have voted the other way. I have no doubt that
Senator from New Jersey (Mr. Williams) feels the same way I d

I do not use this expression in any invidious sense, but I wis
say that we accept the watering down of the enforcement power.
did it in the broader interest of getting a bill to deal with the w
of all discrimination, denial of jobs or the opportunity for jobs
the grounds of race, religion, color, national origin, or sex.

We are satisfied there is a measurable improvement over what
have had up to now and that it will result in materially cutting d
the backlog of equal employment opportunity cases and giving a
better opportunity to protect constitutional guarantees.

This cloture motion contains the highest number of signers in
civil rights bill. There was a measure in 1926 that had more sig
that involved a branch banking bill, but this is the largest numb
signers on a bill involving civil rights.

I join the Senator from New Jersey in expressing great satis
tion in working with him in an extremely difficult debate. I d
any more difficult matter has been carried out in this Chamber.

Mr. Williams. The feeling is certainly mutual in that respect.

Mr. President, I submit the cloture motion under rule XXII o
Standing Rules of the Senate to bring to a close debate on S. 25

The Presiding Officer (Mr. Chiles). The cloture motion h
been requested under rule XXII, the Chair, without objection, d
the clerk to state the motion.

The assistant legislative clerk read the cloture motion, as follow

Cloture Motion

We, the undersigned Senators, in accordance with the provisions of
XXII of the Standing Rules of the Senate, hereby move to bring to a c
debate upon the bill (S. 2515), a bill to further promote equal emplo
opportunities for American workers.

Mansfield
t Griffin
t C. Byrd
am Ribicoff
as J. McIntyre
gs Randolph
i E. Hughes
rd Nelson
is F. Eagleton
Stevenson
F. Mondale
etcalf
E. Moss
Jordan
). Pastore
T. Stafford
D. Hatfield
Taft, Jr.
on Williams

Richard S. Schweiker
Hugh Scott
Jacob K. Javits
J. Caleb Boggs
Charles H. Percy
James B. Pearson
Edward W. Brooke
Gordon Allott
Lowell P. Weicker
Clifford P. Case
Marlow W. Cook
Charles McC. Mathias, Jr.
Robert Dole
Henry Bellmon
Bob Packwood
Ted Stevens
J. Glenn Beall
Vance Hartke
George McGovern

quently, by unanimous consent, the names of the following s were added to the cloture motion.

wton Chiles
rren G. Magnuson

YRD of West Virginia. Mr. President, will the Senator yield?
ILLIAMS. I am happy to yield.
YRD of West Virginia. Mr. President, I want to take this to commend the distinguished manager of the bill (Mr. Wil- the distinguished ranking minority member (Mr. Javits), is the distinguished senior Senator from North Carolina (Mr. and the distinguished junior Senator from Alabama (Mr. on the diligence with which they have all given their talents r strength to the debate and to the improvement of this major legislation. I think it is a tremendous credit to those on both this question and on both sides of the aisle, who have been ur after hour, day after day, and week after week in the of a piece of legislation which would be feasible and work- I believe that their efforts will, at last, have been fruitful id.

marveled at the stamina and skill of the manager of the told him yesterday in private. He has stood on this floor day to defend the bill and he has done a tremendously effec- I have marveled just as much at the same kind of diligence lay of great ability on the part of the ranking minority the distinguished Senator from New York (Mr. Javits). n have displayed the attributes of the finest kind of legisla- as they have worked on this legislation and fought for it, ow on the threshold of victory, I believe, next Tuesday when o invoke cloture will be had.

anager of the bill has, at all times during the debate, dis- thorough knowledge and easy command of the subject mat- legislation, and his floor work has been superb and worthy tion and commendation.

same token I can say with just as great enthusiasm and sin- t I have admired the tenacity, the persistence, the deter- and the equally great ability and dedication on the part nator from North Carolina (Mr. Ervin) and the Senator

from Alabama (Mr Allen). I think that through their effort bill has been made a much better bill. Of course, I am speaking jectively in this regard, and as I personally view the bill. I b their efforts have not been dilatory or delaying tactics but have in the interest, rather, of improving, refining, and bringing ab much improved bill—if any bill is to be enacted into law—th their view this bill was in the beginning. Speaking for the leade I commend and thank all sides for their courtesy, their patience their fine cooperation.

I believe cloture will be invoked next Tuesday. For the first ti have signed a cloture motion on a bill of this kind, and it is the second time I have ever signed a cloture motion. I was the Senator to sign this particular cloture motion, although not o first line of the petition. I thought that the commendable effor the part of those who wanted to refine and improve this bill had largely accomplished, and that the time had come to get onto business.

While there may be some aspects of the bill that I would stil personally to see changed, I think the time has come to pass th and get it eventually into conference, where, if other refinement to be worked out, it can be done there.

I think that on the whole this is a good piece of legislation. I therefore, once again to compliment those Members on both sides question through whose efforts and through whose talents the S will soon be able to pass a landmark piece of legislation.

Mr. Williams. Mr. President, will the Senator yield?

Mr. Byrd of West Virginia. I yield.

Mr. Williams. Certainly I personally want to express my grat for the most generous statement of the distinguished assistant ma leader which dealt with this Senator. I will say that the debate has occupied this time in the Senate without disharmony, in a of earnest cooperation on all sides, in large part was made possib the Senator from West Virginia, whose full cooperation we hav day in and day out. I am most grateful to him.

Before I yield to the Senator from New York, I ask unan consent that the distinguished present Presiding Officer of the S the Senator from Florida (Mr. Chiles), be added as a cospons the cloture motion.

The Presiding Officer (Mr. Chiles). Without objection, it ordered.

Mr. Williams. I yield to the Senator from New York.

Mr. Javits. Mr. President, first, I, too, would like to express tude to the Senator for his management on the floor durin arduous debate and to thank the Senator for supporting the motion. I note that this is a major policy decision for him. I him for his gracious references to me.

I know he would want to include in the nice things he has because I feel as a proponent we must be generous to those who us—the Senator from Colorado (Mr. Dominick), even thou do not agree, who fought very hard for his amendment. I thou disagree with it. We fought it just as hard as we could, but h prevailed in a different version. I think in giving thanks to th have put in a lot of time and effort, he should be mentioned.

Byrd of West Virginia. Mr. President, if the Senator will yield,
it to thank the distinguished Senator for calling my attention
inexcusible inadvertence on my part. The amendment by the
or from Colorado (Mr. Dominick), I think in very great meas-
nproved the bill to the point of acceptability, at least from my
oint, and certainly the Senator from Colorado should be highly
ended for his perspicacity and determination and efforts which
a long way toward insuring a favorable vote on the motion to
cloture next Tuesday. Without that amendment's having been
ed, I personally doubt that cloture would ever have been invoked.
Javits. Whatever the answer may be to that, the Senator from
ado should certainly be included among those who worked hard
s bill.
Byrd of West Virginia. Mr. President, may I ask the distin-
d Senator from North Carolina if he intends to talk about the
g amendment?
Ervin. Mr. President, I think, in view of the remarks that have
nade, I can speak on the pending amendment. Then I would
talk about the nongermane matter, simply owing to the limita-
time there will be, on the antibusing amendment. I would like
an opportunity to present my views with respect to that.
Presiding Officer. The Senator from North Carolina is
ized.
Ervin. Mr. President, if ever the freedoms of American citizens
ally totally destroyed, it will be by the tyranny of a majority
minority.
XXII was undoubtedly adopted by the Senate to make it cer-
at a minority should have an opportunity to present, if not to
nate, then to the Nation, its views and to suggest changes in
ng legislative proposal.
n this bill was originally presented to the Senate, it represented
st monstrous grab for power on the part of a nonelected Federal
that this country has witnessed since George Washington took
oath of office as President of the United States.
he majority leader has stated on a number of occasions, the
during the session thus far, has been plagued by the problem
absenteeism of Senators. The Senator from North Carolina
like to have been absent on several occasions since the Senate
ned to fulfill speaking engagements, but the Senator from
Carolina has the view that his primary obligation is to the
and the Senator from North Carolina has canceled speaking
ments when they would tend to prevent his attendance in the

very difficult to present the views of a minority in respect to
on which is backed by a pressure group. This legislation is
by a pressure group which has tremendous political power in
gress of the United States and, unfortunately—I say this with-
nding to be critical—all too many Members of Congress will
the requests of a pressure group for the support of legislation
to avail themselves of an opportunity to ascertain whether
posed legislation contains iniquitous provisions.
ad not been for rule XXII, this bill would undoubtedly have
n its original form. As the Senator from West Virginia has

so well stated, the bill has been, I would not say improved, but re-
ered much less obnoxious. For example, for years we have had
agency of the Federal Government, elected by nobody, and virtua
responsible to nobody—the Office of Federal Contract Compliance
the Department of Labor—which has been practicing economic t
anny in the highest degree over American industry. This office has
jurisdiction except to see that its own concepts of fair employm
practices are incorporated in contracts which have already been ma
subject to that condition by the departments and agencies of the F
eral Government having original jurisdiction in the field covered
the contract.

I have been informed time and time again by American business
who sought Federal contracts that the Office of Federal Contract Co
pliance would not inform them in writing what it required of them
respect to employment practices; that they would have an oral c
versation with the officials of the Office of Federal Contract Co
pliance and would then undertake to incorporate provisions in
proposed contract conforming to the views expressed to them ora
by the Office of Federal Contract Compliance who would not put
writing what they required.

Mr. President, in ancient days in Rome there was an emperor nam
Caligula, and Caligula wrote his laws in small letters and hung th
up so high on the wall that people could not read them and know w
the laws were.

But as compared with the practices of the Office of Federal Contr
Compliance, Caligula was a most enlightened legislator and admi
trator. Because if a person got a ladder long enough and a magn
ing glass big enough, he could have climbed up and read Caligu
laws. But one cannot read the constantly changing minds of the
cials of the Office of Federal Contract Compliance in the Departm
of Labor. I have been told time and time again by businessmen, w
have had contracts made with the respective agencies and departme
having jurisdiction, that they would file what they thought were p
posals conforming to the ideas of the officials of the Office of Fede
Contract Compliance, based on oral conversations they had had w
those officials, and that the Office of Federal Contract Compli
would never rule on the matter.

As a result of the fact that some of us were willing to stand up h
and fight to protect American business from economic tyranny at
hands of nonelective officials, we did get an amendment in this bill
provides some protection to businessmen who seek contracts with
Government. Under that amendment, they have the right to go
court, for the first time, and vindicate the fact that they have offere
do all that the law requires, and their efforts to get legal protec
will not be denied on the theory that they have no standing to sue,
cause they have no contract.

We also have in that amendment a provision that requires the O
of Federal Contract Compliance to accept or reject within a reasona
time the proposal of a businessman seeking a contract with the G
ernment, and depriving it of the power to reject or annul propo
dealing with employment practices, which it had previously ma
habit of annulling.

as a result of our fight, we have an amendment that, to a limited
. will prevent the rampant economic tyranny which the Office
leral Contract Compliance of the Department of Labor has been
cing upon American industries which are dependent for their
s upon Government contracts.
en this bill originally came before this body, it constituted a rank
tution of the judicial process. It provided expressly that the
should investigate complaints, should prefer charges, should
ute charges, and should have the judicial duty to pass on the
y of the charges which it itself made and prosecuted. To be per-
frank, that is bastardizing due process of law, and flies right in
e of the ancient principle of the common law that no man shall
dge in his own case. It took about five rollcall votes to take that
ne and tyrannous power away from the EEOC, but we did it.
President, I ask unanimous consent that I may yield briefly to
tinguished Senator from Washington (Mr. Magnuson), with
derstanding that I shall not lose my right to the floor by so
and with the further understanding that any remarks he may
vill be printed in the Record immediately after I cease to talk.
PRESIDING OFFICER. Without objection, it is ordered.
MAGNUSON. Mr. President, I ask unanimous consent that my
ire may be added to the cloture motion.
PRESIDING OFFICER. Without objection, the Senator will be per-
to sign the motion.
MAGNUSON. I thank the Chair.
ERVIN. So, Mr. President, there was another rank prostitution
judicial process removed from this bill as a result of our fight.
ll as reported not only combined the powers of investigator,
tor, and judge in the agency, but it also made it impossible
one to go into court to seek redress for injustices perpetrated
agency, to obtain relief in the courts. I say that because it pro-
n its original form, that the findings of fact of the Commission
be binding upon the courts if they were supported by what is
'substantial evidence," which the courts have defined as any-
nore than a scintilla of evidence' and which is far less than
asure of evidence required for a factual finding in any of the
f law or equity.
her words, what that meant, in plain English, was that the
s of fact of the Commission would have to be accepted by the
in the Federal courts, even though the judges in the Federal
elieved that the findings of fact of the Commission were prob-
t true on the basis of the evidence taken before the Commission.
result of about five separate rollcall votes and many days of
some Senators, who on the first votes apparently had no con-
what a rank prostitution of the judicial process this bill was,
hose of us who were opposed to making the agency a judge
vn case, and we adopted the Dominick amendment, which frees
ans involved in controversies with the EEOC from having the
be the prosecutor, the judge, and I might add the executioner.
ey are assured of being able to get a hearing according to the
procedure and evidence by which the rights of all other per-
judged in the courts of our land, and before impartial judges
han biased crusaders.

We have been impliedly criticized for taking advantage of t Senate rules giving us the right to debate. But it was only yesterd that we were able to secure the adoption of an amendment which ma it certain that the elected officials of States and political subdivisio of States could not be denied their offices, to which they were cho by the people, by the EEOC. I assert, without fear of successful co tradiction, that this bill in its original form would have empowe the EEOC to have denied public office to men and women, elected the people, on account of the subjective judgment—not the objecti judgment—of the EEOC; people who have been elected by the el torate because they prefer a person of the race, religion, natio origin, or sex of the people who have been chosen for public offi I know of no measure that would have come nearer to destroying t federal system of government.

We still have an amendment, which has not yet been voted up which would take the political hands of Caesar off religious insti tions and permit those religious institutions to hire people of th own religious persuasion rather than to have people selected by t EEOC. To my mind, no more tyrannous proposal has ever been ma in the Senate than the proposal that the EEOC could compel a Ch tian denomination to employ an atheist or an agnostic in prefere to a Christian. I hope that that amendment will be adopted Monday.

Mr. President, the American people are very solicitous about t rights of minorities. They are so solicitous about the right of mino ties that they have come to the conclusion that the rights of the mino ties should be made superior to the rights of majorities and that th should be subordinated to the rights of the minorities. That is preci what underlies this bill.

I happen to believe that in a free society, any individual has inherent right—and should have a legal right—when he invests resources or his talents in a private business enterprise, to select himself the employees whom he deems are most likely to enable to make his private enterprise a success rather than a failure. T bill in its original form conferred upon the EEOC jurisdiction o all the educational institutions of the country in respect to their ing practices and gave the EEOC the power to determine wh competent to teach such abstruse subjects as anthrolopolgy, phil phy, chemistry, and physics. There never has been a man on EEOC and never will be a man on the EEOC who has suffic competency to pass upon these questions. Yet, we subject the righ institutions of learning to select the persons they think most capa of instructing the youth of our Nation to the nomination of EEOC

I have no apology to make to anyone for resisting this bill. I proud of the fact that, as a result of the amendments thus far m the American people are going to be a little freer for at least a rea able time in the future than they would have been if this bill in original form had been foisted upon them by Congress.

Mr. Byrd of West Virginia. Mr. President, will the Senator yield?

Mr. Ervin. I yield.

Mr. Byrd of West Virginia. Mr. President, not only does the Sen need have no apologies; he also can take great pride in the fact t

stood steadfast and supported the Constitution as he reads it well understands it.

re are those in this country who are so blinded by their own ments with respect to intolerance that they are not tolerant lves. There are those who in their zeal to fight age-old prejudices yes which cannot see and ears which cannot hear. Yet, the Sena- m North Carolina, in his supreme dedication to the Constitution United States, is always willing to stand in the midst of the and speak out against the passions of the moment which threaten ep over all opposition to the maintenance of constitutional prin- dedicated to the preservation of liberty for the majority as well minority.

Senator is to be commended. I need not say that he is highly ed by every Member of the Senate. Whether Senators agree gree with the distinguished senior Senator from North Carolina, ven issue at a given time, every Member of this body accords to ator from North Carolina the highest respect, in the knowledge e Senator from North Carolina deserves that respect and has himself worthy of the high regard that his colleagues hold .

Senator from North Carolina has rendered great service to his ; to the Constitution of the United States in the way he always it and seeks to uphold and defend it; and to the Senate. He has ne all the more proud of the Senate as an institution where con- ial matters can be discussed and where they can be molded and on the anvil of argument and debate.

all the more thankful that we do have rules in the Senate, de- through decades of experience, which assure that even a mi- in the Senate can speak its viewpoint and can be effective in ing the legislation we enact into law.

ute the able Senator for his ability, his dedication, and his e.

ERVIN. Mr. President, I express my deep gratitude to the dis- hed Senator from West Virginia for his most generous remarks. s no one in the Senate for whom I entertain more affection and dmiration than the Senator from West Virginia.

[From the Congressional Record—Senate, Feb. 21, 1972]

L EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

AMENDMENTS NOS. 907 AND 908

lered to be printed and to lie on the table.)

ERVIN (for himself and Mr. Allen) submitted two amendments d to be proposed by them jointly to the bill (S. 2515) to further e equal employment opportunities for American workers.

* * * * * *

PRESIDING OFFICER. Under the previous order, the Chair now fore the Senate the unfinished business, which will be stated.

ssistant legislative clerk read as follows:

(S. 2515) to further promote equal employment opportunities for Ameri ers.

Senate proceeded to consider the bill.

PRESIDING OFFICER. The pending question is on the adoption of ndment of the Senator from North Carolina (Mr. Ervin).

RVIN. We are ready to vote, Mr. President.

VILLIAMS. Mr. President, the amendment proposed by the Sen- m Alabama broadens the present exemption found in Title VII ined in the committee bill, for a religious corporation, associa- ucational institution or society with respect to employment of uals of a particular religion to perform work connected with gious activities of such institution.

amendment would have the effect of exempting these institu- om the operation of Title VII insofar as religion is concerned or not their activities are religious or secular.

not believe that the religious integrity of these institutions e compromised by providing equal job opportunities for em- in positions unrelated to the religious activities of such insti-

President, this is the second attempt to provide such an exemp- veral weeks ago, an amendment was offered that would provide ete exemption from Title VII to employees of educational and s institutions. That amendment, No. 815 was soundly defeated e of 55 to 25 on February 1.

we are faced with another such amendment. Admittedly, it h narrower exemption that is offered since it only applies to . Nonetheless, I believe it should not be adopted.

of these religious corporations and associations often provide ecular services to the general public without regard to religious n, and most of the many thousands of persons employed by stitutions perform totally secular functions. In this regard, es in these "religious" institutions perform jobs that are iden-

tical to jobs in comparable secular institutions. It is appropriate, th
fore, that these persons employed by religious corporations and a
ciations should be given the same equal employment opportunitie
those persons employed in comparable positions by secular employ

I would like to revisit some of these considerations as I did w
the previous amendment was offered.

For example, religious organizations in this country own and op
ate a substanial number of hospitals open to the public. These hospi
employ a broad range of persons to staff them. Without expound
on all of the job classifications at a hospital, I will just note that
categories of employment range from nurses and hospital adminis
tor to dietitians and housekeeping personnel. There is no justificat
in my judgment, for such hospitals to be permitted to discrimi
against such personnel on any grounds. Further, in my judgment
might be very well unconstitutional for Congress to permit such
crimination. I recognize that the first amendment protects the f
exercise of religion. However, the major purpose of hospitals
other service agencies is to provide public service. In providing
service they should not be allowed to become instruments of invid
and unreasonable discrimination in employment.

I would note for the record again that a similar issue was resol
by the administration under the Occupational Safety and Health
passed by this Congress in 1970, which provided no exemptions
employers in defining the term "employer engaged in the busi
affecting commerce," for purposes of that act.

The Department of Labor faced the question of coverage of chur
as employers. As a matter of enforcement policy, the performanc
or participation in, religious services—as distinguished from se
or proprietary activities whether for charitable or religious-rel
purposes—is regarded as not constituting employment under the
I believe that interpretation is fully consistent with the statutory
emption in Title VII of these institutions insofar as religious activ
are concerned. Some of the Labor Department's examples would
useful comparisons. Coverage of religious organizations would in
a private hospital owned or operated by a religious organizatio
private school or orphanage owned or operated by a religious or
nization; commercial establishments or religious organizations
gaged in producing or selling products such as alcoholic bevera
bakery goods, religious goods, and so forth; and administrative, ex
tive, and other personnel employed by religious organizations.

Some examples of noncoverage in the case of religious organizat
would be: Clergymen while performing or participating in relig
services; and other participants in religious services; namely, c
masters, organists, other musicians, choir members, ushers, and
like.

I reiterate my judgment expressed during the debate on the
such amendment. Of all the institutions in this country that sh
be setting the example of equal employment opportunity, of e
opportunity for that matter in all aspects of life, it is America's
gious institutions. I am confident that the houses of God in this co
do not shirk that responsibility nor should we. I, therefore, urge
the amendment be rejected.

PRESIDING OFFICER. The question is on agreeing to the amend-
f the Senator from North Carolina (putting the question).
mendment was agreed to.
ALLEN. Mr. President, I move to reconsider the vote by which
ndment was agreed to.
ERVIN. I move to lay that motion on the table.
notion to lay on the table was agreed to.
WILLIAMS. Personally, I strongly oppose this amendment. I
ze, however, that 2 years ago, when this body faced the identical
October 1, 1970, it agreed to the amendment of the Senator
orth Carolina by a rollcall vote of 43 to 28. I believe that a
y of the Senate would be as clear today in its agreement with
ator from North Carolina and therefore I did not insist on a
vote.
PRESIDING OFFICER. The bill is open to further amendment.
WILLIAMS. Mr. President, I call up amendments numbered 896,
, 900, 901, and 902, and ask that they be considered en bloc.
PRESIDING OFFICER. Without objection, the amendments will
lered en bloc.
mendments will be stated.
ssistant legislative clerk proceeded to read the amendments.
WILLIAMS. Mr. President, I ask unanimous consent that further
of the amendments be dispensed with.
PRESIDING OFFICER. Without objection, it is so ordered; and,
objection, the amendments will be printed in the Record.
mendments are as follows:

AMENDMENT No. 896

e 58, line 4, after "Senate" insert the following: "for a term of five

58, line 9, strike out the word "members" and insert in lieu thereof
'member".

AMENDMENT No. 897

50, before line 20, insert the following:
The fifth sentence of section 706(f)(1) of the Civil Rights Act of 1964,
d by the previous section, is amended to read as follows: "Upon timely
n, the court may, in its discretion, permit the General Counsel, or the
ieneral in a case involving a government, government agency, or politi-
ision, to intervene in such civil action if he certifies that the case is
public importance."

AMENDMENT No. 899

60, line 9, beginning with the word "powers" strike out through the
' on line 12.

AMENDMENT No. 900

59, in the matter to be inserted after line 22, strike out in lines 22 and
3 of amendment numbered 797 the following: "the issuance of com-
e prosecution of such complaints before the Commision," and insert in
f the following: "the filing of complaints".
59, in the matter to be inserted after line 22, strike out beginning after
on line 7 through the period on line 14 on page 4 of amendment num-

AMENDMENT No. 901

On page 56, beginning with line 15, strike out through the period in li

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AMENDMENT No. 902

On page 52, line 1, beginning with the comma, strike out through the "thereof" on line 3.

Mr. WILLIAMS. Mr. President, the first amendment, No. 896, technical amendment to correct a typographical error in the redraf of section 705 concerning the number of commissioners to make that their term of office is 5 years. The second sentence of the am ment corrects a typographical error.

No. 897 amendment to the court enforcement provision is inte to allow the general counsel to intervene in private actions no volving governments, governmental agencies or political subdivis and to make clear that it is the Attorney General who will inter in cases involving governments, governmental agencies, and poli subdivisions brought by private individuals. The present langua the Dominick substitute only authorizes the Attorney Genera intervene in private actions. The amendment is to clear up an in sistency whereby the General Counsel of the Commission may bri civil action for the Commission, but might not be able to protec Commission's interest in a case where private litigant is involved.

No. 899 is a technical amendment redefining the Commission's ational authority to eliminate references to the cease-and-desist po

No. 900 is a technical and conforming amendment to the prov of S. 2515 that created a general counsel. It makes clear the Ge Counsel authority is to handle the filing of complaints under the adopted court enforcement procedures rather than the issuance prosecution of complaints before the Commission under ceas desist.

The amendment also strikes the provision prohibiting the Com sion employees engaged in prosecutorial functions from partici in other decisional functions at the Commission since there is n ministrative hearing process any longer, as a result of the amend

Amendment No. 901 is a technical amendment concerning th vestigatory powers of the Commission which eliminates a sen relating to the use of the subpena powers in relation to cease and de which again has been stricken.

Amendment No. 902 is a technical amendment, eliminating the erence in the pattern and practice transfer to cease-and-desist cedures to make clear that the Commission's handling of patter practice cases is to be through the Federal district courts.

The PRESIDING OFFICER (Mr. Moss). The question is on agr en bloc to the amendments numbered 896, 897, 899, 900, 901, an

The amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment

Mr. WILLIAMS. Mr. President, I have nine other technical am ments which have not been printed. I have reviewed them wit Senator from North Carolina and believe that, as they are of a nical nature only, they will be accepted.

d the amendments to the desk and ask unanimous consent that
ot be read but printed in the Record, and I will explain each
his time.

PRESIDING OFFICER. Is there objection to consideration of the
ing amendments en bloc and to suspend the reading of the
nents? The Chair hears none, and it is so ordered; and without
on, the amendments will be printed in the Record.

ext of the amendments is as follows:

ge 33, in the matter to be inserted by an amendment after line 13, strike
word "religions" and insert in lieu thereof the word "religion".
ge 33, in the matter to be inserted by an amendment after line 13, strike
ord "in" and insert in lieu thereof the word "to".
ge 38, in the matter to be inserted by amendment numbered 884, insert
2, line 7, after the period the following: "The person or persons ag-
hall have the right to intervene in a civil action brought by the General
or the Attorney General in a case involving a government, govern-
gency, or political subdivision.".
e 38, in the matter to be inserted by amendment numbered 884, insert
2, line 13, after the words "Attorney General" the following: "has not
il action".
e 38, in the matter to be inserted by amendment numbered 884, on
ne 11, strike out "subsection (c)" and insert in lieu thereof "subsec-
r (d)".
e 38, in the matter to be inserted by amendment numbered 884, insert
, line 6, after the word "Commission" the following: "or the Attorney
n a case involving a government, governmental agency, or political
n,".
e 38, in the matter to be inserted by amendment numbered 884, on
ne 20, strike out the word "plaintiff" and insert in lieu thereof the
grieved person".
e 38, in the matter to be inserted by amendment numbered 884, insert
after line 11, the following:
e provisions of section 706 (f) through (k), as applicable, shall
il action brought hereunder."
e 55, line 12, strike out the word "or" and insert in lieu thereof the

50, line 25, strike out "1971" and insert in lieu thereof "1972".
51, line 20, strike out "1971" and insert in lieu thereof "1972".
59, line 6, strike out "1971" and insert in lieu thereof "1972".

RESIDING OFFICER. The Senator from New Jersey (Mr. Wil-
ay propound the perfecting amendments at this time.

ILLIAMS. Mr. President, the first amendment that I offer makes
graphical corrections in the amendment that was adopted
ous belief. The first correction makes the word "religion"
instead of plural. The second change is a grammatical change
to hardship of religious practice to the conduct "of" the em-
business rather than "in" the conduct of the employer's

RVIN. Mr. President, I would like to ask the Senator from
sey if that affects the amendment which was adopted in any

ILLIAMS. No. This does not deal with the amendment offered
nator from North Carolina. This deals with the amendment
y the Senator from West Virginia, not the Sentor's amend-

RESIDING OFFICER. Does the Senator from New Jersey wish
ndments to be considered en bloc or separately?

Mr. WILLIAMS. I ask unanimous consent that they be consid en bloc, Mr. President.

The PRESIDING OFFICER. Is there objection? The Chair hears n and it is so ordered.

Mr. WILLIAMS. The second amendment replaces language that in the original bill to make it clear that the right of an aggrieved pa to intervene in a civil suit brought by General Counsel or Attor General in cases involving a governmental agency or political subd sion. It is likely that such individual would have the right of inter tion under Federal rules in civil procedures which this amendmen designed to make clear.

Mr. GRIFFIN. If the Senator from New Jersey will yield for a q tion, are these several amendments also cleared with the ranking M bers on this side; is that correct?

Mr. WILLIAMS. Yes.

Mr. GRIFFIN. I thank the Senator.

Mr. WILLIAMS. They were all cleared with the Senators from N York and Colorado.

Mr. President, the third amendment is intended to make clear provision under which a private action may have been filed in a involving a governmental agency and political subdivision. Pri action can be filed if the Attorney General has not filed a civil ac within the requisite period of time. The words "has not filed a c action" were left out of the amendment on court enforcement.

The fourth amendment is intended to correct a typographical e which allowed for the deferral under State and local proceedings u 706(c). It should have read 706 (c) or (d), since there are two defe procedures.

The fifth amendment is intended to make clear that preliminary junctions involving a governmental agency or political subdivision to be sought by the Attorney General.

The sixth amendment is intended to conform to language in the relating to an "aggrieved person" rather than the term "plaint since civil actions would be in the name of the Commission of United States.

The seventh amendment is in the nature of a technical amendm to make clear the provisions under which civil actions are t brought.

The eighth amendment is intended to correct a grammatical e in the redesignation of several subsections. This amendment, whi No. 898, is a technical amendment, intended to reflect the fact tha bill would be passed in 1972 rather than in 1971, as it is in the b introduced.

That concludes this group of technical amendments.

The PRESIDING OFFICER (Mr. MOSS). The nine technical am ments of the Senator from New Jersey have been explained an motion to consider them en bloc having been granted, the question agreeing to the amendments en bloc.

The amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Williams. Mr. President, I ask unanimous consent that the or the quorum call be rescinded.

Presiding Officer. (Mr. Saxbe). Without objection, it is so .

Omission of Names of Signers of Cloture Motion

Williams. Mr. President, I note that the Congressional Record uary 18, 1972, at page S2107, in listing the Senators who signed ure motion on S. 2515 that was offered on that date, omitted the names of several Senators who had signed the cloture It will be recalled that a total of 53 Senators signed the motion. ubmitted on two pages, and evidently the second page somehow at the printers.

refore ask unanimous consent that the cloture motion and the e list of signers be printed in the record.

being no objection, the text of the motion and list of signers dered to be printed in the record, as follows:

Cloture Motion

e undersigned Senators, in accordance with the provisions of rule XXII nding Rules of the Senate, hereby move to bring to a close the debate bill (S. 2515), a bill to further promote equal employment opportunities ican workers.

e Mansfield
ert Griffin
ert C. Byrd
aham Ribicoff
mas J. McIntyre
nings Randolph
old E. Hughes
lord Nelson
mas F. Eagleton
ai Stevenson
ter F. Mondale
Metcalf
nk E. Moss
B. Jordan
n O. Pastore
ert T. Stafford
k O. Hatfield
ert Taft, Jr.
rison Williams
hard S. Schweiker
h Scott
b K. Javits
aleb Boggs
rles H. Percy
es B. Pearson
ard W. Brooke
don Allott
28. Lowell P. Weicker
29. Clifford P. Case
30. Marlow W. Cook
31. Charles McC. Mathias, Jr.
32. Robert Dole
33. Henry Bellmon
34. Bob Packwood
35. Ted Stevens
36. J. Glenn Beall
37. Vance Hartke
38. George McGovern
39. Frank Church
40. Alan Cranston
41. Claiborne Pell
42. Daniel K. Inouye
43. John V. Tunney
44. Gale W. McGee
45. Joseph M. Montoya
46. Philip A. Hart
47. Stuart Symington
48. Lloyd Bentsen
49. William Proxmire
50. Birch Bayh
51. Fred R. Harris
52. Lawton Chiles
53. Warren G. Magnuson

Quorum Call

Williams. Mr. President, I suggest the absence of a quorum.

Presiding Officer. The clerk will call the roll.

cond assistant legislative clerk proceeded to call the roll.

llen. Mr. President, I ask unanimous consent that the order uorum call be rescinded.

Presiding Officer. Without objection, is is so ordered.

* * * * * *

The Senate continued with the consideration of the bill (S. 25 bill to further promote equal employment opportunities for Amer workers.

Mr. ALLEN. Mr. President, on behalf of myself and the distinguis Senator from North Carolina (Mr. Ervin) I call up an amendm which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be read.

The assistant legislative clerk read as follows:

On page 50, between lines 19 and 20, to insert the following at the en section 4 with a proper subsection designation:

As used in this act, the term "charge" shall mean an accusation of discrim tion supported by oath or affirmation."

Mr. ALLEN. Mr. President, by way of explanation of the cle difficulty in reading the amendment, it was drafted by the hand of distinguished Senator from North Carolina (Mr. Ervin) who——

Mr. ERVIN. If the Senator will pardon me, if he tested me so on my capacity to write rather than to read, I could not pass a liter test.

Mr. ALLEN. Fortunately, or unfortunately, as the case may be, t is no literacy test any more, so that the distinguished Senator w have no difficulty getting by any examination if he should ap before a board of registrars. [Laughter.]

Mr. President, the purpose of this amendment is to require charges of discrimination filed with the Commission shall be u oath or affirmation. For some reason unexplained, but apparently intentional, the amendment as drafted and the committee substitu reported, leave off the requirement that a charge be under oa

The present law and the committee report containing a copy of present law, at page 55, section 706(a) points out:

Whenever it is charged in writing under oath by a person claiming t aggrieved—

So all this amendment would do would be to go back to the pre law and make no change in the requirement, meaning charges a be filed and made under oath in writing.

I am advised that the sponsors of the bill have no objection to amendment. I trust that they will so state.

Mr. WILLIAMS. Mr. President, I gather that one copy has been t from the Chamber. Does the Senator have another copy of the am ment?

Mr. ALLEN. No, sir. The amendment adds a new section at the of section 4, and it is between lines 19 and 20 on page 50 of the It merely states that the word "charge" as used in the act shall charge supported by oath or affirmation.

Mr. WILLIAMS. I wonder if the Senator would refer to the b page 34, and whether this would not be the place to make the conform to present law.

Mr. ALLEN. The only reason we did not put it there would been because four or five subsections start off with reference to a ch and it would have been necessary to amend the bill at about fo five places, whereas if we add one coverall, blanket statement it w cover the matter without trying to amend it at four or five diff points, and possibly not covering every one.

WILLIAMS. The present law makes the requirement in one place, s in section 706.

ALLEN. Yes.

WILLIAMS. "Whenever it is charged in writing under oath." I know why it was taken out of the bill, but I would think that be the place to put it back.

ALLEN. As I stated, if it were put back, it would also have to back on page 35, subsection (c), where it refers to the case of a ; it would also have to be put on page 36, subsection (d) where s to the case of a charge; it would also have to be put on page section (e), where it refers to the case of a charge.

WILLIAMS. If the Senator will yield further, if it could be done place, it probably would be best to do it in section 706(b) where uirement would be put at the very beginning: "Charges shall riting under oath or affirmation." That would be on line 21, of the bill before the Senate.

ALLEN. Apparently the oath, or affirmation requirement was left ne bill.

WILLIAMS. Yes.

ALLEN. Would the Senator then, interpose no objection if we w the amendment, put in a quorum call, and then put it in an ent that is applicable to this line?

WILLIAMS. I wonder if the Senator could do that without the of a quorum call, while we further discuss the bill. The reason omission in the bill of the requirement that the charges be filed ng under oath is not clear to me. I do not know why it was done.

ALLEN. Very well. We will put in such an amendment.

WILLIAMS. The Senator has accommodated this provision to ho, for one reason or another do not resist taking an oath, and putting it "in writing under oath or affirmation."

LLEN. That is the way we have worded it.

WILLIAMS. Certainly, in the liberal spirit of today——

RVIN. Mr. President, if the Senator will yield, I would suggest istinguished Senator from Alabama that he modify his amend- as to read, on page 34, line 21, insert the following between d "writing" and the word "and": "under oath or affirmation."

LLEN. Very well.

President, I offer a modification of my amendment in the man- ested by the distinguished Senator from North Carolina.

mendment, as modified was, on page 34, line 21, after the word ," insert "under oath or affirmation."

PRESIDING OFFICER. The amendment is so modified.

uestion is on agreeing to the amendment.

LLOTT. Mr. President, it just occurs to me at this time that this e an appropriate time to see that the name of the Senator from o, as well as other Senators who are present, appears in the As I gaze upon this very tightly packed Senate today, I am ed at the great number who are here.

k this is a very meritorious amendment. I think we are very lebted to the distinguished Senator from Alabama for offering ndment, even though I cannot read the handwriting of the o originated the amendment. For that reason I shall support ndment wholeheartedly. It is very nice to be present here and ate in the debate on a day like this.

Mr. ALLEN. I thank the distinguished Senator from Colora
feel certain that, having taken a stand on this amendment and th
ing his support behind it, the amendment will be unanimously ad
by the packed membership of the Senate present at this time. [La
ter.]

The PRESIDING OFFICER. The question is on agreeing to the am
ment.

The amendment was agreed to.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quor

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the o
for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. WILLIAMS. Mr. President, one of the amendments that
offered and considered en bloc, for technical reasons, should b
scinded, because the language in the master copy does not confor
the language as offered. I ask unanimous consent that the action o
Senate in adopting the first of the unprinted amendments be rescin

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 2515.

Mr. JAVITS. Mr. President, for the Senator from New Jersey (
Williams) and myself, I send two amendments to the desk and ask
their immediate consideration.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

On page 34, line 1, strike out "(e)" and insert in lieu thereof "(g)".
On page 34, line 3, strike out "(e")" and insert in lieu thereof "(g)".

Mr. JAVITS. Mr. President, I ask unanimous consent that the am
ments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. These are technical amendments, simply renumbe
and relettering certain sections to conform with the present stat
the bill.

The PRESIDING OFFICER. The question is on agreeing to the am
ments, en bloc.

The amendments were agreed to.

Mr. JAVITS. Again for Senator Williams and myself, I send an
amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 66, line 15, beginning with the word "not" strike out through the
"Act" in line 17 and insert in lieu thereof the following: "the applicabl
respect to charges pending with the Commission on the date of enactment
Act and all charges filed thereafter."

Mr. JAVITS. Mr. President, this amendment would make whatev
do enact into law applicable to pending cases. The Department
Justice has requested it in a letter to the minority leader; that i
reason for offering it.

Mr. ERVIN. Mr. President, will the Senator yield?

AVITS. I yield.
ERVIN. Did I understand the Senator from New York to say
is amendment merely provides that charges existing at the time
is passed shall remain in existence, and that the bill as amended
e considered a part of the Civil Rights Act of 1964?
AVITS. That is right.
ERVIN. In other words, it is just to keep pending charges alive,
ke them subject to the amendment to the original act?
AVITS. To this particular act, whatever it is, at the time it be-
aw.
PRESIDING OFFICER. The question is on agreeing to the amend-
the Senator from New York.
mendment was agreed to.

AMENDMENT NO. 848

AVITS. Mr. President, I call up amendment No. 848.
PRESIDING OFFICER. The amendment will be stated.
ssistance legislative clerk read as follows:

nd of the bill add the following new section:
The Chairman of the United States Civil Service Commission, or his
should be a member of the Equal Employment Opportunity Coordinat-
il established by section 715 of the Civil Rights Act of 1964, as amended
t.

AVITS. Mr. President, the purpose of this amendment is to make
rman of the U.S. Civil Service Commission a member of the
mployment Opportunity Coordinating Council, the idea being
we are introducing the Civil Service Commission into this
n, the highest official of that Commission ought to be a mem-
e Coordinating Council which is established under this bill.
RESIDING OFFICER. The question is on agreeing to the amend-
o. 848) of the Senator from New York.
nendment was agreed to.

AMENDMENT NO. 909

AVITS. Mr. President, I submit an amendment to the desk for
and wish to serve notice as to what it is.
n amendment upon which I have yet to consult finally with
tor from Colorado (Mr. Dominick); but in view of the fact
will be tolling amendments, as it were, as of tomorrow, I
ve it printed and give notice.
mendment developed from debate, which I think Senators
present will recall, on the Dominick amendment, in the pres-
of the Senator from Kentucky (Mr. Cooper), who voted with
inick.
r Cooper pointed out that the courts could refer cases, in order
te them, to a special master or referee. That, of course, is en-
sible under the Rules of Civil Procedure, and Senator Dom-
I discussed the idea of asking the courts to do that. Of course,
t compel them to do it, but we can ask the courts to do it,
case has been pending for a given period of time.
Dominick and I have agreed on a provision to go into the
nciple, but we have not yet agreed on a number of days. We

have discussed varying numbers of days from 60 to 150. I have ch
120 days as being 4 months and somewhat analogous to the other
visions of the bill, which provide various periods of time.

So, Mr. President, I send to the desk for printing, so that it
be at the desk and qualified, an amendment which would provide
if the judge designated pursuant to subsection (f) of this section,
is, in the assignment of a case of this kind for trial, does not assig
case for trial within 120 days after issue has been joined—the
after giving the time for pleadings, which probably normally w
take another 60 or 90 days, giving us, normally, the 6-month pe
which this act generally contemplates—the judge shall appoi
social master in accordance with the rules of civil procedure.

I would call the amendment up at this time except that I have
consulted with Senator Dominick.

The PRESIDING OFFICER. The amendment will be received
printed and will lie on the table.

Mr. ERVIN. I wish to ask a question about the jurisdiction of
amendment. As I understand the Dominick amendment, it puts
jurisdiction in the Federal district courts, or in certain cases in
circuit courts of appeals. Certainly with respect to cases in the Fed
district courts, there is plenty of authority under existing law for
judge to appoint a special master if he sees fit to do so.

Mr. JAVITS. Exactly.

Mr. ERVIN. Would this amendment seek to make that mandat

Mr. JAVITS. I do not think we can mandate a court to do that. I
use the word "shall," but as a lawyer, I believe with such a provisio
the law it would give a lawyer for either side the opportunity to a
to the court for such procedure in order to expedite the case. Tha
my thought in proposing it.

Mr. ERVIN. I wanted to tell the Senator from New York that I
pose to offer an amendment which is now at the desk to provide for
trial of issues of fact arising in these cases by a jury. I guess we
battle out the two amendments. I do not know what the law of
Federal court is—I am not enough of an expert to say what it is
to whether, if you have a right of jury trial, the court can pre
that right of a jury trial by appointing a special master.

Mr. JAVITS. I would doubt it. I would think the two amendm
would be inconsistent, so if they were both the law, it would pose a
neat legal problem. I hope they will not both be the law.

Mr. ERVIN. I hope the Senator from New York joins the Sen
from North Carolina in his deep veneration for the right to a tria
jury, which our citizens have enjoyed throughout the history of
Nation.

Mr. JAVITS. Of course, the Senator from North Carolina, who
good a lawyer as I am, knows that the overwhelming majority of
in equity are tried without a jury; so I am not too inhibited by
fact that the Senator would seek to provide for a jury trial. How
that is the Senator's right, as it is my right to seek some way of e
diting this court procedure, which is what this amendment pro

Mr. ERVIN. I would just like to express the hope that the Sen
from New York and those who have sought to provide for jurisdi
in the Federal courts will accept the wise course of action follo
by the State of North Carolina, which gives the right of trial by

ect to all issues of fact, regardless of whether they arise in legal
table proceedings.

JAVITS. I thank my colleague for the information he has con-
to the Senate. As I said before, I shall not call up the amend-
t this time, but simply ask that it be printed.

President, if there is no other business, I suggest the absence
orum.

ERVIN. Mr. President, I should like to call up an amendment,
enator will withhold that.

JAVITS. We have another amendment. We are discussing whether
g it up. Will the Senator give me a minute on that?

'resident, I suggest the absence of a quorum.

'RESIDING OFFICER. The clerk will call the roll.

ssistant legislative clerk proceeded to call the roll.

AVITS. Mr. President, I ask unanimous consent that the order
quorum call be rescinded.

'RESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 850

AVITS. Mr. President, on behalf of the Senator from New Jer-
myself, I send to the desk amendment No. 850.

'RESIDING OFFICER. The amendment will be stated.

ssistant legislative clerk proceeded to read the amendment.

AVITS. Mr. President, I ask unanimous consent that further
of the amendment be dispensed with.

'RESIDING OFFICER. Without objection, it is ordered; and, with-
ction, the amendment will be printed in the Record.

nendment is as follows:

66, Section between lines 13 and 14, insert the following new section:
3. Section 5108(c) of title 5, United States Code, is amended by——
riking out the word 'and' at the end of paragraph (9);
riking out the period at the end of paragraph (10) and inserting in
of a semicolon and the word 'and'; and
adding immediately after paragraph (10) the last time it appears
e following new paragraph:
the Chairman of the Equal Employment Opportunity Commission, sub-
standards and procedures prescribed by this chapter, may place an
ten positions in the Equal Employment Opportunity Commission in
S–17, and GS–18 for the purposes of carrying out Title VII of the
ts Act of 1964.'."
66, line 14, strike out "SEC. 13" and insert in lieu thereof "SEC. 14".

AVITS. Mr. President, this amendment proposes to establish
grade jobs in the Equal Employment Opportunity Commis-
eal with the added responsibilities which are vested in the
ion. I shall not call it up today or deal with it today, if that
ble to the manager of the bill, but it can be the pending
nt overnight. I will lay before the Senate that amendment
leration. I will not press it today.

OSS. Mr. President, I suggest the absence of a quorum.

ESIDING OFFICER. The clerk will call the roll.

istant legislative clerk proceeded to call the roll.

OSS. Mr. President, I ask unanimous consent that the order
orum call be rescinded.

ESIDING OFFICER. Without objection, it is so ordered.

Mr. Moss. Mr. President, I ask unanimous consent that if clo
should be invoked on S. 2515 tomorrow, it be in order to call up
amendment now at the desk to S. 2515, regardless of the pagina
and section references, as now printed, so long as no changes in s
stantive matter are made, but that it would be in order to elimi
parts of amendments that would no longer be applicable becaus
changes in the bill; and that it be in order to correct the referenc
pages and sections on these amendments when called up so as to ap
properly to S. 2515 as now amended.

This, of course, would have no effect on whether or not the am
ments are germane as required by the rule.

The Presiding Officer. Is there objection? The Chair hears n
and it is so ordered.

Mr. Stevenson. Mr. President, S. 2515, the Equal Employ
Opportunity Enforcement Act, is designed to give the Equal Emp
ment Opportunity Commission the authority it needs to deal res
sibly and effectively with job discrimination. In some quarters, h
ever, S. 2515 is characterized strictly as a measure to combat
discrimination based on race or color. The legislative battle to e
S. 2515 is thereby cast as another chapter in the continuing s
saga which, for our purposes, began at least as early as the Cons
tional Convention.

There is no question that S. 2515 is a civil rights bill in the best
truest sense of the term. Discrimination in employment becaus
race or color continues in this country, and the EEOC must be g
new and more meaningful powers to help end this seemingly ne
ending problem. But S. 2515 is something more.

There is, for example, job discrimination based on an emplo
nationality, and on religion or religious practices. In regard to
latter problem, the Senate early in the debate on this bill consid
and adopted an amendment proposed by the distinguished senior S
tor from West Virginia, Mr. Randolph, which sought to define
clearly and thereby prohibit more directly such discrimination b
on religious practice. During that consideration Senator Rand
documented the employment problems which affect those who
to observe the Sabbath on a day other than Sunday, such as Sev
Day Baptists, Seventh-day Adventists, and Orthodox and Cons
tive Jews.

There is yet another major area which the bill treats—the g
problem of discrimination in employment against women.

To many citizens of both sexes efforts to combat sex discrimin
may seem novel. But even the sketchiest perusal of American hi
discloses that the legislative aspect of this movement, the searc
women's equal rights, is at least a century old. That was abou
time that the roots which later became the full-fledged suffra
movement—culminating in the 19th amendment—began to grow.
equal rights amendment, which the Senate shall consider again
near future and which I support, and which is a main legislative
of all present day women's groups, was first introduced in 192
has been introduced in every Congress since. And even at the la
of 1964 the women's rights movement as it has come to be known i

t prominent. But in 1964 Congress first enacted Title VII of the Rights Act, and one of the broad mandates given to the newly shed Equal Employment Opportunity Commission was to end ination in employment based on sex.

liscrimination, especially in employment, is not new. But it spread and persistent.

e are some 30 million women employed in the United States, 8 percent of the total work force. And the number of working has increased rapidly in the last 25 years—between 1947 and one the number of women in the labor force increased by 75 . The comparable figure for men was only 16 percent. But this comparatively large increase in the number of women in the orce, women continue to be relegated to the lower-paying posi- urgely excluded from the higher-paying executive positions, moted much slower than men in similar positions.

statistics have been mentioned before in this prolonged debate, bear repeating, for they illustrate this grave aspect of employ- scrimination. In 1968, for example, the last year for which e data is available, the median salary for all scientists was but for women scientists alone the median was $10,000. The even more stark for blue-collar workers: the median salary l-time male factory worker was $6,738; the counterpart female was $3,991. In fact, 60 percent of women but only 20 percent arned less than $5,000 per year, while only 3 percent of women rcent of men earned $10,000 per year or more.

ps nowhere can this problem be seen in better perspective than r education employment, an area over which even the presently OC does not have jurisdiction, but likewise a problem to which s addressed. Of all men in higher education facilities in 1968– percent held the rank of professor, 21.9 percent the rank of professor, 28.2 percent the rank of assistant professor, and ent instructor or below. Similar figures for women faculty percent professors, 15.7 percent associate professors, 28.7 per- stant professors, and 46.2 percent instructor or below. In 1965– edian annual salary of women was $410 less than men at the r's level, $576 less at the assistant professor's level, $742 less sociate professor's level, and $1,119 less at the professor's level.

tany of discrimination can continue into a consideration of n professions in this country. Women presently comprise 3.5 of our Nation's lawyers, 2 percent of our dentists, and 7 per- ur physicians. The comparable figure for lawyers in Denmark ent and for dentists 70 percent. In Great Britain, 16 percent ctors are women, and this figure is 20 percent in Germany and t in Israel.

are some who would say that much of this discrimination is discrimination in previous years in the admissions processes education, especially in graduate and professional schools. tent this is correct. The law school which nine other Senators ended, Harvard, did not admit women until after 1950. But arative figures I quoted above, for comparative ranks and

salaries within educational institutions, and for comparative sala
even at the blue-collar level, belie such simplistic explanations. T
problem of discrimination, as in other kinds of discrimination, for
that old vicious circle. The attack against discrimination agai
women, therefore, must come on a variety of fronts—to enact an eq
rights amendment, to end discrimination in school admissions, to
job discrimination, and to act in yet other ways.

The question is not whether the EEOC should have jurisdiction o
sex discrimination in employment, but whether EEOC is to have
tools needed to discharge its mandates effectively.

Whether S. 2515 is a civil rights bill or a women's rights bill she
not matter. It should only further emphasize the importance of
legislation.

Once again, I urge my fellow Senators to heed the words of the C
mission on Civil Rights and act "promptly and vigorously" to rem
the impediments from the effective functioning of the EEOC. The t
to act is now. The place to begin is with passage of S. 2515.

Calendar No. 412

CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 21, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

ıded to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 66, insert the following new section between ines 13 and 14:

"SEC. 13. Section 703 of title VII of the Civil Rights Act of 1964 is amended as follows: Strike out the word title' wherever it appears in subsection (j) and insert in lieu hereof the words 'title, Executive Order Numbered 11246, or ny other statute or executive order'."

Renumber "SEC. 13" as it appears on page 66, line 14, s "SEC. 14".

Amdt. No. 907

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 21, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. ERVIN (for himself and Mr. ALLEN) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 66, insert the following new section between lines 13 and 14:

"SEC. 13. Upon demand of any party, the issues of fact arising in any civil action brought under the provisions of this Act or the provisions of title VII of the Civil Rights Act of 1964 shall be determined by a jury."

Renumber "SEC. 13" as it appears on page 66, line 14, as "SEC. 14".

Amdt. No. 908

Calendar No. 412

CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 21, 1972
Ordered to lie on the table and to be printed

AMENDMENT

nded to be proposed by Mr. JAVITS (for himself and Mr. WILLIAMS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: On page 50, before line 20, insert the following new section:

SEC. 4A. Section 706 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(l) If the judge designated pursuant to subsection (f) (3) of this section does not assign the case for trial within one hundred and twenty days after issue has been joined, that judge shall appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.".

Amdt. No. 909

[From the Congressional Record—Senate, Feb. 22, 1972]

L EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

PRESIDING OFFICER. Under the previous order, the Chair lays the Senate the unfinished business, which will be stated by

egislative clerk read as follows:

(S. 2515) to further promote equal employment opportunities for workers.

QUORUM CALL

YRD of West Virginia. Mr. President, I suggest the absence of n.

RESIDING OFFICER. The clerk will call the roll.

gislative clerk proceeded to call the roll.

YRD of West Virginia. Mr. President, I ask unanimous con- the order for the quorum call be rescinded.

RESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

our of 11:15 has arrived, and pursuant to the unanimous- agreement the remaining time between now and 12:15 p.m. equally divided and controlled by the manager of the bill, tor from New Jersey (Mr. Williams), and the Senator from rolina (Mr. Ervin). Who yields time?

YRD of West Virgina. Mr. President, I suggest the absence of n and I ask unanimous consent that the time be equally against both sides.

RESIDING OFFICER. Is there objection? The Chair hears none, so ordered. The clerk will call the roll.

gislative clerk proceeded to call the roll.

LLEN. Mr. President, I ask unanimous consent that the order orum call be rescinded.

RESIDING OFFICER. Without objection, it is so ordered.

RVIN. Mr. President, I yield to the Senator from Alabama as he may need out of the time allotted to me.

LEN. Mr. President, I yield myself 7 minutes.

RESIDING OFFICER. The Senator from Alabama is recognized utes.

LEN. Mr. President, this is the third time since January 18 nvoking of cloture has been sought in the Senate on this bill, hat would extend the authority, jurisdiction, and power of the Equal Employment Opportunity Commission. On two occa- Senate has refused to invoke cloture because more than one- he Senators voting on the cloture motion voted against that

cloture motion. I harbor no illusions that the cloture motion will be voted today, but I feel sure that it will.

Has this effort to familiarize the people of the country with provisions of S. 2515 been worth the effort that has been put into In the judgment of the junior Senator from Alabama the time effort expended in the discussion of the provisions of this bill h been well worthwhile. To this extended debate goes the credit for adoption of the Dominick amendment which substituted court ac on charges of discriminatory employment practices for the orig provisions of the bill that would have allowed this Commission t the court, jury, prosecutor, and enforcement officer, all wrapped one Federal bureau.

To this debate goes credit for the amendment of the bill that wo raise from eight to 15 the number of employees that a person wo have to have in order to be subject to the provisions of the EEOC.

To this debate would go the credit for the adoption yesterday the amendment that would exempt religious societies, corporati and educational institutions from the provisions of the act insofa their employment practices are controlled by religious considerati In other words, it would prevent the EEOC from forcing on a Bap school an atheist, or from forcing on a Catholic-supported scho Mohammedan.

So, Mr. President, this debate has been worthwhile. The dis guished majority leader has said that if this cloture effort today sho fail he is going to ask that the whole measure be set aside. In ef this is voting for or against enlarging the powers of the EEOC. and down.

The EEOC has been operating for 7 years and almost 8 years an advisory body, a conciliatory body, without enforcement pow It claims it has been doing a good job. It has come in every year asked for increased appropriations, and I assume they have told Appropriations Committees of both bodies that they have been do a good job. Therefore, why do they need enforcement powers? I s mit they do not.

I object, too, to the extension of the jurisdiction of the EEOC the employment practices of State, county, and local governme because I believe Federal bureaucracy should not encroach further the powers of State and local governments.

I object to the extension of control by the EEOC of every edu tional institution in this country, every university, every college, ev church-supported school, except in regard I mentioned a moment every private school, and very public school, for that matter, bec each of them is an educational institution. I object to these extens

If we should vote against cloture today it would defeat this ef It is not often a Senator has an opportunity to strike such an effec blow, because to vote against this cloture motion will kill the bill strike an effective blow against mushrooming Federal bureaucrac it will strike a blow against the doubling in size of a Federal agen it will strike a blow against further encroachment on the power the State and local governments, and on the power of the EEOC the Federal Government over the daily lives of our people.

Mr. President, the bill extending as it will, the power of the EE over small businesses—and I would say a business that employs as

people is a small business—will crowd many a small business
wall. It is going to force many small businesses to close their
nd throw hundreds of thousands of people out of employment.
President, with the demands of Federal bureaucracy on small
sses, with the investigations, harassment, redtape, and high taxes
rd for any small business to stay in business. So the giving of
ment power to the EEOC over the employment practices of
usinesses, over the employment practices of State, counties,
nd all educational institutions in the entire country, is in the
nt of the junior Senator from Alabama, wrong.
hoped that one more than one-third of the Senators present
e against this cloture motion.
proponents of the measure, of course, have been able to select
e when this vote is to take place on the cloture motion, by
ing the time for the filing of the petition. Since the Senate
quire that 1 day be skipped and the vote be taken the next day,
een possible to arrange a day, Tuseday, when the senatorial
tial candidates—and there are about six or seven of them—
here. Mark my words, Mr. President: We are going to have a
ull attendance by the senatorial presidents.
RESIDING OFFICER. The Senator's 8 minutes have now expired.
RVIN. Mr. President, I yield the distinguished Senator from
a such further portion of the time available to me as he may

LLEN. I thank the distinguished Senator from North Carolina.
want to complete my thought that the time for this vote has
osen by the proponents at a time when it will not be incon-
for Senators to come in and vote. One of the cloture motions
st was defeated on account of the absence of a number of the
tial candidates, and I dare say they are going to be here today.
e going to turn out in force for this vote. Every single one of
going to vote to cut off free debate in the U.S. Senate. I hope
try is going to mark, and mark well——
RVIN. Mr. President, will the Senator yield?
LLEN. I yield.
RVIN. Does the Senator think any of them would want to cut
e for the candidates for the office of President?
LLEN. They would not like to be cut off, themselves; they might
t off the opposition from discussion. But not a single one of
sidential candidates is going to vote against cloture. Each
y one of them is going to cast a vote to cut off free debate in
Senate.
the names of 53 Senators on the cloture motion, and that is a
w of strength. I daresay a two-thirds vote will be cast invok-
re.
s an opportunity to kill this bill. I hope Senators will avail
es of the opportunity to come in and vote against the cloture

VIN. Mr. President, will the Senator yield for a question?
LLEN. I yield.
VIN. Is the Senator from Alabama convinced that the Senator
bama and the Senator from North Carolina will follow the
n of the Scriptures where it says, "Thou shalt not follow after
ultitude to do evil?"

Mr. ALLEN. Yes, I do agree with the distinguished Senator f
North Carolina.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I yield myself such time as I n
within my limits.

Mr. President, we have now reached the moment of decision in
debate over the Equal Employment Opportunity Enforcement Ac
1972. This is the 21st day of debate on that legislation. We have c
pleted 5 weeks of discussion. We have had more than 30 rollcall v
We have adequately and amply debated every issue that has been
significant concern to any Member of this body.

This is now the third time that we have tried to obtain a vote
the bill. It has been crystal clear since last week, when the Se
decided that the method of enforcement to be given EEOC was t
litigation through the Federal district courts, that no further del
on this bill was really necessary. I think it is clear that it was the se
of the Senate that we could have passed the bill last Tuesday nig

Since that vote, we have had a number of other amendments c
sidered, but it has appeared to me that, for the most part, we h
merely been marking time waiting for this day.

The people of the United States deserve this bill. The minori
and women who are suffering from discrimination in employment n
this bill. The President of the United States has stated that he wa
this bill.

The only people who oppose this kind of bill are those who, wit
point of view of long standing, feel that no such legislation should
enacted by the Congress of the United States.

Mr. President, we crossed that bridge in 1957. We crossed t
bridge in 1960, and we crossed that bridge in 1964 with the judgm
of the Congress that the Federal Government protect the civil rig
of our citizens. In a larger sense, that bridge was crossed with
adoption of the Constitution of the United States. Over the last
years there have been periods of activity with respect to enforcem
of those constitutional guarantees, and other times when, regrettab
there has been less interest shown on behalf of individual rights.

I firmly believe that today, as much as at any time in our histo
we need to actively protect the rights of our citizens.

The Senate has an opportunity to pass a far-reaching and vita
important piece of legislation after having conducted as extensive a
intensive a debate as could conceivably be asked for on this measu
There is nothing left to discuss, Mr. President. This is a bill that
awaiting a vote of final passage. This is a bill where final passa
cannot come until the Senate, observing its two-third rule, invo
cloture.

Mr. President, I expect that cloture will be invoked today. I
spectfully urge all of my colleagues to vote to do so, so that we
expedite enactment of this legislation.

Mr. President, just before we recessed Friday, the Senator fr
North Carolina made a statement. I did not take an opportunity
Friday to comment, because we had just had an historic moment
filing of a cloture motion with 53 Senators, and understandably
people of the press wanted to talk about that. So I did not make

tions at the time after the Senator from North Carolina made
ement, but I would like to make a brief statement now with
to his observation on Friday last, when he said:
very difficult to present the views of a minority in respect to
ion which is backed by a pressure group. This legislation is
by a pressure group which has tremendous political power in
ngress of the United States and, unfortunately— I say this
intending to be critical—all too many Members of Congress
en to the requests of a pressure group for the support of legis-
nd fail to avail themselves of an opportunity to ascertain
the proposed legislation contains iniquitous provisions.
President, the first comment I would like to make is that, while
ator has said it is very difficult to present the views of a minor-
rather he was speaking of his position and the difficulty of
ng his views—we have had, as I have indicated, 5 weeks of
nity here in the Senate for those who are opposed to this
on to express their views: Perhaps it is difficult. It did require
nce over the days through those 5 weeks. It was a hardship, but
portunity was there. But the very distinguished and respected
from North Carolina seemed to be saying that having a pres-
up backing the bill and supporting the bill is an iniquitous

had an opportunity to reflect over that statement over many
is past weekend, driving through a part of our country that
ly the cradle of our country, where our Nation was born,
the land of the American Revolution, up through the Sara-
tlegrounds, and down through and across the river and into
gland. I thought about the miracle and the pain of this young
We are less than 200 years old. Two hundred years sounds
ng period of time, but when we measure it against the history
nations, it is really almost a brief moment.
thinking subjectively and personally. I had an opportunity as
ter to sit with my grandfather and learn from him about the
as it was when he was a boy. He was born before the Civil
as a young man had an opportunity to sit with his grand-
nd learn about the country as it was at the beginning. His
her was born during the American Revolutionary War. So
ief span of time—a grandson, his grandfather and his grand-
this subjective view of time personally—I have spanned the
f this country.
st the miracle is that with the promise of liberty and equality
lividual as the basic principle, within 200 years this land has
ne pinnacle of the aspirations of all people for freedom and

at of the pain during those 200 years? People came here with
ise and the hope of living lives of freedom and equality; but
t an automatic thing. Earlier in this debate, some days or
, I recalled the people who came from Eastern Europe and
e who came from Western Europe, and I mentioned those
and who came here knowing that this was a land of hope for
o wanted to be free and who understood he would be equal.
ainfulness of this process of assimilation during these 200
been marked indeed.

Those who have come from the south, from Spanish-speaking la
also came here for opportunity. From depressed lands, they can
get jobs. Their assimilation has yet to be completed. The others I
mentioned have been assimilated quite fully, notwithstanding
they came to a land where they were not in a majority in term
religion or national origin; but those from the south, who came
another language, the Spanish-speaking people who came here,
yet to be assimilated. And the same is true of the black people who
impressed into service and servitude here and later freed. They
not yet been assimilated in the full sense.

These are the people to whom we are addressing ourselves, and t
are the people who form the pressure group that I feel. I stand
in open confession that I feel the pressure upon me, as a Memb
the U.S. Senate, of all people who have found in this land of prom
equality and freedom that they, for reasons of land of origin, col
skin, or religion, have not had the opportunity to be fully assimi
on an equal basis.

This is the pressure group to which we are addressing ourselv
those people who know that their constitutional rights are not
protected until there is effective law saying that no matter what
religion, where you came from, or what your race or your sex, yo
equal in that first fundamental for any man or woman, a livelihoo
themselves and their families.

And this is the pressure group. I respectfully submit to our
friend the Senator from North Carolina—not iniquitous at all,
group, a nation, that should be heard—which should be heard a
12:30 p.m. today, when the roll is called after this long, long de
when the Senate will have the opportunity to say it is now tim
vote on this legislation.

The Presiding Officer. Who yields time?

Mr. Javits. Mr. President, will the Senator from New Jersey y

Mr. Williams. How much time does the Senator need?

Mr. Javits. About 5 minutes.

Mr. Williams. I yield the Senator 5 minutes.

Mr. Javits. Mr. President, we come now to the crucial mo
in respect to this measure. We have had two votes on cloture mo
both of which have failed. It has now been clearly demonstrated
the Senate is run, not by a majority, but by one-third of its Mem
who can block anything the majority may wish to do.

We believe that we have now come to terms with two-thirds o
Senate, through the adoption of the so-called Dominick amendm
and through the reduction of the number of employees on w
coverage is based which we had contemplated from 25 to 15 inste
from 25 to 8. We have passed decisively on a number of contro
issues. We have dealt with the question of whether or not the Of
Federal Contract Compliance shall be transferred to the Commi
rather than the Department of Labor. We have dealt with empl
of local units of government and of State units of government
have dealt with the exclusivity of the remedy provided under thi
It seems to me that we have dealt with about every substantive
and in many cases more than once.

So, Mr. President, I say that the time has come to vote. The qu
of whether the Senate can, even under its rules, become disenta

a really old-fashioned filibuster of a civil rights bill now comes into focus. Mr. President, I believe the Senate will vote cloture and we will see the end in sight with respect to this legislation. Senator from New Jersey (Mr. Williams) has very eloquently ed what is at stake, and I would just like very briefly to state ny position, so often stated during this debate.

seek to do a great deal, sometimes with success, about housing, education, about opportunities for the uses of places of public nodation, et cetera; but we know in our hearts that the fundaproposition by which all Americans are ultimately conditioned —the availability of a job, the incentive of promotion with to a job, and the training for a job. Unless these opportunities en, we can say all we want to, and even make all the provisions h about other matters, but they are bound to be inadequate to asion of really giving an equal chance for life to the minorities country.

his is absolutely essential and absolutely basic. This is the enorrea in which discrimination continues. This law is vital. To he rights which we wish to secure under the Constitution, an l condition precedent is that we shall secure this right, the a job. In terms of what we have learned in the war against and in the civil rights field in the last 2½ decades, one thing out, Mr. President, and that is the issue of dignity. This conon is superior even to money, or to any other opportunity. s no greater dignity than that of the man who has a job and ng his way. So, sociologically, this becomes a critical element effort in this country to bring abreast of the rest of society the d the minorities who are disadvantaged.

ly, Mr. President, the opposition to this act has been constantly on the ground that it would jeopardize American freedom, and would immobilize the employers of American workmen.

rms of jeopardizing American freedom, I cannot see any enlargement of American freedom we could give than greater e that if a man rates it—that is the traditional American piorit—there is no limit to where he can go. We know that in the day, he cannot go anywhere without the necessary opportunity and to prove himself in work.

Mr. President, it seems to me that we are assuring and butan inalienable right here, the right of every American to go as e can go in an economic sense—one of the dearest and strongest s of our country, which has brought us to the greatness of e are all so proud.

ther aspect, Mr. President, is that of the employer. We are conold about how the employer is going to be bedeviled, inhibited, ribed, and persecuted by frivolous complaints, litigations, and

resident, this contradicts the experience of 34 States with laws g the right to get cease-and-desist orders, a far stronger remedy even have in this bill now, for a denial of equal opportunity ng jobs and job training.

RESIDING OFFICER. The time of the Senator has expired.

AVITS. Will the Senator yield me 2 additional minutes?

ILLIAMS. Yes.

Mr. JAVITS. Having given the instance before, I give it again. I own home State of New York we have had a job discriminatio since 1946, the famous Ives-Quinn bill, the principal author of w was Senator Irving Ives, who served in this body for two term with whom I had the great privilege of serving earlier in my in bency here.

Our experience there has been that the cases are relatively few the overwhelming majority of cases are settled by conciliation cedures, that the fears which we expressed in 1945, when that bil being considered, which were precisely those we hear here, of ha ment and persecution of employers, were never realized. Sure, i worked inadequately. I am sure we still have some discriminatio still have complaints and court cases, and so forth. But on the w it has been a remarkably successful reform, as it will be when natio carried through under this bill.

So, Mr. President, the best proof is experience, and experience tradicts the network of fears which have been argued here against measure.

Finally, we all know that we face a great social problem in country, and that is the problem of an integration of the black munity into the society of the United States, uninhibited by the centuries old tradition beginning with times of slavery, in whi first saw light in this country. This is a constant struggle w certainly can be dealt with according to the processes of law and Constitution, if we are ready to afford a remedy when there is a le mate grievance, as there is in this case, as witness the thousand complaints which the EEOC has received since 1964.

So, in the interest of peace and tranquillity at home, this is an a lutely indispensable measure.

For all those reasons, I hope that the Senate, being now ready to will commit itself to vote by voting cloture today.

Mr. ERVIN. I yield myself the remaining time at my disposal.

Mr. President, I do not think anyone can gainsay the accurac the statement I made last Friday to which my distinguished friend Senator from New Jersey, has alluded. I pointed out that those represent a minority viewpoint against the demands of a pres group are greatly handicapped in presenting their cause to Congres

Under the Constitution of the United States, the Senate mem ship consists of 100 Members. The vision of the Senator from N Carolina is pretty good. He looks around the Senate Chamber and one, two, three, four, five Senators. The other 95 do not come to Senate Chamber at this moment to hear what I say is the greatest for governmental power that this country has witnessed in my time.

I use the term "pressure group" to denote a special interest gr which seeks to attain its special objectives by destroying the freed of other men.

I listened with great interest to the very eloquent presentation of exploits of the men of the Revolution by my good friend, the Sen from New Jersey, and I applaud every word he said on that s After they had won their independence, they established a Const tion to secure the blessings of liberty to themselves and their poste

Our generation has been so solicitous about the plight of mino groups that it has come to the conclusion that, by virtue of bei

er of a minority group, an individual has rights superior to those
er Americans and that the rights of other Americans must be sub-
ted to their demands or the demands made on their behalf. That
is absolutely incompatible both with liberty and equality.
A has a right under the law to require B to work for him, that
ery. On the contrary, if A has a right to say to B, "You must
y me if ordered to do so by a Federal agency in Washington,
f you prefer to select men of other races or other religions or
national origins because you think they will assist you better
king your business a success instead of a failure," that is also
r.

bill is incompatible with the free enterprise system, because the
terprise system contemplates that a man who invests his talents
s resources in a business shall have the right to do those things
will make his business a success, including the right to determine
nself, without the dictation of government, whom he shall hire,
he shall promote and whom he shall discharge.

e never has been a bill which illustrates better the advisability
ng rule XXII. When this bill was presented to the Senate, it
most intemperate piece of legislation. It even went so far as to
ligious institutions the power to hire people of their own reli-
do their ordinary work. A religious institution is not two sepa-
stitutions, one sectarian and the other secular. It is one living
m. It was only yesterday, after days of debate, that those of us
d not favor this bill in its original form were able to secure the
n of an amendment that secured the freedom of worship guar-
by the first amendment, by denying this Federal Commission
er to compel a religious society or a religious educational insti-
o hire people of another religion or no religion whatsoever.

e, this bill is a rather despondent bill in its outlook for Ameri-
ure. It is based upon the theory that America is, in substance,
ent nation, that there are not enough jobs to go around, and
ne men must be denied jobs and that the Government, through
cy elected by no one and responsible to no one, must decide who
e the jobs and who will be denied the jobs.

king of equality and freedom, the bill was designed to confer
Federal agency the power to deny employment to members of
y groups. A member of a majority group is just as much entitled
oyment as the member of a minority group. Yet when the dis-
ed Senator from Alabama and the senior Senator from North
a introduced an amendment to the bill to prohibit the Commis-
up to prevent discrimination in employment, from practicing
nation in employment, the amendment was overwhelmingly
l.

President, I do not know of any single activity which deserves
vere condemnation than the effort to secure the enactment of
ovisions which will prostitute the judicial process while pre-
to make obeisance to justice, thus damaging procedures under
ustice cannot possibly be obtained.

bill came in here with a proposal that the Commission be given
ic power and that it combine within itself the duty of a pros-
he duty of an investigator, and the duty of a judge in a cause
the members were essentially biased. It actually contained a

provision in its original form, prior to adoption of the Domi amendment, that the findings of fact of this prosecutor, judge, jury, should be binding on the courts and that the courts would h to accept them even though it appeared to the courts that the findi of fact were probably not true.

I cannot imagine a greater prostitution of the judicial process t a provision like that.

By reason of the fact that the Senator from Colorado (Mr. Do nick) and the Senator from Alabama (Mr. Allen) and myself timed to make appeals to the Senate, notwithstanding the fact t the Senate had sanctioned by its votes such a prostitution of the judi process, we were at last able to persuade the Senate to adopt an am ment which would provide that decisions should be made in the place where decisions affecting the rights of other people shoul made, and that is in courts of justice presided over by impartial jud

Every man is entitled to a fair trial. A litigant is denied a fair when he is tried by an individual or an agency who is prosecuto well as judge.

What is a fair trial?

A fair trial is given a man when he has his cause determine an atmosphere of judicial calm by a judge who, in the word Edmund Burke, "is able to decide the cases with the cold neutrali the impartial judge."

Mr. President, I rejoice in the fact that despite the demands special interest group with great political power in this Nation, t have been some Senators who have stood on the floor of the Senate sought to protect the freedom of American business and the free of the workingmen who belong to majority groups from legisla which would impose economic tyranny upon all American busi employing as many as eight persons.

I respectfully submit that there is no body on earth which is cap of exercising wisely and impartially and justly all of the powers w this bill in its original form attempted to confer upon the EEOC.

Thus, Mr. President, in fighting for these changes in the bill, we not only sought to prevent the prostitution of the judicial process we have also sought to preserve the right of employers who put t means and their resources into a business to determine for themse things which should be determined by them, rather than by a gov mental agency elected by no one and responsible to no one and pos ing no competence in determining the requirements of business or a business should be operated.

Mr. President, thanks to rule XXII, the Senate will probably soon, a bill which will be far less obnoxious than the bill was wh was originally presented to the Senate.

Mr. President, I yield the floor.

Mr. Williams. Mr. President, a parliamentary inquiry.

The Presiding Officer (Mr. Gambrell). The Senator from Jersey will state it.

Mr. Williams. How much time remains?

The Presiding Officer. Seven minutes.

Mr. Williams. That is, at the conclusion of the 7 minutes, that entire time remaining before a quorum call is called prior to the cl motion vote; is that correct?

PRESIDING OFFICER. The Senator from North Carolina has 1½
es remaining.
WILLIAMS. Mr. President, I yield myself 2 minutes.
PRESIDING OFFICER. The Senator from New Jersey is recognized
minutes.
WILLIAMS. Mr. President, I feel a bit of compulsion to come back
distinguished Senator from North Carolina and his insistence
ng the descriptive phrase "pressure group" as the moving force
this legislation.
nfess that I feel the pressure of a group, a national group, the
e of a nation of people who believe what the Constitution says
be effective, that the Constitution must have laws to support it.
t disturbs me is, it suggests that the Senator is rather impugning
ble process, the legislative process.
n a man introduces a bill and he goes out to fight for the bill, he
ing for a measure that he believes will be useful or necessary for
ion.
be a group has persuaded him that this is in the national in-
but I would not impugn the process. Frankly, this would make
n sense as for me to look over to my good friend from North
a and say that he is being the voice of a pressure group of
ional basketball players, because everyone in this country
who read the sports pages, and now it is beginning to get into
eral news, that the distinguished Senator from North Carolina
rvin) is fighting the fight for professional basketball players
rve their freedom to contract.
PRESIDING OFFICER. The 2 minutes of the Senator have expired.
WILLIAMS. And we know the problems in baseball. I believe it
sted that the Senator from North Carolina is going to pick up
t for the freedom of professional baseball players to contract.
at to say that in this analogy what we are doing here, or what
prayer we are doing here, is saying to the employers of this
be they governments or private employers, that they cannot
reserve clause reserving the right to not hire because of a per-
ligion, race, sex, or national origin.
reserve clause opportunity, I think, is against one of the first
ental principles of the United States of America.
President, I yield to the Senator from New York.
PRESIDING OFFICER. The Senator from New York is recognized.
AVITS. Mr. President, I think that the very eloquent argument
Senator from New Jersey brings the matter home to every
n.
ve that what is involved at this point is the capability of the
o operate. It seems to me that we get to a point—and I have
d the major issues we have already debated and redebated in
ate—where democracy itself is challenged by the question of
a legislative body can operate. The thing that is often over-
s the rule in the Senate by which a cloture motion must be
by two-thirds in the event of a filibuster against the bill. That
e-third of the membership present and voting the ability to
ize the Government.

We hope and pray that there is never a day when this right wil
used to jeopardize the security of this Nation. However, it could be
We should all realize that nothing in the Constitution makes
Government work. If money is not appropriated, if authority is
given, if a law expires and is not renewed, the U.S. Government it
literally can be ground to a halt, not by affirmative action, but by
willingness to act. And that is what is at stake. Therefore, we hav
question involving a really major bill and the capability of the Se
to act and, therefore, the ability of the Government to act.

The President cannot spend money unless Congress appropriate
The President cannot do anything if one side in the Senate were to
"No. We will not do anything in a given aspect concerning the
eral law."

At long last when the Senate does gird its loins, it can invoke
ture, as I believe it will do today. It represents, if inadequate a vi
cation of the process of our constitutional form of government so
we are not in the position where we will collapse because our own i
tutions have trapped us in this quagmire so that we cannot act.

I hope very much we realize that the Senate must act. Democ
has to have finality some time. That is why we have a Supreme C
of the United States. That is why we have a Congress. And th
why—notwithstanding the usefulness of a filibuster in giving the
that feels they do not want a law, the opportunity to say, for what
reason, that they will use this rule that permits the Senate to act
by a majority of two-thirds—the Senate will act.

Mr. President, I hope that the vote on cloture will be succe
today.

Mr. WILLIAMS. Mr. President, do we have any time remaining.
we run out of time?

The PRESIDING OFFICER. The Senator from New Jersey has 5 sec
remaining.

Mr. ERVIN. Mr. President, at long last I believe that the Se
from New York and I agree that the rule requires a majority of
thirds.

In this very case, it compels the Senate to listen, to stop, and to
long enough to recover its senses.

Mr. WILLIAMS. Mr. President, I yield to the Senator from New
the 5 seconds if he wants to correct that erroneous impression.

Mr. JAVITS. Mr. President, I think that we have argued and
gued this thing enough. There are some things, notwithstandin
great respect for the distinguished Senator from North Carolina
we cannot agree on. So, I think we had better vote.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 12:15 has arrived. Unde
unanimous consent agreement and pursuant to rule XXII the
lays before the Senate the pending cloture motion, which the cler
state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions
XXII of the Standing Rules of the Senate, hereby move to bring to a c
debate upon the bill (S. 2515), a bill to further promote equal empl
opportunities for American workers.

Iike Mansfield
obert Griffin
obert C. Byrd
braham Ribicoff
homas J. McIntyre
ennings Randolph
larold E. Hughes
aylord Nelson
homas F. Eagleton
dlai Stevenson
alter F. Mondale
ee Metcalf
rank E. Moss
en B. Jordan
hn O. Pastore
obert T. Stafford
ark O. Hatfield
obert Taft, Jr.
arrison Williams
ichard S. Schweiker
ugh Scott
icob K. Javits
Caleb Boggs
harles H. Percy
mes B. Pearson
lward W. Brooke
rdon Allott

28. Lowell F. Weicker
29. Clifford P. Case
30. Marlow W. Cook
31. Charles McC. Mathias, Jr.
32. Robert Dole
33. Henry Bellmon
34. Bob Packwood
35. Ted Stevens
36. J. Glenn Beall
37. Vance Hartke
38. George McGovern
39. Frank Church
40. Alan Cranston
41. Claiborne Pell
42. Daniel K. Inouye
43. John V. Tunney
44. Gale W. McGee
45. Joseph M. Montoya
46. Philip A. Hart
47. Stuart Symington
48. Lloyd Bentsen
49. William Proxmire
50. Birch Bayh
51. Fred R. Harris
52. Lawton Chiles
53. Warren G. Magnuson

Call of the Roll

Presiding Officer. Under rule XXII, the Chair directs the
call the roll to ascertain the presence of a quorum.
second assistant legislative clerk called the roll and the follow-
ators answer to their names:

[No. 51 Leg.]

Fannin
Fong
Fulbright
Gambrell
Goldwater
Gravel
Griffin
Gurney
Harris
Hart
Hartke
Hatfield
Hollings
Hruska
Hughes
Humphrey
Inouye
Javits
Jordan, N.C.
Jordan, Idaho
Kennedy
Long
Magnuson
Mansfield
Mathias
McGee
McIntyre
Metcalf
Miller
Mondale
Montoya
Moss
Muskie
Nelson
Packwood
Pastore
Pearson
Pell
Percy
Proxmire
Randolph
Ribicoff
Roth
Saxbe
Schweiker
Scott
Smith
Sparkman
Spong
Stafford
Stennis
Stevens
Stevenson
Symington
Taft
Talmadge
Thurmond
Tower
Tunney
Weicker
Williams
Young

Mr. BYRD of West Virginia. I announce that the Senator fr
Arkansas (Mr. McClellan), the Senator from South Dakota (M
McGovern), and the Senator from Washington (Mr. Jackson) a
necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Tennessee (M
Baker) is absent by leave of the Senate on official committee busine

The Senator from Wyoming (Mr. Hansen) is necessarily abse

The Senator from South Dakota (Mr. Mundt) is absent becau
of illness.

The PRESIDING OFFICER. A quorum is present.

The question before the Senate now is: Is it the sense of the Sena
that debate on S. 2515, a bill to further promote equal employme
opportunities for American workers, shall be brought to a clos

The yeas and nays are mandatory under the rule, and the cle
will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator fr
Washington (Mr. Jackson), the Senator from Arkansas (Mr. M
Clellan), and the Senator from South Dakota (Mr. McGovern) a
necessarily absent.

On this vote, the Senator from Washington (Mr. Jackson), t
Senator from South Dakota (Mr. McGovern) are paired with t
Senator from Arkansas (Mr. McClellan).

If present and voting, the Senator from Washington and the Se
tor from South Dakota would vote "yea", and the Senator from Arka
sas would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (M
Baker) is absent by leave of the Senate on official committee busine

The Senator from Wyoming (Mr. Hansen) is necessarily abse

The Senator from South Dakota (Mr. Mundt) is absent becau
of illness.

The yeas and nays resulted—yeas 73, nays 21, as follows:

[No. 52 Leg.]

YEAS—73

Aiken	Goldwater	Packwood
Allott	Gravel	Pastore
Anderson	Griffin	Pearson
Bayh	Harris	Pell
Beall	Hart	Percy
Bellmon	Hartke	Proxmire
Bentsen	Hatfield	Randolph
Boggs	Hughes	Ribicoff
Brooke	Humphrey	Roth
Buckley	Inouye	Saxbe
Burdick	Javits	Schweiker
Byrd, W. Va.	Jordan, Idaho	Scott
Cannon	Kennedy	Smith
Case	Magnuson	Spong
Chiles	Mansfield	Stafford
Church	Mathias	Stevens
Cook	McGee	Stevenson
Cooper	McIntyre	Symington
Cranston	Metcalf	Taft
Curtis	Miller	Tunney
Dole	Mondale	Weicker
Dominick	Montoya	Williams
Eagleton	Moss	Young
Fong	Muskie	
Gambrell	Nelson	

NAYS—21

Ellender	Jordan, N.C.
Ervin	Long
Fannin	Sparkman
Fulbright	Stennis
Gurney	Talmadge
Hollings	Thurmond
Hruska	Tower

NOT VOTING—6

Jackson	McGovern
McClellan	Mundt

'RESIDING OFFICER. On this vote the yeas are 73 and the nays 21.
rds of the Senators present and voting having voted in the
ve, the motion is agreed to.
'e has now been invoked on S. 2515, and all debate is limited
of 1 hour, in all, for each Senator.
uestion is on agreeing to amendment No. 850 to the pending

'OTT. Mr. President, on my hour, I rise first to comment briefly
nderstand that not all of this time will be used. I believe the
ished Senator from North Carolina has four amendments, and
tand from him that he does not plan to ask for rollcall votes
I am not sure of the intention of the Senator from New York,
hoped that we can bring this bill to an early conclusion. Does
rity leader have any comment?
ANSFIELD. No; I just wish to echo the sentiments expressed by
nguished Republican leader. The sooner we can dispose of this
the sooner we will be prepared to lay down the bill on higher
and get embarked on that journey.
:OTT. Does the Senator from New York desire the yeas and
is amendment?
VITS. Mr. President, I think it will depend upon the nature
t of the opposition we may encounter. We really do not know.
o desire for rollcalls just for the sake of rollcalls, but if op-
develops to amendments which the Senator from New Jersey
lliams) and I consider important to the bill, they may be
. From what I already know, I do not believe that our amend-
)uld require more than 2 rollcalls at the most.
ANSTON. Mr. President, will the Senator from Pennsylvania

OTT. I yield.
ANSTON. I wish to advise him that the Senator from Colorado
ninick) and I have an amendment, submitted this morning,
wish to bring up, which will not necessarily require a roll-
e much time.
)TT. I thank the distinguished Senator from California.

AMENDMENT NO. 850

ESIDING OFFICER. The question is on agreeing to amendment
Who yields time?
VITS. Mr. President, I yield myself 3 minutes.
RD of West Virginia. Mr. President, the Senate is not in order.
t hear what the Senator says.

The PRESIDING OFFICER. The Senate will be in order. Senators will take their seats. The Senator from New York may proceed.

Mr. JAVITS. Mr. President, the pending amendment seeks to authorize 10 positions in the so-called higher grades 16, 17, and 18, for the purposes of buttressing the higher level staff of the Equal Employment Opportunity Commission in connection with the new responsibilities which it would have under this bill. We are advised by the Commission that this is the absolute rockbottom minimum number with which it can even begin to hope to do the job which we are assigning it under this measure. That includes, of course, an enlarged jurisdiction relating to employers of small numbers of workers, down to 15 from the present 25; it includes the right to go into court and start suits, which the Commission has not had before; and it includes with respect to employees of other units of government, State and local, the responsibility to look into situations and try to handle them by conciliation, the actual litigation being undertaken by the Attorney General.

The mere recital of those responsibilities indicates the size of the job, and it seems to me and to the Senator from New Jersey (Mr. Williams) that the additional positions sought is by no means out of line or unreasonable, and is certainly credible on the basis of the new ambit of their responsibilities. So I hope very much that the Senate, in the process of giving them the authority, will give them the means with which to discharge the responsibility.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, on my time, I should like to make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMINICK. Under the rules of cloture, is it possible to amend an amendment if the amendment has not been sent to the desk prior to this time?

The PRESIDING OFFICER. It would not be in order to amend an amendment which has not been sent to the desk.

Mr. DOMINICK. So the ruling of the Chair is that any amendment that is printed is now in final form, not subject to any amendment whatsoever. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMINICK. Therefore, if changes need to be made, could they be made by consent of the Senator who is offering the amendment—by unanimous consent or otherwise?

The PRESIDING OFFICER. It would require the consent of the Senate to make such a change.

Mr. DOMINICK. I thank the Chair.

Mr. JAVITS. Mr. President, if there is no opposition to this amendment, I am prepared to vote on it now.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, if I may have the attention of the leadership on the Republican side and the Members of the Senate, a situation has come up which may call for the laying before the Senate

er cloture motion this afternoon, with the vote to come on
y.
esident, I ask that immediately after the third reading of the
bill, the Senate proceed to the consideration of H.R. 1746, the
mpanion bill; that the text of the Senate bill as amended be
ed for the House passed bill; that the House bill as amended
through third reading, and that the final vote occur on the
ll as amended.
LLEN. Reserving the right to object, Mr. President, rule XXII
invoked.
RESIDING OFFICER. The Senator asks that rule XXII be sus-

ANSFIELD. Yes.
RESIDING OFFICER. Is there objection?
LLEN. I am reserving the right to object.
XXII, to stop debate on the Senate bill, S. 2515, has been in-
Under the provisions of rule XXII, S. 2515 shall be the pend-
ness until disposed of. Disposed of would mean either killed or

e the point. I do not at this time object to the unanimous-
request. I merely at this time raise the point that the Senator's
is out of order, under rule XXII.
ANSFIELD. Mr. President, if I may be heard, I did ask unani-
nsent, and it is my belief that I am in order. I was aware of the
n which might arise, and I would be prepared to hear the
f the Chair.
RESIDING OFFICER. The Chair rules that the request is in order.
s nothing in the rules which prevents the making of a unani-
nsent request.
LLEN. Then I object, Mr. President.
RESIDING OFFICER. Objection is heard.
ANSFIELD. Mr. President, it is the intention of the Senator from
a to file a cloture motion today, which will come to a vote on
ay next. All Senators should be warned, and all Senators should
tendance at that time.
LLEN. A parliamentary inquiry, Mr. President.
RESIDING OFFICER. The Senator will state it.
LLEN. Is the presentation of a cloture motion in order prior
final disposition of S. 2515, cloture having been invoked with
to it?
RESIDING OFFICER. A cloture motion on the House bill would
in order until the House bill is before the Senate, except by
nous consent.
LLEN. I raise that point of order.
ANSFIELD. Mr. President, it was my understanding, on the basis
oquy between the distinguished minority leader and the Senator
North Carolina and other Senators that not too much time would
it on the bill as long as cloture was invoked. If the situation has
hanged, of course, we will be guided accordingly, and at an ap-
ate time we will file a cloture motion.
ERVIN. Mr. President, a parliamentary inquiry.
RESIDING OFFICER. Who yields time?
ERVIN. I yield time to myself, out of my time, if it is required.
President, rule XXII provides that if the question—that is, "Is

it the sense of the Senate that the debate will be brought to a close? "shall be decided in the affirmative by two-thirds of the Senat present and voting, then said measure, motion, or other matter pend before the Senate, or the unfinished business, shall be the unfinis business to the exclusion of all other business until disposed of."

Does not that provide, cloture having been invoked, that act must be completed on the Senate bill?

The PRESIDING OFFICER. The Senator is correct—except by una mous consent.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. MANSFIELD. Mr. President, it is my understanding—and I kn I am correct—that each Senator has 1 hour, once cloture has be agreed to.

The PRESIDING OFFICER. The Senator is correct.

Mr. MANSFIELD. To the best of my knowledge, not many Senato are going to speak on the amendments; and those who are going speak, with one or two exceptions, are going to speak briefly. It wo be my hope that we could dispose of the pending business someti today, so that later today we could file a cloture motion, after ev Senator has had a chance to be heard on the basis of the hour, wh is his right and which is nontransferrable, under the rules of t body.

The PRESIDING OFFICER. Once the House bill is laid before the Sena The Senator is correct.

Mr. ALLEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ALLEN. Before the cloture motion could be presented, the Ho bill would have to be the pending or the unfinished business, wou it not? In other words, an intervening motion would have to be ma to bring up the matter.

The PRESIDING OFFICER. The Senate would have to agree to consi the bill first, and the bill would have to be the pending business.

Mr. ALLEN. And that motion would be debatable.

The PRESIDING OFFICER. The motion to take up would be debatab

Mr. ERVIN. Mr. President, a further parliamentary inquiry, and yield time to myself.

The PRESIDING OFFICER. The Senator will state it.

Mr. ERVIN. The substance of the proposal embodied in the una mous-consent request of the distinguished majority leader is, in effe an amendment to substitute the Senate version of the bill for the Hou bill, and such is tantamount to an amendment to that effect, and su an amendment was not pending at the time the cloture motion came for consideration.

The PRESIDING OFFICER. The Senator is correct, but by unanimo consent it could be agreed otherwise.

Mr. ERVIN. That is the point I am making. As long as there is unanimous consent, the matter cannot be considered.

Mr. ALLEN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recogniz

Mr. ALLEN. Mr. President, this move to bring up the House b will be resisted.

According to the understanding of the junior Senator from Al bama, the Senate bill and the House bill were reported by the sa

e on the same day. Both bills came to the calendar on the
. The Senate bill was brought up for consideration. We spent
debating it. An election was made as to the bill to be consid-
we spent more than a month considering it.
loes not seem that it would be the wise procedure to abandon
te bill and go to the House bill. Why was not the House bill
up originally? They had that option. Having chosen the
ill, it is going to be the opinion of the junior Senator from
that we ought to stay on that bill until a final vote is had,
ll go to the House, and let the House act on it.
unior Senator from Alabama is going to resist any motion
up the House bill following close on the heels of the passage
enate bill. Why should we pass two bills dealing with the same
after we have spent more than a month debating the Senate

y motion to bring up a House bill will be resisted because it
ven come up until the Senate bill is disposed of. Having acted
question, why should the Senate then bring up another bill
with exactly the same subject? It is certainly not going to be
d without a hard fight. I serve that notice.

AVITS. Mr. President, I yield myself 2 minutes.

PRESIDING OFFICER (Mr. Nelson). The Senator from New York
nized for 2 minutes.

AVITS. Mr. President, of course the answer to the Senator from
a (Mr. Allen) is obvious. It is the traditional procedure in the
hat when we pass a Senate bill and there is a House bill at the
e House bill is called up and the Senate bill is substituted for
rms of the text, and then it goes to conference. The distin-
majority leader had exactly that in mind when he made his
ous-consent request.

Mr. President, tradition is the only reason why I have risen to
Where the Senate has emphasized its will, Senators will gen-
o their utmost to carry out the will of the Senate.
Senate overwhelmingly voted cloture. The Senate will be very
structed to note that, notwithstanding the overwhelming exer-
the Senate of its will, it is now proposed to put the Senate
the trouble—which is all it is, because there is no substantive
n involved whatever—of going through cloture all over again.
only to underline and emphasize that fact.
the "nice guys" in this body who often go along with these
and say, "It is all right, let us do it this way." I have done that
lred times since I came to Congress. The Senate has now
l.
ill be instructive to us to witness that the rules can be used to
he Senate—and it is perfectly legitimate to do so. I have no
int about it—backtrack and go over the same ground again and

very instructive to us on what should be the rules. It is very
tive to us, also on the way the rules can be used in this body to
ith what is the expressed and overwhelming will of the Senate
ng and full and fair debate.
would only say to the Senate that we should be well instructed
w—and that is all I suggest, so that there is no deliberation as

to what should be the rules on how they should be managed—that w
understand just what happens in given situations.

I hope that the distinguished majority leader—I know his nature-
will not be deterred, and I am sure he will not be, by the difficulti
which seem to be before us momentarily. I believe the same will
the Senate, which decided the issue decisively now will decide it aga
and, if necessary, again after today in respect of the determination
enact this bill into law.

Mr. MANSFIELD. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Montana is recogniz
for 5 minutes.

Mr. MANSFIELD. Mr. President, I agree with the remarks of the di
tinguished Senator from New York (Mr. Javits). I feel sorry for th
Senate, though—very sorry for the Senate—because of the use of th
rules as announced by two distinguished Senators this afternoon.

The Senate is supposed to be a deliberative body. On occasion w
refer to this institution as the greatest deliberative body on the fa
of the earth.

In my 20 years in this Chamber, I have come to doubt that stat
ment, because on both sides, and on all sides, I have, on occasion, see
postponement, stalling, dillydallying, outright obstructionism of th
will of the Senate, not of a bare majority but of the great majority.

Of course, this suggested procedure is the regular procedure. This i
the way the leadership usually operates. This is the procedure whic
the Senate, by and large, without exception, to the best of my knowl
edge, has followed until today. This is a privilege and a right—a re
sponsibility if you wish to call it that, Mr. President—which the Sen
ate has given to the leadership.

Mr. President, it was my intention, when I called up the Senat
bill, to follow the usual practice, and, in time, substitute the Hous
bill for it.

May I say that I have been impressed with the attitude and th
cooperation and the sense of fairness shown by the distinguishe
Senator from North Carolina (Mr. Ervin) and the distinguishe
Senator from Alabama (Mr. Allen) during the course of this debat
which began on January 18 on the pending measure.

They were not the ones who, by and large, were stalling most o
the time. When they had something to offer, they offered it.

They were most cooperative and considerate. The delays on th
votes as were on the other side.

Mr. President, the Senate is supposed to operate on the basis of
sense of fairness. The Senate is supposed to have some confidence
some trust in the judgment of the joint leadership. If we have no
got that, we have not got anything, because it is only on the basis o
this trust, this faith, and this confidence that the Senate can operat
as it should and as it must, if it is to be the institution we all think
deep down, that it is.

What the distinguished Senators have indicated in their opposition
to the unanimous consent request proposed by the Senator from Mon
tana is entirely within their rights. It will not delay finally facing
up to this question. It can, of course, postpone final consideration fo
some hours or some days but, eventually, the Senate will face up to
the issue.

Mr. President, what we have before us, after this bill is disposed of, is the higher education bill. Related to that measure is one of the most emotional issues of the year; namely, the issue of busing. We have to contend with that and it will take some time.

Then there is the voter registration bill. That will take some time. Before we get to the voter registration bill, however, we have the women's rights amendment. That will take some time.

Somewhere along the road we have to consider legislation to raise the debt ceiling by $50 billion as requested by the administration—although the House only allowed a $20 billion increase until sometime this spring.

Then there is H.R. 1—a highly contentious piece of legislation.

There is also the Revenue Act, so-called, which would give aid and assistance to States, or if not the States, then to the cities and the municipalities of various kinds. There are measures dealing with health insurance, consumer affairs and many other major issues.

The PRESIDING OFFICER. The time of the Senator from Montana has expired.

Mr. MANSFIELD. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Montana is recognized for 2 additional minutes.

Mr. MANSFIELD. Mr. President, then we have 14 appropriation bills to consider.

Then there is the Democratic National Convention in the State of Florida in early July.

Then there is the Republican National Convention in the State of California in August.

Then we have the election.

You know, Mr. President, even though February has 1 extra day this year, this year is not going to be long enough to get through all this legislation if we continue to operate at this snail's pace and to hamstring the will of the Senate.

So I just want to make myself clear. If the Senate wants to be hamstrung—and the rules allow it—there is nothing we can do except to face up to our responsibilities, not as Senators from New York or Arkansas or West Virginia or Alabama or North Carolina or Montana, but as Senators of the United States.

I would hope that every Member of this body would recognize the fact that he is just not a Senator from a State nor an ambassador from a State, but that the interest of the Senate of the United States and this Nation should supersede all others in the conduct of the affairs of this body.

Mr. BYRD of West Virginia. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 3 minutes.

Mr. BYRD of West Virginia. Mr. President, I express my support for what the distinguished majority leader has just said. And in every respect, may I say, I approve of what he has said.

Every Senator in this body has a tremendous responsibility, and with that responsibility there is an uncommonly heavy burden. However, the heaviest burden to be borne by any Member of the Senate is the burden placed by the membership of this body upon the majority leader and upon the minority leader. Their responsibility is not

only to their constituents in their respective States and to the N tion as a whole, but, more than that, they have a responsibility to the constituency in this body.

It is their responsibility, as the joint leadership, to do everythin within their power, in conformity with the rules and after reaso able debate has occurred on any measure, to try to advance that mea ure to some disposition one way or the other, up or down.

The majority leader has at all times been most patient and fa and most considerate of the rights of every Senator. And I woul hope that our friends in the Senate—whom we admire greatly for the courage, for their ability, and for their dedication to their duty—wi not pursue the course which they have indicated will be pursued. An I am talking with regard to the distinguished Senator from Nort Carolina (Mr. Ervin) and the distinguished Senator from Alabam (Mr. Allen).

Mr. President, I have no greater respect and admiration for an Senators in this body than I have for the two Senators whom I hav just named. I think that they have fought a good fight. I think tha they have performed a service to the Senate of the United States, t their respective States, and to the United States as a nation in bringin to light certain flaws and certain weaknesses in the pending legislatio I think it has been largely through their efforts, Mr. President, tha this legislation has been refined and improved, although not to th complete satisfaction of the two Senators and not to the complet satisfaction of some of those of us who voted for cloture today an who signed a cloture motion last Friday. However, the handwriting i on the wall. The Senate has expressed itself in no uncertain terms. hope that the distinguished Senators will realize that there is nothin to be gained, really, in opposing the unanimous-consent request of th distinguished majority leader, and he will probably propound it again

The Presiding Officer (Mr. Gravel). The time of the Senator ha expired.

Mr. Byrd of West Virginia. Mr. President, I yield myself 2 addi tional minutes.

The Presiding Officer. The Senator from West Virginia is recog nized for 2 additional minutes.

Mr. Byrd of West Virginia. Mr. President, there is nothing to b gained except delay and, in the long run, it is my concern that suc delay, if it does occur, will but inure to the disadvantage of the Sena tor from Alabama and the Senator from North Carolina, perhaps when the next measure is before the Senate I know that they have equally strong feelings about that measure.

Mr. President, the Senate in its vote today has overwhelmingly supported the motion to invoke cloture. It will do so again if the lead ership is forced to offer another cloture motion.

I do not say what I say out of unkindness to the Senator from North Carolina or to the Senator from Alabama. I feel that the die has bee cast and the Rubicon has been crossed. I think that they will do them selves a disservice, perhaps, if they pursue the course which they have indicated they may. They have a right to do that. They are working within the rules. They have their hearts in the matter and whatever they do, I know they will do in good conscience. I have no doubt about that. I know that they will do what they think is right.

But, Mr. President, I want to say again that the leadership does have its burdens and its responsibility, and it will measure up to that responsibility, and the Senate will invoke cloture again on this measure, if need be.

So, I hope that the distinguished Senators will reconsider the position they have staked out and that they will not force the leadership to offer another cloture motion.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BYRD of West Virginia. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for an additional minute.

Mr. BYRD of West Virginia. Mr. President, I hope that once the Senators have offered amendments which have qualified under rule XXII and the Senate has disposed of them, they will accept the judgment of the Senate on this bill and we might go on to take up the higher education measure—which is also very controversial.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent at this time that I may be permitted to yield my 1 hour, under the rule, or the remaining portion thereof, to the distinguished Senator from North Carolina (Mr. Ervin). I do this because I know that he has a multitude of amendments at the desk and I want him to have all the time he can possibly have in order to discuss those amendments. Whether or not I support them is another matter.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. Yes.

Mr. ALLEN. Mr. President, I thank the Senator from West Virginia. It occurs to the junior Senator from Alabama that, the choice having been made to take up and consider the Senate bill, and that having been under consideration for a month, and rule XXII having been invoked—not through the vote of the distinguished Senator from Alabama or the distinguished Senator from North Carolina, but by the proponents of the bill who are demanding final action on S. 2515—I would like to inquire——

The PRESIDING OFFICER. The Senator from West Virginia may yield only for a question.

Mr. ALLEN. I am now ready to propound the question. I have laid this matter out as a predicate.

I ask the distinguished Senator from West Virginia why it would not be the better course of wisdom to send the bill over to the House for action? Why is it necessary to abandon the work of 1 month in the Senate and take up a brandnew bill which is entirely different from the bill that the Senate has acted upon and then go through a cloture motion again on that measure? Why would it not be a better course of wisdom to let the Senate bill go to the House for action there?

The distinguished Senator from West Virginia has pointed out that the bill has been improved by the debate in the Senate. Might it not be improved more if it goes back to the House for consideration in that body?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may have back 5 minutes of my time.

Mr. ERVIN. Mr. President, I yield back to the Senator from West Virginia out of the time he yielded to me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, from the standpoint of the Senator from Alabama, I can see why he views the parliamentary procedure as he does. From his standpoint he is entirely within his rights, and I would have to agree with him, if I stood in his shoes and viewed the matter as he does. I agree with his viewpoint that sending the Senate bill to the House and letting the House act on it would, indeed, perhaps allow, through additional consideration in the House, further refinement of the measure. However, it would also impose further delay.

Mr. ALLEN. It would not provide for any delay in the Senate. The Senate would be free of it until the measure came back to the Senate after House action.

Mr. BYRD of West Virginia. The Senate will soon have worked its will on the Senate bill. The House has already acted on the House bill. The leadership is pursuing the same course that has been pursued heretofore in situations of this nature. Once having acted on a Senate bill, it then moves to substitute the Senate language for the language of the House-numbered bill that came from the House. It is a faster procedure, and the bill then goes direct to conference. It saves time. The House acts in the same way with respect to Senate bills sent to that body.

So the leadership is pursuing the same course it always pursues in the interest of time and in the interest of orderly legislative procedure. It is for that reason the leadership is taking this course. A decision was made at some point, somewhere by the leadership to take up the Senate bill rather than to take up the House bill in the beginning. But we have come down that road. The Senate will soon complete its action on the Senate bill, and I am simply saying to my distinguished friend from Alabama, for whom I have the greatest respect, that I think it would be a mistake, and I hope that that course will not be pursued, to force the leadership to again offer a motion to invoke cloture in order to get the House-passed bill acted upon by the Senate, with the Senate language substituted therein.

Mr. ALLEN. Mr. President, on my time, I have asked the distinguished Senator from West Virginia if it would not be conceivable that the Senate, having acted on the Senate bill, send it to the House, that the House might well act upon the Senate bill before the Senate could act on the final bill. Is that conceivable?

Mr. BYRD of West Virginia. It might be conceivable, but I do not think it is going to happen.

I must say that a cloture motion, when offered, will receive probably even more heavy support than the one which was voted on today. Certainly, it will be just as overwhelmingly adopted.

I say that in the interest of the Senator from Alabama: I cannot see where anything can be gained for the cause concerning which thus far he has made such a great contribution.

Mr. ALLEN. It seems strange to the junior Senator from Alabama hat the Senate would pass the Senate bill and then, after having lone that, move to the House bill on the very same subject, with so nany other bills pending in the Senate needing action. Why would hat be the best course to pursue?

Mr. BYRD of West Virginia. Well, we have already pursued the ourse of considering the Senate bill; we are already down that road. I am trying to say I hope the Senator from Alabama will not seek o turn the Senate back from its unalterable course—which has now een chosen—of taking up the House bill and substituting the Senate anguage therefor.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield to the distinguished majority eader.

Mr. MANSFIELD. I came in only on the last part of the speech just nade by the distinguished Senator from Alabama so I may have missed ome of it or misinterpreted what I heard. The Senator from Alabama will recall that the Senator from Montana, as majority leader, nade the statement last week to the effect that if the cloture motion ailed today the pending legislation would be set aside and we would urn to the next order of business. That did not come to pass. The loture motion was adopted with at least 10 votes to spare, if my nathematics are correct.

Therefore, I think the Senate has expressed its will and I hope the vill of the Senate will be respected by all of us, regardless of our eeling on this matter.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

I think sometimes it is better to dispel any concerns or possibilities. suggest to the distinguished majority leader the possibility that a nanimous-consent request be couched strictly in terms of what it is ll about. In other words, the only thing of interest here would be to ubstitute the Senate text for the House text, and nothing else. There hould be no concern in that regard that anybody has designs to redo he bill. If the unanimous-consent request is limited to the one funcion, that may be of some help. I make that suggestion.

Mr. BYRD of West Virginia. Mr. President, I renew my unanimousonsent request that my time may be yielded to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

Mr. ERVIN. Mr. President, I assure the Senator I do not need his time because I have only four amendments, on which I do not expect to ask for rollcall votes, and they can be disposed of quickly by voice vote.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to rescind the action on my request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. The question occurs that rule XXII having been invoked, nd since the rule declares that the pending business must be disposed f before anything else can be brought up, it seems to me that the rule vould require that the Senate bill be sent to the House. The House bill s entirely different from the Senate bill, and the House should have n opportunity to consider the quite different bill under its procedures.

We do not have any desire to force another cloture vote. But since

the substitution of the revisions of the Senate bill to the House bi would be, in effect, an amendment which was not pending at the tim the cloture motion was agreed to. I do not see how there would be an thing to do except to pass the bill and send it to the House for its pr cedures. I do not see anything under the rules to necessitate or requi any other cloture motion.

I have not placed this in the form of a parliamentary inquiry, b I would like to have it considered.

There are no other Senators in this Chamber for whom I have mo respect than I have for the distinguished majority leader and the di tinguished assistant majority leader. They have been most fair to u If we have a valid point it can be sustained. We do not desire anothe cloture motion. We would just like to send it to the House because i is an entirely different bill than the bill the House passed, and let th House work its will according to its procedures.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New Jersey is recognize for 2 minutes.

Mr. WILLIAMS. Mr. President, it was last Wednesday that the Sen ator from Alabama asked the Senator from New York and the Senato from New Jersey our parliamentary intention at the end of the debat on this bill. The Senator will recall that it was his concern that, having addressed the amendments through the last few weeks to the substitute at the end of the amending process we might move to table and then we would be back at the original bill. I am sure the Senator recall that. It was made crystal clear we would take the work of the Senat at that point and that would be the final legislative measure. Does th Senator recall that?

Mr. ALLEN. Yes.

Mr. WILLIAMS. It was this Senator's firm commitment that w would not use parliamentary availability to set aside the Senate's work and go back to the original measure.

Then, I so clearly stated that the work that we did here would no be touched again when that was finally voted, except to send it in the usual parliamentary and procedural way to the House for conference by taking that work and using it in substitution of the House bill when that was taken up.

I could not have been more clear when I said there is to be only one cloture vote under our procedure, and the Senator stated "Yes."

Mr. ALLEN. Mr. President, I yield myself 3 minutes.

The Senator from Alabama is not suggesting that the intention of the proponents of the measure is to go back on what the Senate has done; but the point the junior Senator from Alabama is making is that it is the Senate bill which is before us.

It is the Senate bill which has to go back to the House, not the House bill. The debate has been on the Senate bill and the colloquy we had several days ago had reference to the Senate bill. The House bill was never mentioned.

Mr. WILLIAMS. I would write it in blood that the Senate bill, when it is substituted for the House bill, will be the Senate's work, and that is what will go over there.

Mr. ALLEN. That is not the point.

Mr. WILLIAMS. Is it the substance of what goes over there that bothers the Senator from Alabama?

Mr. ALLEN. The point that the Senator from Alabama is raising is that it is the Senate bill that we are working on, and it is the Senate bill, S. 2515, that should go to the House for conference, and not the House bill. We have not been discussing the House bill.

Mr. WILLIAMS. The Senate bill as finally passed will be the substantive measure which goes to the House.

Mr. ALLEN. Will it be S. 2515, as to which cloture has been invoked?

Mr. WILLIAMS. It will be the work of the Senate.

I would like to ask the distinguished acting majority leader, parliamentarily, if, in substance, we are getting absolutely the same result the Senator from Alabama is suggesting. Am I right or not?

Mr. BYRD of West Virginia. The language passed by the Senate is substituted for the language in the House bill, carrying the House number.

Mr. WILLIAMS. And that was the only thing that was not done here in the Senate—the numbering of the bill.

Mr. BYRD of West Virginia. The language of the Senate will not have been before the House, but will go to conference.

Mr. WILLIAMS. Exactly, but the Senator from Alabama is not worried, then, about the substance of the legislation that leaves this Senate Chamber for conference with the House. He simply is disturbed about the number at the top of the bill. It is as simple as that.

Mr. ALLEN. That is exactly right in this respect: The Senator from Alabama has been suggesting that we have been acting on S. 2515, and that is the bill that ought to go to the House, not the House bill, because we have not been acting on the House bill.

Mr. WILLIAMS. Let me ask again: Is it the substance of it?

Mr. ALLEN. It is the Senate bill.

Mr. WILLIAMS. I will say again: I will guarantee and I will write it in blood that the substance of the Senate action will be what will be sent to the House.

I yield to the Senator from New York. Is that not a blood promise?

Mr. ALLEN. The Senator does not doubt the integrity of the Senator from New Jersey and the Senator from New York. What the Senator from New Jersey does not seem to comprehend is that the objection the Senator from Alabama is making is to consideration of the House bill. He says that S. 2515 is what is before us. That is what rule XXII requires us to act upon. That is the bill that must go to the House under rule XXII.

Mr. JAVITS. Mr. President, if the Senator will yield to me, on my time—I yield myself 1 minute—this whole thing comes down simply to the fact that the Rules Committee in the other body will have another shot in calling the Senate bill to the floor, so that the House can go to conference, and the only net result will be to delay the Senate and the legislative process for a week or thereabouts. That is exactly the thing that will happen. That is the only point. That would be the only result of it. Senators are absolutely within their rights, but it will have no substantive effect whatever. So it would be well to underline and emphasize again that what we are seeing is that the rules can be very susceptible of being used, as the majority leader said, to hamstring the Senate's will. That is all it amounts to.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, a parliamentary inquiry, and again I yield myself 1 minute. If there is no further amendment, is third reading in order?

Mr. ERVIN. Mr. President, I have another amendment.

The PRESIDING OFFICER. The Senate would first have to agree to the committee amendment as amended.

Mr. JAVITS. Mr. President, what is the question?

The PRESIDING OFFICER. The question is on the adoption of the committee amendment as amended.

Mr. ALLEN. Mr. President, the Senator from North Carolina has an amendment.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

AMENDMENT NO. 860

Mr. ERVIN. Mr. President, on behalf of myself and the distinguished Senator from Alabama (Mr. Allen), I call up my amendment No. 860 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read the amendment:

(A copy of amendment No. 860 to S. 2515 appears on p. 1338.)

Mr. ERVIN. Mr. President, I yield myself 2 minutes.

This amendment, if approved by the Senate, would remove from the coverage of the bill the employment of teachers or other members of the faculties of public schools.

We already have Federal courts dealing with the subject of employment of members of faculties and teachers of public schools. We also have the HEW dealing with that same question. To my mind, it is rather ridiculous to have a third agency or department of the Federal Government have jurisdiction in exactly that same field in which the other two are acting. We have enough confusion in this field. Indeed we have conflicts between the EEOC and the Office of Federal Contract Compliance in the Department of Labor. So that this amendment would merely make it certain that EEOC is not going to undertake to act in the same field in which the Department of Health, Education and Welfare and the Federal courts are now acting.

We do not need to have three different Federal governmental powers to try to deal with one situation.

I hope the Senate will adopt the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

This is simply an effort to add to the exemptions of the bill an exemption for teachers or other members of the faculties of public elementary and secondary schools. It simply removes from Title VII of the Civil Rights Act of 1964 the question of discrimination regarding teachers or other members of faculties.

There has certainly been enough involvement in this question to recognize that teachers, just as much as others, are involved in the effort to desegregate schools.

The PRESIDING OFFICER (Mr. GRAVEL). The question is on the amendment. All those in favor say "aye." All those opposed, "no." The noes have it. The amendment is not agreed to.

Mr. ALLEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. It is too late to ask for the yeas and nays.

Mr. JAVITS. Mr. President, I yield myself half a minute.

As I understand it, at this stage of the proceedings that we have just assed by, a quorum call is in order, because there are not enough Senators here for the yeas and nays or for any other purpose, really, f anyone wishes to challenge it.

The PRESIDING OFFICER. A quorum call would be very much in order. The Chair will entertain a motion to rescind the recent action, and vote gain.

Mr. ALLEN. Mr. President, I am satisfied with the result.

The PRESIDING OFFICER. The Chair thanks the Senator.

The committee amendment, as amended, is open to further amend- ent.

AMENDMENT NO. 908

Mr. ERVIN. Mr. President, I call up amendment No. 908, and ask at it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment.

(A copy of Amendment No. 908 to S. 2515 may be found on p. 1682.)

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, I yield myself 4 minutes.

This amendment would amend subsection (j) of section 703 of the riginal Civil Rights Act of 1964 so that it would read as follows:

Nothing contained in this title or in Executive Order No. 11246, or in any other w or Executive Order, shall be interpreted to require any employee, employment gency, labor organization, or joint labor-management committee subject to this tle or to any other law or Executive Order to grant preferential treatment to ıy individual or to any group because of the race, color, religion, sex, or national igin of such individual or group on account of an imbalance which may exist ith respect to the total number or percentage of persons of any race, color, ligion, sex, or national origin employed by any employer, referred or classified r employment by any employment agency or labor organization, admitted to embership or classified by any labor organization, or admitted to, or employed , any apprenticeship or other training program, in comparison with the total or rcentage of persons of such race, color, religion, sex, or national origin in any mmunity, State, section, or other area, or in the available work force in any mmunity, State, section, or other area.

In short, this would make it unlawful for the EEOC, the Office of ederal Contract Compliance, or any other Federal agency or depart- ent in seeking to prevent so-called discrimination in employment, om practicing discrimination in reverse such as is being practiced ery day by the EEOC and also by the Office of Federal Contract ompliance. I sincerely hope that the Senate will agree to the amend- ent.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I yield myself 1 minute.

The amendment would simply spin out and lengthen the time delay nich is already incident to the fact that the EEOC must go into urt by seeking a jury trial, thus guaranteeing that the——

Mr. ERVIN. No, Mr. President, this is not the jury trial amendment. ıe amendment is at the desk. This is the amendment which would nend——

Mr. JAVITS. No. 908 is the jury trial amendment, is it not?

Mr. ERVIN. No, this is to amend subsection (j) of section 703 of e Civil Rights Act of 1964 to make its prohibition upon preferential

treatment applicable to the EEOC, the Office of Contract Compliance and any other bargaining agency of the Federal Government enforcing any statute or Presidential directive relating to this subject.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. What is the pending amendment?

The PRESIDING OFFICER. The pending amendment is amendment No. 908.

Mr. ERVIN. Mr. President, I withdraw that amendment for the time being.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is withdrawn.

AMENDMENT NO. 907

Mr. ERVIN. I call up amendment No. 907. I made a mistake a moment ago in stating the number. I did not intend to call up the jury trial amendment—No. 908—at this time. I ask that amendment 907 be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

Mr. ERVIN. Mr. President, I yield myself 4 minutes, or such portion thereof as I may use, to explain this amendment to the Senate.

I ask unanimous consent that subsection (j) of section 703 of the Civil Rights Act of 1964 be printed in the Record at this point.

There being no objection, the statute was ordered to be printed in the Record, as follows:

PREFERENTIAL TREATMENT

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified, for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Mr. ERVIN. Any Senator who is desirous of understanding this amendment can read the amendment in the light of subsection (j) of section 703 of the Civil Rights Act of 1964 and understand what it would do.

It is designed to make the prohibition upon preferential treatment created by this subsection of the original act applicable not only to the EEOC, but also to the Office of Contract Compliance and to every other executive department or agency engaged, either under the statute or under any Presidential directive, in enforcing the so-called equal employment opportunity statutes.

Mr. JAVITS. Mr. President, I yield myself 1 minute in opposition to the amendment.

What is sought to be done here is to apply a particular provision of
ie Civil Rights Act of 1964 to the executive order in order to make
nlawful any affirmative action plan like the so-called Philadelphia
lan, and by including the Executive order in this title, that would ef-
ectively be done, so that the Federal Government, as an employer,
ould be inhibited from putting into effect such a plan.

We have held that, because the Federal Government—we voted on
iat here; we debated it and we decided it—has an interest in main-
ining constitutional guarantees, it has discretion as to whom it will
ontract with and will not contract with, to affirmatively encourage
ondiscrimination and full utilization of minority group employees
id women. So we—and the courts have sustained us—permitted the
ederal Government to put into effect an affirmative-action plan.

This amendment, for practical purposes, would simply nullify that
tion. For those reasons, I oppose the amendment and hope it will be
jected.

Mr. Williams. Mr. President, I yield myself 1 minute.

When this idea was last presented by the Senator from North Caro-
ia, it was resisted. There was resistance to the transfer of the OFCC
the EEOC. I joined with the Senator from North Carolina, but we
st.

I have recently, within the last few minutes, made a pledge to sup-
ort what the Senate has done here, that I would support it as the
easure we send to the House of Representatives.

The Senate has acted. I happened to agree with the Senator from
orth Carolina on the transfer of OFCC, but we lost. He is trying
do it all over again. Therefore I resist it, because the Senate has
ted.

Mr. Ervin. I yield myself 1 minute.

This is not exactly the same amendment. The same question is in-
olved. The other amendment tried to circumvent the extenuated rul-
g of the then Secretary of Labor, who nullified the Civil Rights Act
1964. This puts it under the Civil Rights Act of 1964 and makes it
pressly apply to the Department of Labor as well as everybody else.

The Presiding Officer. The question is on agreeing to the amend-
ent (putting the question).

Mr. Allen. Mr. President, I ask for a division.

Mr. Ervin. Mr. President, I ask for a division.

The Senate proceeded to divide.

Mr. Allen. Mr. President, I suggest the absence of a quorum.

The Presiding Officer. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. Allen. Mr. President, I ask unanimous consent that the order
r the quorum call be rescinded.

The Presiding Officer (Mr. Roth). Without objection, it is so
dered.

Mr. Allen. Mr. President, I ask for the yeas and nays on the pend-
g amendment.

The yeas and nays were ordered.

Mr. Javits. Mr. President, a parliamentary inquiry.

The Presiding Officer. The Senator from New York will state it.

Mr. Javits. Has debate ended on this matter?

The Presiding Officer. No.

Mr. Javits. I thank the Chair.

I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New York is recogniz for 1 minute.

Mr. JAVITS. Mr. President, I wish to call the attention of the Sena to the fact that this amendment which is now before us for a vote see to cancel out the ability of the Federal Government to use the Phil delphia Plan approach of affirmative action plans respecting emplo ment. The courts have upheld that plan. The Senate has upheld t plan. We say that Federal Government contractors should be a mod in that respect.

I wish also to point out for the information of the Senate that wh the distinguished Senator from North Carolina (Mr. Ervin) in previous amendment stated that the affirmative action plan was bein used arbitrarily and capriciously in some employment. I worked o with him an amendment which would guarantee and assure that whe a contractor had gone into a plan and was proceeding with it, he woul not be arbitrarily canceled out or coerced, or anything like that.

It seems to me, under those circumstances, that the Senate shoul very definitely reject the pending amendment.

The PRESIDING OFFICER (Mr. Roth). The question is on agreeing t the amendment No. 907 of the Senator from North Carolina (M Ervin).

On this question the yeas and nays have been ordered, and the cler will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Ar kansas (Mr. Fulbright), the Senator from Washington (Mr. Jack son), the Senator from Massachusetts (Mr. Kennedy), the Senato from Arkansas (Mr. McClellan), and the Senator from South Dakot (Mr. McGovern) are necessarily absent.

I further announce that, if present and voting, the Senator fro Washington (Mr. Jackson) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr Baker) is absent by leave of the Senate on official committee business

The Senator from Wyoming (Mr. Hansen), and the Senator fro Iowa (Mr. Miller) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because o illness.

The Senator from Arizona (Mr. Goldwater) is detained on offici business.

The result was announced—yeas 30, nays 60, as follows:

[No. 53 Leg.]

YEAS—30

Allen	Eagleton	Montoya
Anderson	Eastland	Pastore
Bennett	Ellender	Sparkman
Bentsen	Ervin	Spong
Bible	Fannin	Stennis
Brock	Gambrell	Symington
Burdick	Gurney	Talmadge
Byrd, Va.	Hughes	Thurmond
Byrd, W. Va.	Jordan, N.C.	Tower
Cannon	Long	Young

NAYS—60

ken	Griffin	Nelson
lott	Harris	Packwood
ayh	Hart	Pearson
all	Hartke	Pell
ellmon	Hatfield	Percy
ggs	Hollings	Proxmire
ooke	Hruska	Randolph
ckley	Humphrey	Ribicoff
se	Inouye	Roth
iles	Javits	Saxbe
urch	Jordan, Idaho	Schweiker
ok	Magnuson	Scott
oper	Mansfield	Smith
tton	Mathias	Stafford
anston	McGee	Stevens
rtis	McIntyre	Stevenson
le	Metcalf	Taft
minick	Mondale	Tunney
ng	Moss	Weicker
avel	Muskie	Williams

NOT VOTING—10

ker	Jackson	Miller
lbright	Kennedy	Mundt
ldwater	McClellan	
nsen	McGovern	

So Mr. Ervin's amendment was rejected.

Mr. Ervin. Mr. President, on behalf of the distinguished Senator om Alabama and myself I call up amendment No. 844 and ask that e stated.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read the amendment.

(A copy of amendment No. 844 to S. 2515 may be found on p. 1089.)

Mr. Ervin. Mr. President, I yield myself whatever time I consume. Mr. President, this amendment would remove from the coverage of bill all employment practices of all educational institutions. As I inted out some days ago, when the EEOC invades the field of educa- n to enforce employment practices, they have to decide two things fore they can take action.

Mr. Byrd of West Virginia. Mr. President, may we have better order the Senate?

The Presiding Officer. The Senator will please suspend. The Sen- will be in order.

The Senator may proceed.

Mr. Ervin. Mr. President, the first thing they have to decide is that nan who claims he has suffered discrimination when he applied for ob at the educational institution is qualified to teach the course of udy in which the vacancy occurs. The second thing they have to ide is that he was denied employment because of his race, or re- ion, or national origin, or his sex.

Manifestly, as I pointed out some days ago, Federal judges, and mbers of the EEOC are not competent to pass on the qualifications people who teach such abstract subjects as anthropology and other ojects in institutions of higher learning. Therefore, this amendment uld remove from the coverage of the act employment in educational titutions.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New York is recogniz

Mr. JAVITS. Mr. President, I think this is simply rearguing the e which has been argued before in respect of this debate as to the deli itations of the employment of any individuals by any educational stitutions.

I would like to point out that the exemption as it is now contain in section 702 has been considered and reconsidered five or six times believe as it stands now it represents the will of the Senate in wh exemptions the Senate wishes to make in this particular title. The fore, in accordance with the pledge that was made to the Senate by t Senator from New Jersey and me, the Senate has spoken and we wi to leave the matter strictly where it is.

Therefore, I urge that the amendment be rejected.

The PRESIDING OFFICER. The question is on agreeing to the amen ment. All those in favor will signify by saying "aye." All those oppos will signify by saying "no."

Mr. ERVIN. I ask for a division.

The PRESIDING OFFICER. A division is requested.

All Senators in favor please stand and be counted.

Those opposed stand and be counted.

Mr. ALLEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a suf cient second. The yeas and nays are ordered. The clerk will call the ro

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Sout Dakota (Mr. McGovern), the Senator from Arkansas (Mr. McCle lan), the Senator from Washington (Mr. Jackson), the Senator fro Indiana (Mr. Bayh), the Senator from Florida (Mr. Chiles), th Senator from Massachusetts (Mr. Kennedy), the Senator from Mai (Mr. Muskie), the Senator from Arkansas (Mr. Fulbright) are nece sarily absent.

I further announce that, if present and voting, the Senator fro Washington (Mr. Jackson) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (M Baker) is absent by leave of the Senate on official committee busines

The Senator from Wyoming (Mr. Hansen) and the Senator fro Iowa (Mr. Miller) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because o illness.

The Senator from Arizona (Mr. Goldwater), the Senator from Ver mont (Mr. Stafford), and the Senator from Ohio (Mr. Taft) ar detained on official business.

If present and voting, the Senator from Ohio (Mr. Taft) woul vote "nay."

The result was announced—yeas 15, nays 70, as follows:

[No. 54 Leg.]

YEAS—15

Allen	Ervin	Sparkman
Brock	Fannin	Stennis
Byrd, Va.	Gurney	Talmadge
Eastland	Jordan, N.C.	Thurmond
Ellender	Long	Tower

NAYS—70

ken	Fong	Nelson
lott	Gambrell	Packwood
nderson	Gravel	Pastore
ball	Griffin	Pearson
ellmon	Harris	Pell
nnett	Hart	Percy
ntsen	Hartke	Proxmire
ble	Hatfield	Randolph
ggs	Hollings	Ribicoff
rooke	Hruska	Roth
ckley	Hughes	Saxbe
rdick	Humphrey	Schweiker
rd, W. Va.	Inouye	Scott
nnon	Javits	Smith
se	Jordan, Idaho	Spong
urch	Magnuson	Stevens
ok	Mansfield	Stevenson
per	Mathias	Symington
tton	McGee	Tunney
anston	McIntyre	Weicker
rtis	Metcalf	Williams
le	Mondale	Young
minick	Montoya	
gleton	Moss	

NOT VOTING—15

ker	Hansen	Miller
yh	Jackson	Mundt
iles	Kennedy	Muskie
lbright	McClellan	Stafford
ldwater	McGovern	Taft

So Mr. Ervin's amendment (No. 844) was rejected.

AMENDMENT NO. 908

Mr. ERVIN. Mr. President, I call up amendment No. 908, and ask at it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment.

(A copy of Amendment No. 908 to S. 2515 may be found on p. 1682.)

Mr. ERVIN. I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I am a great believer in the right of trial jury. I think that the issues of fact in any legal proceeding which ects the rights or responsibilities of any man ought to be determined a jury rather than by a court. I find myself in complete harmony th the men who drafted and ratified the Constitution. They declared that instrument, in the third paragraph of section 2 of article III:

"The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; d such Trial shall be held in the State where the said Crimes shall have been mitted; but when not committed within any State, the Trial shall be at h Place or Places as the Congress may by Law have directed.

When the demand of the people of North Carolina, as expressed in eir constitutional convention, that there be a Bill of Rights added the Constitution, was complied with, or at least when it became tain it would be complied with, there was eventually adopted amend nt 6, which provides that:

In all criminal prosecutions, the accused shall enjoy the right to a spee
and public trial, by an impartial jury of the State and district wherein
crime shall have been committed, which district shall have been previously as
tained by law.

Then it is provided, in amendment 7, that:

In suits at common law, where the value in controversy shall exceed twe
dollars, the right of trial by jury shall be preserved, and no fact tried by
jury shall be otherwise reexamined in any Court of the United States, th
according to the rules of the common law.

I am aware that the seventh amendment guaranteed the right
trial by jury only in common law actions as distinguished fro
equitable proceedings. But they were so solicitous of the right guara
teed in that amendment that they guaranteed that right in comm
law actions where the value in controversy amounted to more tha
$20. Here we are passing a bill giving the Federal district cour
jurisdiction of controversies which far exceed in value $20, in so
cases going to the hundreds of dollars.

I have been astounded by the expansion of the equitable powers
Federal courts. They have been expanded, I think, because some peop
do not favor trials by jury, and the expansion of the equitable powe
of Federal courts has occurred to circumvent the guarantees of tri
by jury contained in the Constitution.

I recognize that Congress has the power to deny the people covere
by this bill the right of trial by jury. I think if the courts of our land a
going to enjoy the respect and confidence of the people in cases of th
kind, as well as in equitable proceedings generally, Congress is goin
to have to grant the litigants in those cases a statutory right of trial b
jury. I say that because I think it is calculated to cause a loss of co
fidence in the courts of our country to allow everything in those court
to be determined solely by members of one profession, namely, the lega
profession. I say this because the fact is that all Federal judges at leas
have a law license, are theoretically lawyers, and are so regarded by th
general public, regardless of their legal attainments or lack of lega
attainments.

I think the people of this Nation should participate in the admin
istration of justice, and that we should have jurors called from th
body of the citizenship of this Nation to determine issues of fact. Tha
is the only way in which we can have citizen participation in the admin
istration of justice in matters which might otherwise fall within th
jurisdiction of courts of equity, where cases are tried without the inter
vention of a jury.

I feel that there would be a guarantee of a trial by jury contained in
the Constitution in respect to equitable proceedings, which were very
few in number at the time of the adoption of the Constitution, had the
Founding Fathers been able to envisage the future and see how the
powers of courts of equity were to be expanded. I rejoice to say that
within the State of North Carolina, where I have the privilege of resid
ing and which I have the honor of representing in part in this body,
the legislature has recognized and the constitution of the State recog
nizes that there shall be a trial of issues of fact by jury, regardless of
whether the issues of fact arise in what would have been common law
actions or in equitable proceedings.

The purpose of this amendment is just to make it certain that liti
gants who are removed under this act to the Federal courts shall have

ne right to demand a trial by jury on the issues of fact, and to make certain that there shall be citizen participation in the enforcement of ne provisions of this bill.

I think both of these purposes are praiseworthy, and ought to move ne Senate to vote in favor of this amendment.

Mr. JAVITS. I yield myself 2 minutes.

Mr. President, in the first place, this is an equity proceeding in the ederal courts; and even the other body, in passing this bill, did not clude a requirement for a jury trial. It would be special and unusual, nd available only for this particular kind of proceeding which would carried out by the Commission. If it is valid for this, why is it not alid for all proceedings under the 14th amendment, which would inude education, housing, and everything else in the Civil Rights Act of 964?

The real objection to it is that it would simply proliferate the court elays which were the primary element in the struggle here, and we ad the assurances of the Senator from Colorado in his amendment at there was expedited procedure, including the possibility of a ree-judge Federal court. When the Senate adopted that approach, otwithstanding that a majority did not want it but finally had to eld to the fact that it wanted a bill, it was without any contemplaon that we would simply pyramid the difficulties we already had in urt delays running up to 40 months—3 years and 4 months in many risdictions—by now imposing what would be a special requirement these cases, as distinguished from the antidiscrimination field genally, of jury trial.

I believe that the Senate, having decided that it is going to go the ute of litigation, does not desire simply to stop the litigation dead its tracks even further by clogged calendars. As there are many feguards, with appeals and so forth, and as we have many cases in uity, including those dealing with environment and other matters lly as serious as this, if not more so, I see no justification for introcing the jury trial except to delay these cases further.

For those reasons, I urge the Senate to reject the amendment.

Mr. ALLEN. Mr. President, I ask for the yeas and nays.

The years and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendnt of the Senator from North Carolina. On this question the yeas d nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indi-a (Mr. Bayh), the Senator from Washington (Mr. Jackson), the nator from Arkansas (Mr. McClellan), the Senator from South kota (Mr. McGovern), the Senator from Maine (Mr. Muskie), the nator from Arkansas (Mr. Fulbright), the Senator from Indiana Ir. Hartke), the Senator from Massachusetts (Mr. Kennedy), and Senator from California (Mr. Tunney) are necessarily absent.

I further announce that, if present and voting, the Senator from shington (Mr. Jackson) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. ker) is absent by leave of the Senate on official committee business.

The Senator from Wyoming (Mr. Hansen) and the Senator from va (Mr. Miller) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because illness.

The Senator from Ohio (Mr. Taft) is detained on official busine

If present and voting, the Senator from Ohio (Mr. Taft) wou vote "nay."

The result was announced—yeas 30, nays 56, as follows:

[No. 55 Leg.]

YEAS—30

Allen	Dole	Jordan, N.C.
Allott	Eastland	Jordan, Idaho
Bennett	Ellender	Long
Brock	Ervin	Randolph
Buckley	Fannin	Sparkman
Byrd, Va.	Gambrell	Spong
Byrd, W. Va.	Goldwater	Stennis
Chiles	Gurney	Talmadge
Cotton	Hollings	Thurmond
Curtis	Hruska	Tower

NAYS—56

Aiken	Griffin	Pastore
Anderson	Harris	Pearson
Beall	Hart	Pell
Bellmon	Hatfield	Percy
Bentsen	Hughes	Proxmire
Bible	Humphrey	Ribicoff
Boggs	Inouye	Roth
Brooke	Javits	Saxbe
Burdick	Magnuson	Schweiker
Cannon	Mansfield	Scott
Case	Mathias	Smith
Church	McGee	Stafford
Cook	McIntyre	Stevens
Cooper	Metcalf	Stevenson
Cranston	Mondale	Symington
Dominick	Montoya	Weicker
Eagleton	Moss	Williams
Fong	Nelson	Young
Gravel	Packwood	

NOT VOTING—14

Baker	Jackson	Mundt
Bayh	Kennedy	Muskie
Fulbright	McClellan	Taft
Hansen	McGovern	Tunney
Hartke	Miller	

So Mr. Ervin's amendment (No. 908) was rejected.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for Amer can workers.

EQUAL EMPLOYMENT OPPORTUNITY IN THE LIBRARY OF CONGRESS

Mr. CRANSTON. Mr. President, I call up the amendment I submitted earlier today prior to the cloture vote, which has been cosponsored by the distinguished Senator from Colorado (Mr. Dominick) and ask that it be stated.

The Presiding Officer (Mr. Roth). The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. Cranston. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered; and, without objection, the text of the amendment will be printed in the Record.

The text of the amendment is as follows:

On page 63, strike out lines 9 and 10 and insert in lieu thereof the following: "In those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be".

On page 63, line 13, strike out "The" and insert in lieu thereof:

"Except as otherwise provided in this subsection, the".

On page 65, between lines 4 and 5, insert the following new sentence at the close of subsection (b):

"With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress."

Mr. Cranston. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The Presiding Officer. Without objection, the amendments will be considered en bloc.

Mr. Cranston. Mr. President, this amendment deals with section 11 of S. 2515, relating to nondiscrimination in Federal Government employment.

Mr. President, section 11 of the bill inserts of new section 717 in Title VII of the Civil Rights Act of 1964 to provide, for the first time, a clear statutory mandate with respect to equal employment opportunity in the Federal Government. This section was added in committee as a result of an amendemnt which I offered with the Senator from Massachusetts (Mr. Kennedy) and in cooperation with the Senator from Colorado (Mr. Dominick).

This bipartisan provision has three basic purposes:

First. Subsection (a) of the new section 717 provides a statutory mandate that all personnel actions affecting employees or applicants for employment in the Federal Government, "Shall be made free from any discrimination based on race, color, religion, sex or national origin."

Second. Subsection (b) in the new section 717 empowers the Civil Service Commission to enforce the mandate in subsection (a) and to be responsible for review of evaluation of Federal agency equal employment opportunity plans and programs. The subsection also requires that certain provisions be included in each agency's plan.

Third. Subsection (c) of the new section 717 creates a remedy in federal district court—comparable to private employment actions—for any employee who has exhausted the equal employment opportunity complaint procedure within his Federal agency.

Mr. President, unfortunately, as drafted, these provisions, which in many respects only codify requirements presently contained in Executive orders and the Constitution, would not apply to employment in the Library of Congress. That is because legislative branch coverage in the bill is limited to "positions in the competitive service." Although this would apply to both the General Accounting Office and the Government Printing Office—which are agencies of the Congress, it would

not apply to the Library of Congress which does not have positions in the competitive service and is not generally bound by the Federal personnel manual.

Presently, the Library of Congress has established its own equal employment opportunity program and generally cooperates with the Civil Service Commission with respect to equal employment, although the Library is not covered by the Government-wide executive order. Under the amendment Senator Dominick and I are offering, employment in the Library of Congress would be subject to the nondiscrimination mandate of subsection (a) in the new section 717. I am assured by the Library of Congress that this would do no more than codify existing practice in the Library's personnel program.

In the same way, the amendment I am offering would also include the Library of Congress within the subsection (c) provision permitting aggrieved employees to bring civil actions in Federal court after they have exhausted their agency's administrative remedies. I am also assured by the Library of Congress that such law suits have been brought in the past against the Library in discrimination cases, and have not been dismissed on jurisdictional grounds.

However, with respect to the enforcement authorities granted to the Civil Service Commission in subsection (b) of the new section 717, to include the Library of Congress would raise substantial questions about the appropriateness of the Congress delegating to an executive agency—the Civil Service Commission—the legislative function of overseeing one of its own arms in this instance, the Library of Congress. Presently, the Civil Service Commission has no authority in the area of nondiscrimination in Library of Congress personnel programs or actions.

The amendment we offer would not in any way change that situation. Our amendment would amend subsection (b) so as specifically to remove any possibility that the Civil Service Commission or the EEOC would be empowered to exercise enforcement, review or evaluation responsibilities or authorities vis-a-vis Library of Congress equal employment opportunity programs or actions. Instead, our amendment gives to the Librarian of Congress with respect to Library of Congress employment all enforcement authorities which are given to the Civil Service Commission under subsection (b) with respect to nondiscrimination in Federal employment generally, and bestows on the Librarian of Congress, himself, the final authority—except as it continues to repose in the Congress itself with respect to one of its own agencies—for preparing and carrying out equal employment opportunity plans and programs. Thus, there would be no invasion by this amendment of the statutory authority of the Librarian to appoint employees of the Library "solely with reference to their fitness for their particular duties." (2 U.S.C. 140).

Mr. President, the Library of Congress employs approximately 3,500 employees under all pay systems, the vast majority of whom are paid under the general schedule. Its record of entry level equal employment opportunity for minority groups generally is a good one. According to figures compiled as of May 31, 1971, blacks, Spanish-surnamed, and orientals hold 11.8 percent of all Library of Congress jobs. By contrast, minority group persons hold only about 19 percent of total Federal Executive Branch jobs.

However, opportunities for job advancement for minorities at the Library of Congress, as for the Government generally, leave much to be desired as illustrated by the disproportionately large share of Library of Congress jobs which minorities hold at the lowest GS grades and the very small share of jobs they hold at the higher grades. For example, minorities hold 87.5 percent of the 40 jobs at GS-2, 75.6 percent of the 226 jobs at GS-3, and 76.5 percent of the 466 jobs at GS-4. Yet, at the higher levels of employment, blacks, for example, hold only 6.4 percent of the 299 jobs at GS-12, 4.1 percent of the jobs at GS-14. And blacks hold none of the 134 positions above GS-14.

Thus, the Library of Congress needs to make greater progress in provision for upward mobility for its minority group employees and also in opening up higher paying jobs for qualified minority persons beginning employment in the Library of Congress. Toward this end, as sponsors of this amendment, we would expect the Library of Congress, to the maximum extent possible, to continue to cooperate and coordinate with the Civil Service Commission in the planning and implementation of its equal employment opportunity program, including keeping the Commission periodically advised of the appropriate data showing the results of its EEO program.

I am grateful to the Senator from Colorado (Mr. Dominick) for joining me in offering this amendment this afternoon and for all the cooperation he has extended to me in developing section 11 of the pending bill.

Mr. President, this amendment has been discussed with the Director of Personnel and the Legislative Liaison of the Library of Congress, who have raised no objections to it. It has also been discussed with the distinguished Senator from North Carolina (Mr. Jordan), Chairman of the Joint Committee on the Library of Congress, who has agreed to it. I have also discussed it with his fellow Senator from North Carolina (Mr. Ervin) and the distinguished floor leaders of the bill, Senator Williams and Senator Javits, all of whom have agreed to it.

Mr. WILLIAMS. Mr. President, I should like to address myself for a few moments to the section of the pending bill which contains significant new procedures and directives to the Civil Service Commission regarding Federal equal employment programs. It also provides, for the first time, to my knowledge, for the right of an individual to take his complaint to court. The Senator from California (Mr. Cranston) will be offering an amendment to this section and my remarks are intended to include the provisions of his amendment concerning the Library of Congress.

Historically, procedures and responsibilities regarding Federal equal employment opportunity have been set forth in Executive orders, rather than in statute. The first of these orders was issued by President Franklin D. Roosevelt in 1940. Every President since Roosevelt has issued at least one Executive order on the subject, and yet equal employment opportunity in the Federal Government is still not a reality for all of its workers.

Some of the relevant statistics tell the story all too clearly. For example, minorities represent 19.4 percent of the total employment of the Federal Government, but their concentration in grades GS 1 through 4 indicates that their ability to advance to the higher levels has been severely restricted. Just as glaring is the situation regarding employ

ment of women by the Federal Government. Women represent about 34 percent—approximately 665,000—of Government employees, and yet more than three-fourths of all women employed by the Government are in grades 1 through 6.

There are, perhaps, many reasons for this unfortunate record. One of them must be presumed to be the fact that the complaint process, in effect, calls upon the complaining party's agency to investigate and judge itself. Although the informal nature of the complaint process provides for the appointment of an outside examiner, the examiner does not have the authority to conduct an independent investigation and his conclusions and findings are in the nature of recommendations to the agency head who makes the final determination on whether there is discrimination in that particular case. The only appeal possible is to the Civil Service Commission's Board of Appeals and Review.

Testimony heard in the past by this committee and the records of other committees of Congress indicate that there is substantial skepticism on the part of Federal employees regarding the ultimate benefit of such procedures.

Many tend to feel that it is useless to even bother to file a complaint, knowing that it will be a rare instance where an agency admits to its own shortcomings. During the hearings on this bill conducted by the Senate Subcommittee on Labor, testimony was presented by the Honorable Walter E. Fauntroy, the Delegate in Congress from the District of Columbia. If I may I should like to quote briefly from Delegate Fauntroy's remarks on this very subject. He said:

> It seems anomalous to have the Commission both establish policies for rooting out discrimination and at the same time have the basic responsibility for measuring the effectiveness of its personnel policies against the demands of the law. S. 2515 will remedy this inequity and provide for objective review of Federal discrimination policies.

It does indeed seem anomalous, and I am confident that the proposals proposed and adopted by the committee will improve the Federal equal employment picture substantially.

Mr. President, I should like to outline briefly the provisions of this section for the Senate, as I believe that an understanding of them will be beneficial as we consider this legislation. The section makes clear that personnel actions of the U.S. Government affecting employees or applicants for employment shall be made free from any discrimination based on race, color, religion, sex, or national origin, and the Civil Service Commission is given power to enforce that provision with appropriate remedies. The committee report makes clear that such remedies may be applied as the result of individual allegations of discrimination, Civil Service investigation of equal employment opportunity programs in Federal agencies, or their field offices, or from review of agency plans of action and progress reports. These remedies may relate to a situation involving a single employee, a group of employees, or broad management action to correct systemic discrimination and to improve equal employment opportunity program effectiveness.

The bill also directs the Civil Service Commission to require each Federal department and agency to prepare an equal employment affirmative action plan at least once every year.

As part of this program, it is expected that the Commission would require agency plans to include specific regional plans for particularly large installations. Federal agencies are to receive from the Commission the necessary guidance and authority to institute necessary remedies in individual cases including the award of back pay, reinstatement or hiring, and promotion where appropriate.

So that it will be a model for other agencies and lend the greatest credibility to Federal equal employment efforts, the Commission will be expected to review and revise its own equal employment opportunity plan, particularly in its regional offices and at the higher grade levels, to insure that its own record in this field is exemplary. Other Federal agencies will be required to provide, on at least a semiannual basis, minority group employment and other data to the Civil Service Commission for its evaluation and for the public record.

Finally, written expressly into the law is a provision enabling an aggrieved Federal employee to file an action in U.S. District Court for a review of the administrative proceeding record after a final order by his agency or by the Civil Service Commission, if he is dissatisfied with that decision. Previously, there have been unrealistically high barriers which prevented or discouraged a Federal employe from taking a case to court. This will no longer be the case. There is no reason why a Federal employee should not have the same private right of action enjoyed by individuals in the private sector, and I believe that the committee has acted wisely in this regard.

Mr. President, I appreciate the Senate's time and attention. I am convinced that the language in the committee bill regarding Federal employees will prove a substantial help to those, who, for so long, have been "second class citizens," as far as equal employment opportunity is concerned. I ask unanimous consent that a more detailed analysis be printed in the Record.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

ANALYSIS OF FEDERAL EMPLOYMENT

The bill adds to title VII a new section 717 making clear the obligation of the Federal Government to make all personnel actions free from discrimination based on race, color, sex, religion or national origin. The Civil Service Commission, which presently has the responsibility under Executive Order 11478, is given the authority under this title to enforce equal employment in the Federal Government.

BACKGROUND

The Federal Government, with 2.6 million employees, is the single largest employer in the Nation. It also comprises the central policy-making and administrative network for the Nation. Consequently, its policies, actions, and programs strongly influence the activities of all other enterprises, organizations and groups. In no area is government action more important than in the area of civil rights. The prohibition against discrimination by the Federal Government, based upon the due process clause of the Fifth Amendment, was judicially recognized long before the enactment of the Civil Rights Act of 1964.[1] Congress itself has specifically provided for nondiscrimination in the Federal Government by stating that it is "the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin . . ." (5 U.S.C. § 7151). The primary responsibility for implementing this stated National objective has been granted to the Civil Service Commission pursuant to Executive Order 11246 (1964), and more recently by Executive

[1] See *Bolling* v. *Sharpe*, 347 U.S. 497 (1954) and cases cited therein.

Order 11478 (1969). In his memorandum accompanying Executive Order 1147 President Nixon stated that "discrimination of any kind based on factors n relevant to job performance must be eradicated completely from Federal emplo ment." This was an important step forward in the field of equal employment oppo tunity for Federal employees.

STATISTICS RELATING TO FEDERAL EMPLOYMENT OF MINORITIES AND WOMEN

Statistical evidence shows that minorities and women continue to be denie access to a large number of government jobs, particularly in the higher grad levels. This disparity can be clearly seen in figures presented in a recent repo released by the Civil Service Commission, *Minority Group Employment in the Fe eral Government (1970)*. On the basis of the figures presented therein, the fo lowing listing shows the percentage of minority group employees under th General Schedule by grade level:

	Negro	Spanish surnamed	American Indian	Orienta
GS–1 through GS–4	21.8	3.0	1.8	0.
GS–5 through GS–8	13.5	2.2	.7	.
GS–9 through GS–11	5.1	1.5	.5	1.
GS–12 through GS–13	2.7	.8	.2	.
GS–14 through GS–15	1.7	.7	.2	.
GS–16 through GS–18	1.4	.3	.1	.

Minorities represent 19.4% of the total employment in the Federal government (15.0% are Negroes, 2.9% are Spanish-surnamed, 0.7% are American Indians, and 0.8% are Oriental). Their concentration in the lower grade levels indicates that their ability to advance to the high levels has been restricted.

In many areas, the pattern at regional levels is worse than the national pattern, for example, the particularly low percentage of Federal jobs held by Spanish-surnamed persons in areas of high residential concentration of such persons, particularly in California and the Southwestern States.

The position of women in the Federal government has not fared any better. In testimony before the Senate Labor Subcommittee on this bill, Mrs. Daisy B. Fields, past president of Federally Employed Women (FEW), testified as to the distribution, by percent, of all women employed by the Federal Government (approximately 665,000 or about 34%) as represented by the following breakdown:

	Percent
GS–1 thru GS–6	76.7
GS–7 thru GS–12	21.7
GS–13 and above	1.1

The inordinate concentration of women in the lower grade levels, and their conspicuous absence from the higher grades is again evident.

COMPLAINT PROCEDURE

One feature of the present equal employment opportunity program which deserves special scrutiny by the Civil Service Commission is the complaint process. The procedure under the present system, intended to provide for the informal disposition of complaints, may have denied employees adequate opportunity for impartial investigation and resolution of complaints.

Under present procedures, in most cases, each agency is still responsible for investigating and judging itself. Although provision is made for the appointment of an outside examiner, the examiner does not have the authority to conduct an independent investigation, and his conclusions and findings are in the nature of recommendations to the agency head who makes the final agency determination on whether there is, in fact, discrimination in that particular case. The only appeal is to the Board of Appeals and Review in the Civil Service Commission.

The testimony before the Labor Subcommittee reflected a general lack of confidence in the effectiveness of the complaint procedure on the part of Federal employees.

Complaints have indicated skepticism regarding the Commission's record in obtaining just resolution of complaints and adequate remedies. This has, in turn,

iscouraged persons from filing complaints with the Commission for fear that oing so will only result in antagonizing their supervisors and impairing any uture hope of advancement. The new authority given to the Civil Service Com- ission in the bill is intended to enable the Commission to reconsider its entire omplaint structure and the relationships between the employee, agency and Commission in these cases.

SYSTEMIC DISCRIMINATION

Another task for the Civil Service Commission is to develop more expertise recognizing and isolating the various forms of discrimination which exist in ie system it administers. The Commission should be especially careful to en- ure that its directives issued to Federal agencies address themselves to the arious forms of systemic discrimination in the system. The Commission should ot assume that employment discrimination in the Federal Government is solely matter of malicious intent on the part of individuals. It apparently has not lly recognized that the general rules and procedures that it has promulgated ay in themselves constitute systemic barriers to minorities and women. Civil ervice selection and promotion techniques and requirements are replete with rtificial requirements that place a premium on "paper" credentials. Similar re- uirements in the private sectors of business have often proven of questionable alue in predicting job performance and have often resulted in perpetuating ex- ting patterns of discrimination (see e.g. *Griggs v. Duke Power Co.*, 401 U.S. 424 1971)). The inevitable consequence of this kind of a technique in Federal em- oyment, as it has been in the private sector, is that classes of persons who are cio-economically or educationally disadvantaged suffer a very heavy burden trying to meet such artificial qualifications.

It will be incumbent upon the Civil Service Commission to undertake a orough reexamination of its entire testing and qualification program to ensure at the standards enunciated in the *Griggs* case are fully met

PROVISIONS OF S. 2515

In order to assist the Commission in accomplishing its goals and to make clear ie Congressional expectation that the Commission will take those further steps hich are necessary in order to satisfy the goals of Executive Order 11478. Sec- on 717(b) of the bill contains specific requirements under which the Commission to function in developing a comprehensive equal employment opportunity ogram.

Thus, the provision in section 717(b) for applying "appropriate remedies" is tended to strengthen the enforcement powers of the Civil Service Commission providing statutory authority and support for ordering whatever remedies or tions by Federal agencies are needed to ensure equal employment opportunity Federal employment. Remedies may be applied as a result of individual alle- tions of discrimination, CSC investigation of equal employment opportunity ograms in Federal agencies or their field installations, or from review of agency ans of action and progress reports. Remedies may be in terms of action required correct a situation regarding a single employee or group of employees or oader management action to correct systemic discrimination and to improve ual employment program effectiveness to bring about needed progress. The ommission is to provide Federal agencies with necessary guidance and thority to effectuate necessary remedies in individual cases, including the ard of back pay, reinstatement or hiring, and immediate promotion where opriate.

REPORTING REQUIREMENTS

The bill also directs the Commission to require each Federal department and ency (including appropriate units of the District of Columbia Government) to epare an equal employment opportunity affirmative plan of action at least nually. The Commission is to review, modify, and approve each department or ency plan (at whatever agency level needed) deve'oped with full consideration particular problems and employment opportunity needs of individual minority oup populations within each geographic area.

Under these provisions, the Commission may require that agency plans include ecific regional plans for particularly large Federal regional installations and her regional offices with deficient records of progress in equal employment portunity.

The bill requires the Commission to obtain, on at least a semi-annual bas minority group employment and such other data as are necessary for effecti evaluation by the Commission and the public of each department's, agency's unit's record of equal employment opportunity achievement and to publish least semi-annually full statistical and other reports (comparable to the repo now published annually) of equal employment opportunity progress. In eval ating agency plans for approval, the Commission is also directed to study a determine the appropriate allocation of personnel and resources committed and the qualifications to be established for top equal employment opportuni officials responsible for carrying out program responsibilities, including nece sary affirmative action as well as processing of individual discrimination cas on both a central office and regional (SMSA) basis.

PRIVATE RIGHT OF ACTION

An important adjunct to the strengthened Civil Service Commission respons bilities is the statutory provision of a private right of action of review of th agency proceedings in the courts by Federal employees who are not satisfied wit the Agency or Commission decision.

The testimony of the Civil Service Commission notwithstanding, the Commit tee found that an aggrieved Federal employee does not have access to the courts In many cases, the employee must overcome a U.S. Government defense of sov ereign immunity or failure to exhaust administrative remedies with no certainty as to the steps required to exhaust such remedies. Moreover, the remedial au thority of the Commission and the courts has also been in doubt. The provision adopted by the Committee will enable the Commission to grant full relief t aggrieved employees, or applicants, including back pay and immediate advance ment as appropriate. Aggrieved employees or applicants will also have the ful rights of review available in the courts.

The bill (section 717(c)) enables the aggrieved Federal employee (or appli cant for employment) to file an action in the appropriate U.S. district court afte either a final order by his agency or a final order of the Civil Service Commission on an appeal from an agency decision or order in any personnel action in which the issue of discrimination on the basis of race, color, religion, sex or national origin has been raised by the aggrieved person. It is intended that the employee have the option to go to the appropriate district court or the District court for the District of Columbia after either the final decision within his agency on his appeal from the personnel action complained of or after an appropriate appeal to the Civil Service Commission or after the lapse of 180 days from the filing of the initial complaint or appeal with the Civil Service Commission.

The Presiding Officer. The question is on agreeing to the amend ments en bloc.

The amendments were agreed to en bloc.

AMENDMENT NO. 909

Mr. Javits. Mr. President, I send amendment No. 909 to the desk on behalf of myself, the Senator from Kentucky (Mr. Cooper) and the Senator from New Jersey (Mr. Williams). I ask unanimous consent that the text of the amendment I send to the desk, rather than the text of the amendment as printed, be the amendment I call up.

The Presiding Officer. Is there objection?

Mr. Ervin. Mr. President, reserving the right to object—

Mr. Javits. Mr. President, I am sure the Senator wants to hear it. I suggest that the amendment be read first.

Mr. Ervin. Mr. President, as I understand the Senator from New York has asked unanimous consent to modify the prior amendment so as to make the appointment of special masters by the judge discretionary rather than mandatory?

Mr. JAVITS. The Senator is exactly correct.
Mr. ERVIN. I certainly have no objection to that.
Mr. JAVITS. Mr. President, I thank the Senator. I yield myself 1 nute.
The PRESIDING OFFICER. Would the Senator suspend while the clerk ids the amendment. The clerk will state the amendment.
The legislative clerk read the amendment.
(A copy of amendment 909 to S. 2515 may be found on p. 1683.)
Mr. JAVITS. Mr. President, the pending amendment really originated th the Senator from Kentucky (Mr. Cooper). I begged him to offer amendment. However, with traditional modesty, he asked me to so and allowed me to join him as a cosponsor.
It arose from the Dominick amendment, on which the Senator from ntucky (Mr. Cooper) based his position that the courts could pro- d as they wished on the appointment of a master under rule 53 of Federal Rules of Civil Procedure. The normal rule as to the ability the court to appoint a master if it wishes under rule 53 is quite ingent—the case must be truly exceptional to qualify. All this endment does is relax that stringency in the area of Title VII cases. ere justice delayed is very often justice denied.
Mr. DOMINICK. Mr. President, on my own time I wish to engage in a loquy with the distinguished Senator from New York.
I discussed this amendment in its original form with the Senator m New York and suggested that rather than to strike what trial lges are supposed to do, we ought to leave it discretionary with lges because of the different situations that might arise in different isdictions.
As I understand it, the amendment language now is simply designed remind the judge that Congress intends that employment discrim- tion cases should be expedited so if the judge thinks it wise, he can n the case over to a master. This language simply highlights Con- ssional concern without trying to mandate what the judge does.
Mr. JAVITS. The Senator is exactly correct.
Mr. DOMINICK. Mr. President, under those circumstances, I can no objection to the amendment.
The PRESIDING OFFICER. The question is on agreeing to the amend- nt of the Senator from New York and the Senator from Kentucky, nodified.
The amendment as modified was agreed to.
Mr. ALLEN. Mr. President, the total unconcern of the Equal Em- yment Opportunity Commission for individual freedoms, prop- y rights, and constitutional principles that would lie trampled he dust under its rampaging feet if this Senate were to confer upon he additional power and authority sought under S. 2515 was phically revealed in an article by Mr. William Chapman which peared in the August 27, 1971, edition of the Washington Post. ny of the Senators may have seen and read the article. I hope they . Prefaced with the heading, "EEOC Would Curb Moves to urbs," Mr. Chapman exposed a diabolical scheme by present and mer EEOC attorneys to snuff out freedom of movement by business.
e article reads as follows:

[From the Washington Post, Aug. 27, 1971]

EEOC Would Curb Moves to Suburbs

(By William Chapman)

Legal officers of the Equal Employment Opportunity Commission have pr
posed a novel strategy to reduce the movement to suburbia of companies whi
leave minority-group workers trapped behind in the city.

A memorandum submitted to the Commission last month suggests that co
panies are guilty of racial discrimination if their movement to new locatio
adversely affects minority workers living in the community where the firm
originally located.

Under the strategy outlined, court orders could be sought against compani
planning to relocate, charging prima facie violations of civil rights laws. Th
companies would then have to prove in court that some overriding busines
necessity required the moves. Private plaintiffs would start the court actions
the EEOC lacks authority to do so.

The memorandum was prepared by the EEOC's former general counsel. Stanle
P. Hebert, and the current acting general counsel, John de J. Pemberton Jr
and given to the Commission chairman on July 7. The Commission has yet t
discuss the proposal.

It is designed to counter what civil rights leaders regard as one of the majo
threats of the times, the movement by businesses and factories to new suburba
locations. Frequently, this means that blacks, Chicanos and other minorities ar
left jobless in the inner cities. Furthermore, either racial discrimination of th
absence of low-cost housing in suburbia prevents these groups from moving t
new job sites.

These factors play a large part in the increasing racial separation illustrate
by the 1970 census. During the 1960s, the white population of the central citie
declined by nearly 2 million people while the minority population increased b
nearly 3 million.

The EEOC memorandum states: "A vast national expansion into the suburb
is generating severe racial polarization in our metropolitan areas. . . . Just as
many middle-class citizens are migrating to the suburbs, companies and trade
associations have begun to pull up stakes in the cities and to move to the
suburbs."

It cites the recent movement out of New York City to New Jersey and Connec
ticut suburbs of such corporate giants as American Can Co., Pepsico and Conti
nental Oil.

The legal strategy under consideration at the EEOC proposes the following
steps to be taken under authority of Title VII of the Civil Rights Act of 1964:

The transfer of an employer's facilities amounts to a prima facie violation
if any of three elements are present—if the community left behind has a higher
percentage of minority workers than the new community, if the transfer affects
minority workers' employment situation more adversely than it affects other
workers, and if the employer fails to take steps to correct inequities.

If the prima facie case were established, then the company would bear the
burden of providing that some overriding business consideration required it to
move. For example, the company could not simply say that the convenience of
its executives and employees would be served by the move.

If the company could not prove an overwhelming business necessity, the court
could then order it to refrain from moving.

The legal theory is based on precedents arising from other EEOC cases and
suits by private plaintiffs against companies accused of violating Title VII. A
string of decisions has held that although the company may not intend to dis-
criminate, it is violating the law if the effect of its actions is to treat racial
groups unequally.

In one case cited by the EEOC attorneys, a Southern power company was
accused of discriminating against black job applicants by using certain educa-
tional tests. More blacks failed than whites. The courts finally held that al-
though the tests were administered equally, their effect was to weed out black
applicants whose education was inferior to whites. The courts said the tests
had to be dropped because the company could show no overriding economic need
for their use.

"The test is whether there exists an overriding, legitimate business purpose
such that the practice is necessary to the safe and efficient operation of the

siness," the Fourth Circuit Court of Appeals said in that case. "Thus, the siness purpose must be sufficiently compelling to override any racial impact." EEOC attorneys would hope to apply that same standard to relocation of ivate businesses. The issue probably will be presented to the Commission is fall.

Such a legal policy would have only indirect effects in the District of Columbia, ere the federal government is the largest employer. The EEOC would not have thority to seek court actions against government agencies, although EEOC at-neys think private plaintiffs could, using the same theory advanced by the ency's counsel.

If the unmasking of this bizarre proposal by Mr. Chapman was ceived incredulously by the American public, it is even more appar-t that the article sent shock waves of embarrassment through the lls of the EEOC. For on the same day Mr. Chapman's article ap-ared in the Washington Post, in a matter of a few hours, EEOC airman Brown, obviously chagrined, issued the following hurry-urry statement:

ATEMENT BY EEOC CHAIRMAN WILLIAM H. BROWN. ISSUED JANUARY 13, 1972

In order to correct some errors of interpretation in press reports earlier today out an EEOC staff memorandum, Chairman William H. Brown III issued following statement:

"The memorandum discussed in press reports today concerned the possibility employment discrimination by relocation of plant and corporate headquarters. "This memorandum was an internal working paper expressing the legal nions of some staff attorneys. It was not a recommendation for action l, of course, it certainly does not express EEOC policy.

"The memorandum was prepared only for me and has not been presented to full Commission; nor is it likely to be considered by the Commission in the r future. We are deeply involved in preparation for our upcoming public rings on employment practices in the gas and electric utilities industry which be first priority of the Commission and staff at the moment.

"The issue of plant relocation is exceedingly complex and can only be skimmed a brief memorandum."

Well, what Chairman Brown said is nice. It is not an uncommon ctice for a Government agency, when it is confronted in print with embarrassing news story, to issue a statement through the head of agency to help straighten out or to "correct some errors of inter-tation in press reports" and then clam up about the disclosure. airman Brown is not the first Federal official to cringe under the t of public disclosure of a nefarious and undercover bureaucratic eme, nor the first to look around for ways to play it down or, better attempt to turn it off.

n fairness, I must say that Chairman Brown's disclaimer as to the l accuracy of Mr. Chapman's article apparently met with some de-e of success. Little notice, if any, was paid to the memorandum ring the hearings and executive sessions in which S. 2515 was med through the subcommittee and then the committee. This may understandable in view of the revolutionary nature of the morandum.

Some people may think that the EEOC would never arrogate unto lf the sole authority to examine and pass judgment as to what siness shall move or not move because of the patent absurdity in-ved. Less than a decade ago, however, the idea of requiring a racial ance in public schools was also deemed too ridiculous to consider. t, today we see little schoolchildren in the South and other parts of Nation being lugged all over cities and counties to achieve what

HEW officials and the courts consider to be a mathematically sat
factory racial mixture in public schools.

No, Mr. President, the EEOC memorandum as described by M
Chapman is no fictionalized horror story. It is real. And its designi
authors were never more serious in either their preparation of it
their intent to see it become the law of the land by some extrapolati
of power conferred upon the executive branch of our Governme

I have in my hand a copy of the EEOC memorandum and intend
read and discuss it in just a few moments. Before doing so, however
should like to say that I was astounded by the memorandum's conten
Even a casual reading of the memorandum removes all questions abo
the thirst for unlimited and unrestricted power which motivated t
writing of the memorandum. It is more than just a vicious assault upo
our free enterprise system. In its simplest terms, the memorandum
the doctrine of the arrogance of bureaucratic power. It would confe
upon the EEOC the power of discretion and enforcement equivale
to that of a czar. Taken to its logical limit, the memorandum woul
destroy the rule of law and would leave us stripped before the whi
of men. It is the very antithesis of a government of law—and partic
larly the antithesis of a government of limited powers specifically del
gated to it by the people through a written constitution.

The authors of this shrewd memorandum tried to give the proposa
some semblance of justification and refinement by the way of case cita
tions. They even tried to use the present languages of Title VII to jus
tify their theory, but here is where the first of many jokers containe
in the memorandum appear. The memorandum asserts that—

> Section 703(a) states that it is unlawful for an employer "to deprive or *tend t*
> *deprive* an individual of employment opportunities . . ." Thus, a proposed reloca
> tion that threatens to deprive minority workers of employment opportunitie
> constitutes a ***prima facie*** violation of Title VII.

The catch is, Mr. President, and it blows their entire legal argu
ment, section 703(a) says much more. It reads as follows:

> Section 703(a)—It shall be an unlawful employment practice for an employer—
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to dis
> criminate against any individual, with respect to his compensation, terms, condi
> tions, or privileges of employment, because of such individual's race, color, re
> ligion, sex, or national origin; or
> (2) to limit, segregate, or classify his employees in any way which would
> deprive or tend to deprive any individual of employment opportunities or other
> wise adversely affect his status as an employee, because of such individuals' race,
> color, religion, sex, or national origin.

From a reading of all of section 703(a), we, therefore, see that
what the authors of the memorandum have done is to trim down part
2 of the section to "prove" its statutory authority to either forbid
or restrict business relocation.

Taken as a whole, neither part 1 nor 2 of section 703(a) says any
thing at all about where a businessman can or cannot operate. It
simply requires an employer to hire, discharge, classify, promote,
and compensate his employees strictly on their skills and performance,
which, I might add, any wise employer who is actuated by the profit
motive does anyway.

When viewed in this light, Mr. President, the memorandum all
of a sudden reveals its legal inadequacies and one-sidedness so quickly as
to be guilty, almost, of indecent exposure.

But let us look at all of the memorandum. It affords a glimpse, ot often granted to the public or even to the Congress of the United States, of some of the ways in which a Government bureau works espousing the side of arbitrary and oppressive governmental inusion against fundamental economic and individual rights.

I ask unanimous consent to have the memorandum printed in the ecord.

There being no objection, the memorandum was ordered to be printin the Record, as follows:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION MEMORANDUM, JULY 7, 1971

: William H. Brown III, Chairman.

om: Stanley P. Hebert, General Counsel; John de J. Pemberton, Jr., Deputy General Counsel; and Martin I. Slate, Attorney, Office of the General Counsel.

bject: Employment discrimination by relocation of plants and corporate headquarters.

A vast national expansion into the suburbs is generating severe racial polarion in our metropolitan areas. During the past decades, the white popula- n in our central cities has declined by 1.9 million persons while the minority pulation has increased by 2.8 million.[1]

Just as many middle-class citizens are migrating to the suburbs, companies l trade associations have begun to pull up stakes in the cities and to move the suburbs. The following companies have, for instance, recently moved ir corporate headquarters from New York City to Connecticut and New Jer- suburbs: The American Can Company, Pepsico, General Telephone & Elecnics, Continental Oil, Chesebrough Pond's, Lone Star Cement, The Olin rporation, Hooker Chemical, and many others.[2]

These corporate relocations sharpen racial polarization, with the companies employment opportunities for minority workers,[3] for while suburbia has welned the white wage-earner, minority workers have been shut out of suburbia.[4] ast month in Washington, D.C., the United States Commission on Civil Rights nducted extensive hearings on the role of the Federal Government in combatg racial polarization resulting from migration to suburbia. The Commission ncluded that the Federal Government has failed to make the full use of its hority in this area, and recommended that the Government develop affirmae programs to assure that future migrations to suburbia reduce rather than ensify polarization.

Pursuant to that recommendation, the Office of General Counsel has prepared s discussion of the role that the Commission might play in the Government's orts to reverse the present process of polarization. Part I shows that a corate relocation or proposed relocation to a suburban area where minority rkers do not reside constitutes a violation of Title VII unless the corporation s taken steps to assure equal employment opportunity. Part II suggests what ps might be.

PART I

The transfer of an employer's facilities constitutes a *prima facie* violation of le VII if (1) the community from which an employer moves has a higher rcentage of minority workers than the community to which he moves, or (2) transfer affects the employment situation of the employer's minority workers re adversely than it affects his remaining workers, and (3) the employer ls to take measures to correct such disparate effect.

Section 703(a) of Title VII makes it unlawful for an employer to engage in criminatory employment practices. In *Griggs* v. *Duke Power Company*, 91 S.

Opening Statement of Dr. Stephen Horn, Vice-Chairman, United States Commission on l Rights, at Washington, D.C., Hearings, June 15, 1971.

Rush to the Suburbs: Business Also Deserts City, The Evening Star (Washington, .), June 15, 1971, page A–14.

A recent St. Louis study found that while the number of jobs in Greater St. Louis had reased fivefold in the past twenty years, the number of jobs in the city of St. Louis had lined by over 20%. *Statement on Hearing Before the U.S. Commission on Civil Rights t. Louis, Missouri*—January 14–17, 1970.

Thus, the 1970 census shows that in metropolitan areas with one million or more dents, 54% of the whites earning less than $4,000 per year live in suburbia while 14% he blacks earning less than $4,000 per year live in suburbia.

Ct. 849 (1971), the Supreme Court held that any employment practice that h
a disparate impact on minority workers constitutes a *prima facie* violation
Section 703(a) and places the burden of proving non-discrimination on t
employer.[5]

A corporate relocation has a disparate effect on the minority workforce. Wh
an employer moves to a community with a lower percentage of minority worke
than that from which he came, he diminishes the pool of available minor
workers. He therefore decreases the employment opportunities for minor
workers while increasing opportunities for non-minority workers.

More specifically, an employer has a duty of fair recruitment.[6] Locating
plant in an area with few minority residents gives rise to minority recruiti
problems. Normal recruiting patterns tend to confine notice of job vacancies
those who reside and work in an area. Unless an employer makes special effo
to institute a minority recruiting program, he will have failed in his duty of fa
recruitment.

A transfer also has a disparate effect on the employer's present minori
workers if the ratio of minority employees who are unable to continue emplo
ment with the company to those minorities who do move is higher than the rat
of whites who are unable to move to those whites who do move. In the conve
tional employment situation there is this disparate effect: Management, whic
is largely nonminority, adjusts to the transfer easily; indeed, management pe
sonnel may live in the area to which the facility is transferred. Other personne
largely minority, are frequently unable to follow the relocation; commuting ma
be too difficult, moving may be too costly, or minorities may be shut out fro
suburbia by racial attitudes or by restrictive zoning laws. Thus, unless the rel
cating employer arranges for his minority employees to continue employmen
he will be discharging employees on the basis of race.[7]

It should be noted that it is not necessary for the relocation to have been com
pleted in order for Title VII liability to attach. Section 703(a) states that it i
unlawful for an employer "to deprive or tend to deprive any individual of em
ployment opportunities . . ." Thus, a proposed relocation that threatens to de
prive minority workers of employment opportunities constitutes a *prima faci*
violation of Title VII.

The proposition that a corporate relocation constitutes a *prima facie* violatio
of Title VII is consistent with Commission policy and Court precedent. Mindfu
of the subtle and sophisticated nature of employment discrimination,[8] the Com
mission and the Courts have not limited their attack on employment discrimina
tion to more traditional forms of discrimination, such as outright refusal to hir
minorities. Rather they have given a broad interpretation to Title VII.[9] Thus,
as the *Griggs* case establishes, commonly used tools of corporate manpower
policy have been declared unlawful when they operate to deprive minority work
ers of equal employment opportunity: the high school diploma requirement, the
Wonderlic test, the hiring hall,[10] and seniority rosters [11] have all been held
illegal in such circumstances.

Nor has the thrust of Title VII been restricted to eradicating practices that are
intentionally discriminatory. Title VII deals with the *consequences* of an em
ployer's action, not with his motivation.[12] In the words of Chief Justice Burger,
Title VII condemns "practices that are fair in form but discriminatory in opera
tion." The neutrality of the relocation process should not save it from illegality
if its consequences are to restrict minority employment.

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[5] The lower courts have consistently articulated identical standards. *Jones* v. *Lee Way Motor Freight*, 431 F. 2d 245 (C.A. 10, 1970); *Papermakers, Local 189* v. *U.S.*, 416 F. 2d 980 (C.A. 5, 1969); *Parham* v. *Southwestern Bell Telephone Co.*, 433 F. 2d 421 (C.A. 8, 1970); *Gregory* v. *Litton Systems*, 316 F. Supp. 401 (C.D. Calif., 1970).

[6] *Parham*, *Southwestern Bell Telephone*, *supra*; *U.S.* v. *Frazer*, — F. Supp. —, 2 FEP Cases 845 (M.D. Ala., 1970). *Clark* v. *American Marine Corp.*, 304 F. Supp. 603 (E.D. La., 1969).

[7] It would be no defense that the relocation will have the same effect on individual [illegible] to employees who are similarly situated (e.g., are of low income). *Jones* v. *Lee Way Freight*, *supra*. The disparate effect on minorities as a class constitutes the [illegible].

[8] *Sanchez* v. *Standard Brands*, 431 F. 2d 455 (C.A. 5, 1970); *Graniteville Co.* v. *EEOC*, [illegible] F. 2d 32 (C.A. 4, 1971).

[9] *Sanchez* v. *Standard Brands*, *supra*; *Dean* v. *Ashling*, 409 F. 2d 754 (C.A. 5, 1969).

[10] *U.S.* v. *Sheet Metal Workers, Local 36*, 416 F. 2d 123 (C.A. 8, 1968); *Asbestos Workers, Local 53* v. *Vogler*, 407 F. 2d 1047 (C.A. 5, 1969).

[11] *U.S.* v. *Papermakers & Paperworkers, Local 189*, 415 F. 2d 980 (C.A. 5, 1969), cert. denied 379 U.S. 919 (1970).

[12] *Jones* v. *Lee Way Motor Freight*, *supra*; *Parham* v. *Southwestern Bell*, *supra*; *U.S.* v. *Sutton Supply Co.*, 429 F. 2d 300 (C.A. 4, 1970).

Finally, it should be noted that the National Labor Relations Board has dealt mly with the corporate relocation problem. An employer who relocates in order avoid a union commits an unfair labor practice.[14] The analogy between the LRA and Title VII has frequently been noted.[15] Indeed, the Courts have pointed t that Title VII provides broader protection than the Labor Act.[16] It would erefore be unthinkable that an employer who is prohibited from relocating avoid a union would be free to relocate his facilities away from minority rkers.

Once a *prima facie* violation is established, to defend his conduct the employer ist show that his discriminatory conduct serves a valid business purpose. As the urt explained in *Robinson* v. *Lorillard*, 319 F. Supp. 835, 841, 2 FEP Cases 465, 0 (M.D.N.C., 1970) *aff'd.* —F. 2d—, 3 FEP Cases— (4th Cir., July 1, 1971), "two ies of thought appear to have been advanced with respect to the meaning of *siness purpose or business necessity* and what value Courts should ascribe to ose words in determining whether a given employment practice is unlawful not."

The first line of thought, and the one that the *Lorillard* court thought was ist in keeping with the primary policy of Title VII is that "a valid business rpose can offer no absolution to an employer or labor organization who is act- in a discriminatory fashion. Where effects of discrimination are present, the stem cannot be regarded as bona fide." Under this standard, an employer who ocates to the detriment of the minority workforce is clearly in violation of le VII.

The second line of thought is that, to defend his conduct, the employer must nonstrate that an overriding business necessity justifies his discriminatory icy.[16] He must show that the advantages that he will derive from his dis- minatory policy are *vital* to the operation of his business, and that they out- igh the discriminatory effect on the minority workforce. At first blush, it pears that this would be a difficult burden for an employer to meet when he ocates without assuring equal employment opportunity. His move will have ated almost insurmountable problems for minorities, while the steps needed assure equal employment opportunity appear far less costly.

On appeal, the Fourth Circuit, found it unnecessary to reject either of these o "lines of thought" for it held, in agreement with the District Court, that employer's business purpose failed as a defense by either standard. But it borated upon the balancing test with these words: "The test is whether there sts an overriding legitimate business purpose that the practice is necessary the safe and efficient operation of the business. Thus, the business purpose st be sufficiently compelling to override any racial impact;[17] the challenged ctice must effectively carry out the business purpose it is alleged to serve;[18] l there must be available no acceptable alternative policies or practices ich would better accomplish the business purpose advanced, or accomplish qually well with a lesser differential racial impact."[19]

Robinson v. *Lorillard*, —F. 2d —, —, 3 FEP Cases —, —, (4th Cir. 1971) (Type- itten opinion at pp. 15–16).

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[14] *NLRB* v. *LEWIS*, 246 F. 2d 886 (C.A. 9, 1957).

[15] *Bouce* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (C.A. 7, 1969).

[16] *Pettway* v. *American Cast Iron Pipe Co.*, 411 F. 2d 998 (C.A. 5, 1969).

[17] *Griggs* v. *Duke Power Co., supra*; *Diaz* v. *Pan American Airways*, —— F. 2d ——, 3 P Cases 337 (C.A. 5, 1971); *Jones* v. *Lee Way Motor Freight, supra*; *Gregory* v. *Litton, ra*; *Hicks* v. *Crown Zellerbach Corp.*, —— F. Supp. ——, 2 FEP Cases 1059 (E.D. La., 0).

[18] "The desire of a union to insure family security by restricting new membership to the s and close relatives of present members may constitute a legitimate 'business purpose.' it cannot override the racial impact where present union membership is all-white. *See* al 53, International Association of Heat & Frost Insulators and Asbestos Workers v. ler, 407 F. 2d 1047 (5th Cir. 1959)." (Footnote in Court's opinion.)

[19] "In the *Griggs* case the Supreme Court held that Congress has placed on the employer burden of showing that any given requirement must have a manifest relationship to employment in question." 39 U.S.L.W. at 4319. The Court concluded that Duke Power ed to carry that burden in arguing that its educational standards were necessary to rade the quality of the work force:

On the record before us, neither the high school completion requirement nor the gen- intelligence test is shown to bear a demonstrable relationship to successful perform- e of the jobs for which it is used." 39 U.S.L.W. at 4319. (Footnote in Court's opinion).

"It should go without saying that a practice is hardly 'necessary' if an alternative ctice better effectuates the intended purpose or is equally effective but less discrim- ory. Thus, with regard to testing, the Equal Employment Opportunity Commission lelines stipulate that where technically feasible, a test should be validated for each erity group with which it is used; that is, any differential rejection rates that may t, based on a test, must be relevant to performances on the jobs in question." 29 .R. S 1607.4(a). (Footnote in Court's opinion).

In the *Lorillard* case, the employer had resisted changing its promotion job transfer system on the grounds, *inter alia*, that the settled policies provi for an efficient progression through interrelated jobs and, besides, had l adopted under union pressure at the risk of having to endure a strike. court rejected the first of these recited reasons, because non-discriminat alternatives could be found to serve the same need for efficiency in job prog sion. As to the second it said:

"The rights assured by Title VII are not rights which can be bargained awa either by a union, by an employer, or by both acting in concert. Title VII quires that both union and employer represent and protect the best interest minority employees. Despite the fact that a strike over a contract provision i impose economic costs, if a discriminatory contract provision is acceded to bargainee as well as the bargainor will be held liable." *Robinson* v. *Lorill* (4th Cir. dec.) *supra*. Typewritten opinion at p. 18. (Footnote omitted).

The reasoning of the Court on these two issues would seem to foreclose a successful "business necessity" defense for a relocation that failed to make a quate provision for members of the minority workforce.

Other judicial precedent is consistent. In cases involving employment discri ination based on race, the business necessity defense has rarely succeede As the Fifth Circuit held in *Diaz*, a discriminatory policy is valid only wh the essence or primary function of a business would be undermined by a n discriminatory policy.[21]

If, as some critics maintain, corporate moves to the suburbs are motivated the desires of corporate officials to locate their offices near their suburban home the move is unlawful. Business convenience does not constitute business necessi

The only possible defense would be proof that the move effects an essential vital competitive advantage. This would be difficult. Not only must the employ prove that suburban relocation would improve his competitive position, but al he must show that it would improve his position more than a relocation in area where minority workers reside; that is, he must show a business necessi that cannot be served by some alternative less costly to minority employme opportunity. Land values are depressed in many lower-income areas, and a location to suburbia might well be more costly than a relocation to a lowe income area.[22]

In any case, even if the profit motive justifies the relocation, to suburbi it cannot justify the failure to take steps to assure that the risk of exclusion minorities from employment is avoided.[24] The employer's costs of taking su steps is minimal in comparison with the social and economic damage brough about by his failure to assure equal employment opportunity. To quote S M. Linowitz, the Chairman of the National Urban Coalition:

"Everytime business decides to move or build a plant or other facility o in the hinterlands without insisting upon housing, schools and other servic for its workers—present and prospective—it is helping to exacerbate the pro lems of an already deeply divided country."

PART II

An employer who violates Title VII must take action to comply with th Title. There are three touchstones in the formulation of remedies in the civ rights and fair employment areas:

(1) The paramount factor is the "public interest".[25] Employment dis crimination is unfair and undercuts national productivity, and the ind

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[21] We are aware of only two cases which even appear to reach that result: *Colbert* v. *W. h Corp.*, — F. Supp. —, 2 FEP Cases 951 (N.D. Ga., 1970) and *Williams* v. *St. Gobain Corp.*, — F. Supp. —, 2 FEP Cases 231 (E.D. Okla., 1969). The Fifth Circ recently remanded *Colbert* to the District Court and in *Williams* it is not clear that t ... proceeded in establishing a disparate effect, the Court's language there wi ... to business necessity may not be central to its ruling.

... *U. S.* v. *Bethlehem Steel*, — F. 2d —, (C.A. 2, Docket No. 35183, June 2 1971).

... *Diaz*, 2, *supra*.

... If the employer did prove that relocation would improve his competitive positio ... the Court would have agree that this particular competitive advantage was essential ... the ... [illegible] ... business. Thus, in the *Diaz* case, the Fifth Circuit held that t ... Pan American's business was transporting passengers, and that th ... Pan American would incur in selecting and training male cabin attendan ... [illegible] ... the achievement of the Airline's primary function. Cf. *Jones* v. *Le ... Right*, *supra*.

In addition there is a question as to whether this particular competitive advantage con ... stitutes a lawful advantage. If an employer improves his competitive position by dis ... criminating, he should not be allowed to enjoy the profits of his discrimination at th ... expense of those other employers who do not discriminate.

[22] *Jones* v. *Lee Way Motor Freight*, *supra*.

[24] *Jenkins* v. *United Gas Corp.*, 400 F. 2d 28 (C.A. 5, 1968); *Clark* v. *American Marine*, *supra*.

vidual "abrasions and dislocations"[26] that a remedy might cause should not interfere with our effort to achieve maximum fairness and efficiency.

(2) The victims of discrimination must be made whole.[27] Fairness dictates that they should have the position that they would have had but for the unlawful conduct.

(3) In making victims whole, a Court or the Commission will be flexible and tailor the remedy to the violation. As Section 706(g) of Title VII provides, when a Court finds that an employer is engaging in an unlawful employment practice, it should "order such affirmative action as may be appropriate."[28]

n this light, the following remedial scheme is appropriate:[29]

'o assure a continued pool of minority labor, an employer should—

(1) institute special recruiting efforts in the nearest areas of minority residence. There is substantial predecent for such programs.[30]

(2) assure that the minority workers enjoy the same access to the employer's facilities that non-minorities do. If commuting expenses for minorities are high, they should be paid. If commuting is impossible, housing arrangements should be made: The employer should provide moving expenses.[31] If necessary, he should also provide or assist in the search for housing and use legal and commerical leverage to assure housing opportunities for minorities. The employer might not be responsible for the factors restricting housing opportunities, such as exclusive zoning regulations, but as the Fifth Circuit stated in refusing a local school board's claim that integration was precluded by natural barriers and by a state highway that crossed between a minority neighborhood and an all-white school:

Barriers which did not prevent enforced segregation in the past will not be held to prevent conversion to a full unitary system.[32]

(3) establish a goal for minority employment. This should be the same goal that he presumably set at his original location:[33] the employment of minorities at a level which reflects the ratio of minorities to the population as a whole in (or to their proportionate participation on the community's work force in that area.

'o assure that his current minority employees are not deprived of employment, employer should:

(1) notify all employees that they will be able to continue employment with the company if they choose to do so.

(2) make the appropriate commuting and housing arrangements (see above) for those who choose to continue with the employer.

(3) offer those who choose not to relocate assistance in obtaining comparable positions with other employers.[34]

n addition to remedying specific violations, the Commission should take gen- steps to implement its policy. Pursuant to Section 709(c), the Commission uld require all employers to keep records concerning their planning with pect to plant location and to report on their efforts to assure equal employ- nt opportunity when they are contemplating a move. Such a reporting system uld serve to alert the employer to his legal obligations and would give the Com- sion an opportunity to become involved in relocation at the planning stage. 'he Commission should also prepare Guidelines concerning plant relocation. preparation of the Guidelines will educate the Commission on this problem. Guidelines themselves will alert employers to their obligations and strengthen litigation position of victims of discriminatory relocation.[35]

Allen v. *Board of Public Instruction of Broward County, Fla.*, 432 F. 2d 362 (1970); *nn* v. *Charlotte-Mecklenberg Bd. of Education*, 91 S. Ct. 1267 (1971).

Bowe v. *Colgate-Palmolive, supra*; *NLRB* v. *Rutter-Rex Mfg. Co.*, 90 S. Ct. 417 (1969). See, for example, *Quarles* v. *Phillip Morris*, 279 F. Supp. 505 (E.D. Va., 1968).

In the discussion below, it is not suggested that an employer return his plant to its inal site or cancel a proposed move. The NLRB has taken the position that a return be ordered only in the most extreme circumstances, and even then only when the loyer rejects alternative remedies. *Ronre Products Co.*, 77 NLRB 1217.

he Commission should take a similar approach—the return of a plant to the city will ribute much less to the harmony and integration of our nation's races than an intelli- ly planned move to suburbia.

See, Note 6, *supra*.

See *Klotz & Co.*, 13 NLRB 1746 (1939); *New Madrid Mfg. Co.*, 104 NLRB 117 (1953). *Henry* v. *Clarksdale Municipal Separate School District*, 433 F. 2d 387 (C.A. 5, 1970). This practice was impliedly sanctioned by the Supreme Court in *Swann, supra*, and ieitly approved by the Third Circuit in the Philadelphia Plan case. *Contractors' Asso- lon* v. *Schultz*, — F. 2d —, 3 FEP Cases 395 (C.A. 3, 1971).

This would be especially appropriate for minority females who are unable to relocate use of their spouses' employment situations.

See *Griggs* v. *Duke Power*, supra, 91 S. Ct. at 855.

Mr. ALLEN. Mr. President, this lifting of a corner of the curt on EEOC activities should be disquieting to every Member of Senate. To my way of thinking, it suggests that the appropriate c mittees of both Chambers of the Congress ought to look much m thoroughly at what the Commission is doing. Granted that busi relocations from urban to suburban areas, undoubtedly, present a pr lem to the communities where they occur. But they do not rise to level of a threat which warrants the adoption of an abomination the name of equal employment opportunity which shows a conte tuous disregard for the essential freedoms of American citizens a strikes dangerously at the foundations of American life.

It should not for a moment be overlooked that the architects of memorandum do not propose to limit the power sought to giant bu ness organizations such as General Motors, United States Steel, IB Procter & Gamble, General Electric, or the like. Remember, if t bill is passed, business establishments having eight or more employ will be subject to the sweeping new authority conferred upon the Co mission. This means such small businesses as the corner drug sto the neighborhood restaurant, the local automobile repair shop a thousands upon thousands of other small business enterprises, inclu ing the so-called "mom and pop" establishments, could be subject constant harassment by EEOC agents in connection with propos business relocations.

Under our free economic system, it has never been seriously qu tioned that a small businessman has the right to set himself up in bu ness, to select the site of his establishment on the basis of such mark considerations as he might, within his own free and uncontrolled d cretion, consider advantageous to his undertaking, and to do all t without hindrance or interferene. Indeed, our history of free locati or relocation of business has been one of the reasons for our unpara leled economic success because our free enterprise system has, by very fundamental nature, allowed men of ability, to create, to build, develop something for themselves on the basis of mobility. It has a ways been recognized that in the development of any business, any ma who invests capital, any many who operates a business, must have t freedom to choose where he wishes to operate or relocate. That is t only way an owner can operate if he expects to remain a part of a fre competitive economy.

But the power which the EEOC is attempting to confer upon itse could utterly destroy the right of the owner of a business, whethe large or small, to select where he wants to operate. Under the guise promoting fair employment practices, the EEOC would be vested wit the right to compel a person or a corporation to do business where th Commission commands. And remember, the EEOC could not onl concern itself with the relocation of businesses, but also with the loca tion of a new business in the first instance; in fact, the memorandu uses the term "location" instead of "relocation" on several occasion

Let us consider how the EEOC could operate against a small busi nessman who has been charged with committing an unlawful employ ment practice because he wants to relocate his business.

Suppose there is the owner of a small restaurant located in a neigh borhood which is experiencing a high incidence of crime. Suppos further than the restaurant has been robbed once or twice and th

me of the owner's waitresses have either been mugged or the victims purse snatchings. Let us also suppose that as a result of this unvorable neighborhood climate, the patrons of the restaurant are beming fewer, particularly in the evenings, but the owner is still manging to make a small return on his investment.

Despite the fact that he is still barely operating in the black, the staurant owner reaches the decision that it would be better for him to ose down his restaurant for the reasons I have just outlined and locate it in an outlying area, perhaps in the suburbs or just across e State line. The owner determines that the new location might not the most desirable site; in fact, he anticipates that he will initially erate in the red. But the new location is relatively free of crime and e owner is confident that in due time his new restaurant will become a ing enterprise. It is, at best, a risky venture, but one which is in keepg with adventurous spirit of our free economic system.

So, the owner commissions an architect to prepare the blueprints r his new establishment and borrows money from his bank to purase a new lot and to construct and furnish his new restaurant. He ay even obtain a loan from the Small Business Administration to rnish the working capital for his new enterprise. All is going well r the small businessman until someone in the neighborhood where is presently situated learns of his impending move and so advises e Equal Employment Opportunity Commission.

An EEOC Commissioner, either on his own motion or acting through subordinate, could firmly, but politely, tell the small businessman at he could not move his business because "the community from nich you are moving has a higher percentage of minority workers an the community to where you are moving. In addition, you are oving so far away from the community where you are presently ated that the shift adversely affects the employment situation of ur minority employees inasmuch as they are in no position to acmpany you and cannot find similar jobs in the community where u are presently located."

The employer could vainly protest that the move is necessary because e neighborhood where he is presently situated is crime ridden and ngerous to human life. He could point out that he has been robbed, at some of his employees have been assaulted, and that business is lling off because many of his customers no longer patronize his tablishment.

"None of this makes any difference," the Commissioner could reply, ecause you have not met the criteria I have just set forth. You are priving minority workers of employment opportunities by virtue your move; hence, the move is denied because, in our opinion, it does t serve a valid business purpose."

The Commissioner could add, "Now, if you do not stay where you presently located. I will put the law to you in an action or proceedg under Title VII in which all the legal and financial might of the deral Government will be arrayed against you and in which you will denied such basic safeguards as the right of trial by jury."

The restaurant owner could then do one of three things. First, he ild submit to the threats of the EEOC, thus permitting a Federal ency to dictate how and where his business will continue to function. Second, he could close the doors of his restaurant and by putting

all of his employees on the unemployment rolls, he could escape furth
EEOC harassment.

Third, he could stand up and fight for his convictions, even to t
point of defending a lawsuit in a Federal district court under Ti
VII as presently written or by way of the cease-and-desist procedu
with only limited appellate review if S. 2515 becomes law.

If the small businessman should pursue the latter course and win,
could conceivably bankrupt himself in defraying the cost of his su
cessful defense. Let me again remind the Senate that S. 2515 wou
provide attorneys' fees for a charging party, but if the respondent
restaurant owner wins his case, he gets nothing.

In addition, if the restaurant owner should pursue the alternative
fighting for his convictions and lose, he could conceivably wind u
being sentenced to jail by a Federal judge sitting without a jury b
cause he truthfully felt that no bureau of the Federal Governmen
should compel him to stay in an undesirable location.

We, thus, see how the odds will be heavily weighed against th
owner of a small business with limited resources to establish that h
is not guilty of an unlawful employment practice. It is clear that th
coercive and oppressive power which could be so wielded by the EEO
could destroy utterly thousands of small private businesses in the man
ner which I have just described.

Like S. 2515, the memorandum is, in its essential features, a wicke
and antilibertarian attack on the rights of individuals and on the whol
concept of due process of law.

In principle, there is no difference between S. 2515 and the memo
randum. Both would deny basic rights of a majority of American citi
zens to protect the alleged rights of a few. As between S. 2515 an
the memorandum, one denies them by the dozen, while the other merel
denies them 12 at a time. If either of these proposals constitutes equal
ity—particularly when the overwhelming might and power of the
Federal Government is arrayed against an employer, a State or local
government, a union, or a school who dares defy the EEOC—then
I just do not understand the meaning of the term.

In his state of the Union address last year, President Nixon pledged
to the American people that he was going to bring the vast Federal
bureaucracy under control. The President said:

> The further away government is from the people, the stronger government be
> comes and the weaker people become. And a nation with a strong government
> and a weak people is an empty shell.

Later on in his remarks the President said:

> The idea that a bureaucratic elite in Washington knows best what is best for
> people everywhere and that you cannot trust local governments is really a con
> tention that you cannot trust the people to govern themselves. This notion is
> completely foreign to the American experience.

Apparently no one down at the Equal Employment Opportunity
Commission took the time to read the President's speech. I should like
to suggest to the President that if he wants to find a "bureaucratic
elite" which is running out of control, he need look no further than
his own Equal Employment Opportunity Commission.

At this point, I wish to remind and commend to the Senate one of
the greatest passages ever contained in an opinion by one of the great
liberal and great Supreme Court Justices of our time, Mr. Justice
Brandeis. He declared:

The makers of our Constitution undertook to secure conditions favorable to e pursuit of happiness. They recognized the significance of man's spiritual ture, of his feelings, and of the intellect. They knew that only a part of the in, pleasure, and satisfactions of life are to be found in material things. ey sought to protect Americans in their beliefs, their thoughts, their emotions, d their sensations. They conferred, as against the Government -the right to let alone, the most comprehensive of rights and the right most valued by ilized men.

When we weigh this bill and when we look beyond and behind it d see it in its true and unmasked form, we see that it is at variance ith the fundamental concept that our Government should be a gov-nment by law and not a government by men.

I urge the Senate to carefully scrutinize S. 2515 as a whole and ndemn the legislation when it has done so as insulting to American inciples. The aim of law must be to enlarge liberty, not extinguish it. Mr. President, in recent years we have already seen many of our ered rights laid on the altar of political expediency. This bill would t us well along the way to the erosion of other freedoms we now ow and enjoy and on which the American system is built.

Let us return to reason. Let us turn away from the dangers inherent S. 2515. Let us not be counted among the communicants at the altar expediency.

UAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—CORRECTING THE EEOC DEFICIENCIES IN THE 1964 CIVIL RIGHTS ACT

Mr. CRANSTON. Mr. President, I rise in support of S. 2515 as reported om committee, the proposed Equal Employment Opportunities En-rcement Act of 1971, which I am pleased to join in cosponsoring th the Senator from New Jersey (Mr. Williams) who serves as the airman of the Committee on Labor and Public Welfare, on which m privileged to serve, and with a bipartisan group of 31 of my leagues.

Mr. President, I would like to congratulate Chairman Williams r his dedication and hard work in the development of the legisla-n we have before us. Senator Williams held extensive hearings on is measure, and with the help of his most able staff—particularly rald Feder, counsel to the Labor Subcommittee, and Donald Elis-rg, associate counsel—worked long and diligently so that S. 2515 uld be considered by the Senate as the first item on the agenda this sion. The fruit of his efforts is a piece of civil rights legislation ich is critical to our total effort to end discrimination in America. The Equal Employment Opportunity Commission was established the Civil Rights Act of 1964 to deal with the problem of discrimi-tion in employment. The Commission was not, however, given the gal powers necessary to fulfill its mandate, and thus its authority cases of discrimination based on race, color, religion, sex, or national igin has been limited to conciliation efforts alone. The provisions of 2515 as reported from committee would provide the EEOC with legal muscle it needs to enforce its findings of discrimination. The l as it has been amended on the floor is less strong certainly, but still ong stride forward.

BACKGROUND

In the last Congress, both bodies of the Congress developed, and e Senate passed, legislation to give the EEOC the enforcement

powers it required. S. 2453 of last Congress was also introduced by t distinguished Senator from New Jersey (Mr. Williams). It succes fully passed the Senate, but the House adjourned before the bill cou be brought to the floor for a vote.

This year, it was the House which acted first on this vital legislatio During the first week of May, the House Education and Labor Co mittee approved by a vote of 21 to 12 H.R. 1746, to give tough enforc ment powers to the EEOC. Unfortunately, when this, the Hawki bill, came to the floor of the House for a vote, it was passed with wh I and other proponents of a strong enforcement measure viewed as most unfortunate substitute. The Erlenborn substitute, which w agreed to by only the narrowest margin, provided for court enforc ment powers in lieu of the tougher cease-and-desist authority whic I believe is so vital to attacking discrimination in hiring.

Subsequently, the Labor and Public Welfare Committee considere the House-passed measure along with S. 2515. The legislation favor ably reported by the committee, unlike the House version, extends th scope and coverage of the equal employment opportunity provision of the Civil Rights Act of 1964, provides for strong methods of en forcement, and consolidates in the EEOC a number of existing Federa programs aimed at ending job discrimination. In addition, the com mittee adopted several important changes, one of which I am pleased to say is a result of an amendment I offered to deal with discrimina tion in Federal Government employment and to open up more and better paying jobs in the Federal sector for Mexican Americans, blacks, Indians, orientals, women, and other minorities.

EQUAL OPPORTUNITY IN FEDERAL GOVERNMENT EMPLOYMENT

My Federal Government EEO amendment included in the com mittee bill would:

First. Put the Congress on record in favor of maximum affirmative action under Civil Service Commission direction to provide Federal jobs and real advancement opportunities for minority groups in Fed eral service. At the present time, the CSC derives its authority to act against discrimination from executive order.

Second. Specifically charge the Civil Service Commission with the responsibility to require all agencies to draw up affirmative action plans and see that they are carried out.

Third. Entitle an employee to back pay if discrimination has been found to exist—the Government has insisted it does not have legal authority to make such awards.

Fourth. Direct the Civil Service Commission to publish, twice a year, employment studies, agency by agency and for every large metropolitan area, to indicate progress in eliminating discrimination in Federal employment.

Fifth. For the first time, permit Federal employees to sue the Fed eral Government in discrimination cases—under the theory of Federal sovereign immunity, courts have not generally allowed such suits - and to bring suit either prior to or after CSC review of the agency EEO decision in the case. As with other cases brought under Title VII of the Civil Rights Act of 1964, Federal district court review would be based on the agency and/or CSC record and would not be a trial de novo.

Mr. President, the Federal Government must be a model of equal
nployment opportunity.
This requires that Federal agencies make a special effort to employ
nd promote qualified minority persons according to their relative
roportions in the population of the area surrounding agency field
fices. Although statistics available to me show that there has been
me recent improvement, the situation is by no means satisfactory. In
any instances, Federal minority employment remains disgracefully
w. There is a national pattern of disproportionately low employment
attern of certain minorities and a definite pattern of exclusion of
inorities, when they are employed, from the higher, better-paying
overnment positions.
We must provide meaningful opportunities for advancement, train-
g, and education in service in order to qualify minority group per-
ns for the higher and better-paying jobs, as well as to open up entry
vel jobs.
At the present time, although minority groups make up 19.4 percent
the total number of Federal employees, approximately 80 percent
e locked into grades 1 through 8 and account for 27.3 percent of the
west four GS—General Schedule—grades. Minority employees hold
ly 3.3 percent of the jobs at grades GS 14 and 15 and only 2 percent
those at Grades GS 16 through 18. An examination of the jobs held
the highest ranking minority group employees discloses that a
rge number of them are working only in civil rights-related fields.
e find this shocking pattern of exclusion in the very agency responsi-
e for creating equal employment opportunity in the Federal Govern-
ent—the Civil Service Commission. Of the Commission's 53 top jobs,
ly two are held by blacks, one of whom is a civil rights official.
In my own State of California, Mr. President, where at least 15.6
rcent of the population is Spanish-surnamed, I find similar discrep-
ncies in Federal minority group employment based on local popula-
ons. I am shocked that in my State only 5.6 percent of all Federal
bs, and in certain agencies even fewer of the jobs, are filled by
panish-surnamed persons. In many instances, the statistics for other
inorities are just as disturbing and inequitable.
In Los Angeles, for example, minority group employees make up 34
rcent of all Federal employees, but white Anglo employees hold
.4 percent of the top jobs in grades GS 14 and above. In contrast,
inority members hold nearly half of the positions in the very lowest
ades there—42 percent in GS 1 through 8—often doing the most me-
al work with little or no opportunity to advance to management,
pervisory or policymaking positions—only 6 percent in GS 14
rough 18.
The largest minority in Los Angeles, the Spanish-surnamed Ameri-
ns, makes up at least 18 percent of the population, but holds only 6.2
rcent of the total number of Federal jobs there. And the record of
nicano employment in certain agencies is even more disproportionate.
Moreover, in virtually every agency there is evidence of a serious
ck of upward mobility opportunity for Spanish-surnamed employ-
s. They hold only 25 of the 1,342 Federal positions above GS–14 in
e Los Angeles SMSA, and only 55 of those top 5,042 positions state-
de. This is grossly inadequate and must be rectified.
In contrast, the overall employment rate for blacks in the Los
ngeles area appears to be equitable—25 percent of all Federal jobs

there. However, most of their jobs are found in the entry-level, lower paying jobs—32.6 percent of all jobs at GS–1 through 4—indicating a clear lack of upward mobility in the Federal employment of blacks. In Los Angeles, for example, blacks hold only 22 of the 1,342 Federal positions above GS–14, and statewide hold only 60 of those top 5,04 positions. This highly unfortunate pattern is repeated in simila fashion in most of the other SMSA's in California.

Mr. President, because of the seriousness of the situation in the Lo Angeles area, I have asked for a special investigation by the Civi Service Commission. I have also sent letters to the heads of each Fed eral agency which has installations in California, outlining in detai their minority employment records. In addition, I have asked each o these agency heads to submit reports on the efforts each is taking t overcome discrimination in their Federal hiring and their efforts toward increasing upward mobility for their minority employees. I ask unanimous consent, Mr. President, that my February 7 letter t the Chairman of the U.S. Civil Service Commission be printed in the record at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1 on p. 1752.)

Mr. CRANSTON. I also ask unanimous consent to have included at this point in the record charts which my office has compiled from Civil Service Commission employment data and U.S. Census figures indicating the percentages of Federal minority group employees in the California SMSA's compared to their total percentage within the local population, followed by a 1969 and 1970 Minority Group Employment Study of Federal Employment in California which indicates the declining percentages of minority employment as the GS level inclines, compared to the ascending percentages of all other employees.

There being no objection, the charts were ordered to be printed in the Record as follows:

Area (SMSA)	Total population [1]				Total Federal employment [2]				
		Percent				Percent			
	Population	Spanish surnamed [3]	Blacks	American Indian	Employment	Spanish surnamed	Blacks	American Indian	Other white
Statewide California	19,953,134	15.6	7.0	0.46	293,770	5.6	14.9	0.5	75.0
Los Angeles-Long Beach	7,032,075	18.0	10.8	.35	66,475	6.2	25.0	.3	65.9
San Francisco-Oakland (Alameda)	3,109,519	14.0 13.0	10.6	.41 .53	73,408	3.8	22.8	.4	65.1
Sacramento	800,592	9.0	4.7	.42	27,390	4.6	7.5	.5	84.1
Fresno	413,053	25.0	4.9	.52	2,703	10.7	4.6	.6	81.8
San Diego	1,064,714	13.0	4.6	.43	29,272	6.2	8.0	.4	82.5
San Bernadino-Ontario-Riverside	1,143,146	16.0 (4)	4.4	.51 .6	13,121	11.8	6.2	1.3	80.1
San Jose (Santa Clara)	1,064,714	18.0	1.6	.38	8,442	6.9	6.6	.4	81.4

[1] From official U.S. Census Bureau, 1970.
[2] From U.S. Civil Service Commission report "Minority Group Employment in the Federal Government," 1970.
[3] County.
[4] Not available.

ABLE 3-6.—1970 MINORITY GROUP STUDY, CALIFORNIA: FULL-TIME EMPLOYMENT AS OF NOV. 30, 1970

Pay system	Total full-time employees number	Negro		Spanish surnamed		American Indian		Oriental		All other employees	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all pay systems	293,770	43,711	14.9	16,506	5.6	1,352	0.5	11,855	4.0	220,356	75.0
Total general schedule or similar	127,679	11,417	8.9	4,423	3.5	627	.5	4,698	3.7	106,514	83.4
through GS-4	29,511	5,239	17.8	1,516	5.1	225	.8	1,027	3.5	21,504	72.9
through GS-8	36,330	4,349	12.0	1,523	4.2	210	.6	1,577	4.3	28,670	78.9
through GS-11	35,228	1,323	3.8	981	2.8	127	.4	1,358	3.9	31,639	89.2
through GS-13	21,568	446	2.1	347	1.6	54	.3	630	2.9	20,091	93.2
through GS-15	4,857	58	1.2	54	191	11	.2	106	2.2	4,628	95.3
through GS-18	185	2	1.1	1	.5					182	98.4
Total wage systems	84,780	14,774	17.4	6,805	8.0	481	.6	4,030	4.8	58,690	69.2
rough $5,499	221	43	19.5	39	17.6	3	1.4	4	1.8	132	59.7
through $6,999	6,822	2,145	31.4	618	9.1	38	.6	751	11.0	3,270	47.9
through $7,999	10,746	2,585	24.1	1,332	12.4	63	.6	655	6.1	6,111	56.9
through $8,999	19,130	4,794	25.1	1,843	9.6	132	.7	784	4.1	11,577	60.5
through $9,999	30,589	4,127	13.5	2,165	791	172	.6	1,314	4.3	22,811	74.6
10 through $13,999	16,156	1,065	6.6	785	4.9	68	.4	516	3.2	13,722	84.9
10 through $17,999	951	14	1.5	22	2.3	5	.5	5	.5	905	95.2
10 and over	165	1	.6	1	.6			1	.6	162	98.2
Total postal field service	79,602	17,397	21.9	5,231	6.6	242	.3	3,087	3.9	53,645	67.4
through PFS-5	66,911	15,251	22.8	4,609	6.9	206	.3	2,506	3.7	44,339	66.3
through PFS-9	10,388	1,975	19.0	562	5.4	35	.3	512	4.9	7,304	70.3
0 through PFS-12	1,729	131	7.6	47	2.7	1	.1	55	3.2	1,496	86.5
3 through PFS-16	522	39	7.5	12	2.3			13	2.5	458	87.7
7 through PFS-19	49	1	2.0	1	2.0			1	2.0	46	93.9
0 through PFS-21	3									3	100.0
Total other pay systems	1,709	113	6.6	47	2.8	2	.1	40	2.3	1,507	88.2
rough $6,499	535	81	15.1	25	4.7	1	.2	25	4.7	403	75.3
through $9,999	464	25	5.4	16	3.4	1	.2	8	1.7	414	89.2
10 through $13,999	316	2	.6	4	1.3			4	1.3	306	96.8
10 through $17,999	141	2	1.4	2	1.4			2	1.4	135	95.7
10 through $25,999	164	3	1.8					1	.6	160	97.6
10 and over	89									89	100.0

cludes 4th class postmasters and rural carriers.

rce: From the U.S. Civil Service Commission study: "Minority Group Employment in Federal Government" Nov. 30,

TABLE 3—6a.—1969 MINORITY GROUP STUDY, CALIFORNIA

FULL-TIME EMPLOYMENT AS OF NOV. 30, 1969

Pay system	Total full-time employees number	Negro		Spanish surnamed		American Indian		Oriental		All other employees
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number
Total all pay systems	300,745	43,733	14.5	16,556	5.5	1,375	0.5	11,744	3.9	227,337
Total general schedule or similar	128,812	11,069	8.6	4,224	3.3	642	.5	4,502	3.5	108,375
GS-1 through GS-4	31,883	5,513	17.3	1,573	4.9	254	.8	1,098	3.4	23,445
GS-5 through GS-8	36,248	3,925	10.8	1,404	3.9	196	.5	1,511	4.2	29,212
GS-9 through GS-11	35,095	1,206	3.4	905	2.6	132	.4	1,264	3.6	31,588
GS-12 through GS-13	20,785	380	1.8	290	1.4	53	.3	535	2.6	19,527
GS-14 through GS-15	4,628	44	1.0	51	1.1	7	.2	94	2.0	4,432
GS-16 through GS-18	173	1	.6	1	.6					171
Total wage systems	93,288	15,803	16.9	7,250	7.8	509	.5	4,276	4.6	65,450
Up through $5,499	1,749	175	10.0	237	13.6	4	.2	217	12.4	1,116
$5,500 through $6,999	14,094	3,710	26.3	1,390	9.9	71	.5	1,143	8.1	7,780
$7,000 through $7,999	20,753	4,723	22.8	2,187	10.5	137	.7	883	4.3	12,823
$8,000 through $8,999	28,706	4,603	16.0	2,041	7.1	178	.6	1,144	4.0	20,740
$9,000 through $9,999	16,866	2,025	12.0	977	5.8	82	.5	611	3.6	13,171
$10,000 through $13,999	10,578	564	5.3	408	3.9	37	.3	274	2.6	9,295
$14,000 through $17,999	462	3	.6	10	2.2			4	.9	445
$18,000 and over	80									80
Total postal field service	77,012	16,751	21.8	5,044	6.5	221	.3	2,943	3.8	52,053
PFS-1 through PFS-5[1]	65,811	15,133	23.0	4,547	6.9	187	.3	2,447	3.7	43,497
PFS-6 through PFS-9	9,101	1,491	16.4	448	4.9	33	.4	448	4.9	6,681
PFS-10 through PFS-12	1,596	104	6.5	39	2.4	1	.1	37	2.3	1,415
PFS-13 through PFS-16	463	22	4.8	10	2.2			10	2.2	421
PFS-17 through PFS-19	38	1	2.6					1	2.6	36
PFS-20 through PFS-21	3									3
Total other pay systems	1,633	110	6.7	38	2.3	3	.2	23	1.4	1,459
Up through $6,499	577	85	14.7	22	3.8	2	.3	11	1.9	457
$6,500 through $9,999	514	21	4.1	14	2.7	1	.2	9	1.8	469
$10,000 through $13,999	188			2	1.1			1	.5	185
$14,000 through $17,999	168	1	.6					2	1.2	165
$18,000 through $25,999	106	2	1.9							104
$26,000 and over	80	1	1.3							79

[1] Includes 4th class postmasters and rural carriers.

Mr. CRANSTON. Mr. President, I do not have the statistics on t Federal employment trends for women within California, but I h have information for the national level which I am sure will be interest to my colleagues. These statistics show employment discre agencies with women holding 76.4 percent of all-white-collar Feder jobs at GS-2, 79.1 percent of those jobs at GS-3, and 75.9 percent GS-4. Yet at the higher levels of white collar employment wom hold only 1.8 percent of the jobs at GS-16, 1.5 percent at GS-1 and 0.6 percent at GS-18. These deeply distressing statistics are mo fully set forth in an additional chart which is included as an attach ment to my February 7 letter to the Chairman of the Civil Servi Commission, which will be set forth at the end of my remarks.

With respect to the employment of American Indians, Mr. Pres dent, although they make up 0.46 percent of California's populatio and comprise 0.5 percent of the State's Federal Government employ ment, some Federal agencies employ well below this level and other employ no Indians at all.

My amendment, then, adds to Title VII of the Civil Rights Act a w section 717 making clear the obligation of the Federal Govern- ent to insure that all personnel actions are free from discrimina- on based on race, color, sex, religion, or national origin. The Civil rvice Commission is mandated under this title to enforce an affir- ative equal employment opportunity program in the Federal Gov- ment.

I want to express my gratitude to Chairman Williams and the nking minority member of the committee (Mr. Javits)—and his nority counsel, Gene Mittelman—for their support of my amend- nt. I also want to thank the Senator from Massachusetts (Mr. nnedy), and the Senator from Colorado (Mr. Dominick), who ned with me as cosponsors, for their cooperation in this amend- nt.

I urge my colleagues to consider carefully these new provisions— tion 11 of S. 2515—and to approve the bill with this amendment changed.

I would like now to discuss some of the other major provisions of 2515 as reported from committee.

EXTENSION OF COVERAGE

Mr. President, section 2 of the bill amends section 701 of the Civil ghts Act of 1964 to extend coverage to the following groups: First, ployees of private employers with 15—eight as reported from nmittee—or more workers and members of unions with 15—also ht originally—or more members, to become effective 1 year after actment of the law; the present limit is 25; second, State and local vernment employees; and third, teachers and other employees of ucational institutions.

The committee agreed with the Chairman of the EEOC that dis- mination must be attacked wherever it exists. We recognize that aller establishments have frequently been among the most flagrant lators of equal employment opportunity. It was for this reason t coverage under S. 2515 as reported from committee was extended groups of eight or more workers. The compromise to reduce from to 15 is still a significant step forward. The delay in the effective e of this provision was included to insure that the Commission uld have adequate time to prepare to assume and carry out effec- ely these new responsibilities.

The bill also deletes the existing exemptions for State and local vernment employees but provides for enforcement through civil ions brought by the Attorney General rather than through cease- d-desist orders. I believe this is a desirable compromise rather than powering a Federal agency—the EEOC—to order sovereign units State and local government to take particular employment actions. Both the Constitution and Federal law prohibit job discrimination State and local governments, but the existence of pervasive dis- mination in State and local government is all too well documented. hat is lacking, however, is an effective Federal administrative chinery to enforce these prohibitions. Thus, the expansion of Title I coverage to State and local governments is necessary if we are to vide a truly effective means of implementing the declared equal ployment opportunity policy of our Nation.

The existing exemption for employees of educational institution also eliminated by S. 2515. There are at present over 120,000 edu tional institutions, with approximately 2.8 million teachers and p fessional staff members and another 1.5 million nonprofessional st members. Yet all of these employees are, at present, without an eff tive Federal remedy in the area of employment discrimination. As other areas of employment, statistics for educational institutions in cate that minorities, and particularly women, are precluded from more prestigious and higher paying positions and are relegated to more menial and lower paying positions. I believe it is essential th these employees be given the same opportunity to redress their grie ances as are available to other employees in the private sector.

I have already discussed in great detail the provisions of section of S. 2515, which mandates the Civil Service Commission to strength its programs to eliminate discrimination in Federal employment a job advancement and provides for civil suit remedy in Federal distri court.

ENFORCEMENT

Section 4 of S. 2515 as reported from committee would have revis section 706 of the act to enable the EEOC to process a charge employment discrimination through the investigation, conciliatio administrative hearing, and judicial review stages. The present a allows the Commission to pursue charges only through the inform methods of persuasion and conciliation, a factor which has proven be seriously defective in providing an effective Federal remedy fo violations of Title VII.

The need to provide some form of direct enforcement power for th EEOC has been voiced since the inception of the Commission. Indee last Congress, during testimony before the Labor and Public Welfa Committee on S. 2453 and again this past year in testimony on S. 251 EEOC Chairman William Brown concurred in the need for cease-and desist authority.

The committee was not persuaded that the direct court enforcemen technique, the method included in the House version, would be faste and more effective than cease-and-desist enforcement. The present, an ever increasing, overcrowded caseloads of the Federal courts is a wel known fact, and measures are desperately needed to expedite trials an relieve the court dockets, not to increase their case responsibilities There is ample evidence that reliance on the court enforcement ap proach could create an unacceptable deluge of new cases on the already previously backlogged Federal courts. In 1970 alone, for instance there was a 63 percent increase in the filing of civil rights cases.

It was for this reason that the Labor and Public Welfare Committee as did the House Education and Labor Committee last May, rejected the court enforcement approach. Moreover, without exception, every spokesman for the major civil rights groups who appeared before our committee strongly supported the cease-and-desist enforcement powers provided in S. 2515.

The major benefits of the cease-and-desist approach are that: First, it would encourage early settlement of claims, thereby further alleviat ing the courts and providing quick relief for aggrieved individuals; second, it is the type of authority given to many other Federal regu latory agencies, including the National Labor Relations Board, the

partment of Justice, the Interstate Commerce Commission, the Dertment of Labor, and the Department of Health, Education, and lfare, to name but a few; third, it is the type of enforcement hority prefered by 32 of the 37 States which have equal employment portunity laws; fourth, it would insure a unified approach to the blems of discrimination since decisions would be rendered by one ency rather than several hundred district court judges; and fifth, would provide the needed expertise in recognizing and solving the re subtle, institutional forms of discrimination.

The enforcement authority in S. 2515 as reported from committee vided that employees of private employers would have their rights forced by the EEOC through administrative complaint and hearing er investigation and conciliation of charges. If the EEOC found unlawful employment practice, it could have issued cease-and-desist lers subject to review in U.S. courts of appeals.

n my judgment, cease-and-desist authority was, by far the stronger l more workable enforcement mechanism. However, the Senate has ed by a narrow margin to substitute district court suits to enforce COC findings. This is better than no EEO enforcement mechanism all, and I believe that civil rights groups, and the minority comnity generally will make the most of this new remedy.

CONSOLIDATION OF ENFORCEMENT FUNCTIONS

Mr. President, section 5 of S. 2515 would transfer from the Attorney neral, as granted under section 707 of present law —to the EEOC authority to bring "pattern or practice" suits directly in the Fedl district courts. This transfer would take place over a period of 2 rs, with the EEOC and the Attorney General having concurrent isdiction during this time. This transfer to the Commission should help the Federal Government pursue a more unified attack upon ployment discrimination.

Section 10 of S. 2515 as reported would have provided for the transfrom the Department of Labor to the Commission of the authority, ctions, and responsibilities of the Office of Federal Contract Comance—OFCC—authority, which presently rests in Executive Or- 11246—as amended by Executive Order 11375. The executive or- stipulates that Government contractors and subcontractors are uired to agree to the following contract provision:

> The contractor will not discriminate against any employee or applicant for emment because of race, color, religion, sex or national origin. The contractor take affirmative action to ensure that applicants are employed, and that ployees are treated during employment, without regard to their race, color, gion, sex, or national origin.

During committee consideration of the equal employment opporities enforcement bill—S. 2453—in the 91st Congress, I joined with ator Kennedy in moving successfully to delete the provision transring this function from the Department of Labor to the mmission.

believed then, and I continue to believe, that it would be a mistake consolidate all EEO functions in one Federal agency, thereby creng a single target for those who would seek to retard advancement this field. I recognize, at the same time, that the OFCC record of ievement in this field leaves a good deal to be desired. I just am

not convinced that consolidation of this function would have the effect of improving the EEO Federal contract compliance effort.

Although I recognize that many, as fully committed to equal employment as I am, support this OFCC/EEOC consolidation, I differ with their views and thus voted for the successful amendment to delete this transfer from the bill.

In conclusion, Mr. President, although I believe the bill as reported has been weakened by floor amendments, I urge my colleagues to support it. If we are to make progress in fulfilling our commitment to equal employment opportunity for all Americans, we must make the Equal Employment Opportunity Commission a more effective instrument for preventing discrimination in employment. To this end, the extended coverage which S. 2515 provides; its new methods of enforcement, although not optimum; and its stress on Federal Government equal employment opportunity promise real gains in this long and arduous civil rights battle.

EXHIBIT 1

U.S. SENATE,
Washington, D.C., February 7, 1972.

HON. ROBERT HAMPTON,
Chairman, U.S. Civil Service Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: I am increasingly disturbed by the gross discrepancies in the employment of certain minorities and their lack of advancement opportunities throughout the Federal Government.

The Federal Government should be a model of equal employment opportunity. I know that you fully share this view.

This requires that Federal agencies make a special effort to employ and promote qualified minority persons according to their relative proportions in the population of the area surrounding the agency field offices. Although there has been some recent improvement, the situation is by no means satisfactory. In many instances, Federal Government minority employment remains disgracefully low. There is a national pattern of disproportionately low employment of certain minorities and a definite pattern of exclusion of minorities, when they are employed, from the higher, better-paying government positions.

In California, where at least 15.6% of the population is Spanish-surnamed, I find many such discrepancies in Federal minority group employment based on local populations. I am shocked that in my state only 5.6% of all Federal jobs and only 5.4% of all CSC jobs, are filled by Spanish-surnamed persons. Statewide the CSC fills 16.9% of the GS 1 through 4 positions with blacks, yet blacks hold only 2 of the 85 jobs above GS 12.

In Los Angeles, for example, minority group employees make up 34% of all Federal employees, but white Anglo employees hold 95.4% of the top jobs in grades GS 14 and above. In contrast, minority group members hold nearly half of the positions in the very lowest grades there (42% in GS 1 through 8), often doing the most menial work with little or no opportunity to advance to management, supervisory or policy-making positions (only 6% in GS 14 through 18).

The largest minority in Los Angeles, the Spanish-surnamed Americans, makes up at least 18% of the population, but holds only about 6.2% of the total number of Federal jobs there.

The Civil Service Commission's record of Chicano employment is almost as disproportionate with only 8.6% of the CSC employees having Spanish-surnames in the Los Angeles Standard Metropolitan Statistical Area (SMSA). In the San Francisco SMSA, only 4% of all CSC employees are Spanish surnamed, as compared to the total local Chicano population share of 14%. There also is evidence of a serious lack of upward mobility opportunity for Spanish-surnamed CSC employees in San Francisco where they hold only 1 of the 102 positions above GS 9.

The data reveal that the CSC has a good record in the employment of blacks in entry level, lower paying jobs. But they also show a clear lack of opportunity for upward mobility on the part of Black CSC employees. In the San Francisco SMSA, blacks occupying 10.3% of all CSC jobs, hold 14% of the jobs between

S 1 thru 4 but only 4 of 102 jobs above GS 8 and none of the 17 jobs at GS 14 rough 18. This pattern is repeated in similar fashion at most of the other CSC stallations in California.

In discussing upward mobility opportunities, I am not suggesting the advance- ent of persons who do not meet job qualifications. Rather, special efforts must made to offer accessible training, upgrading and ongoing educational oppor- nities to minority persons to prepare them for career advancement.

As a member of the Senate Labor and Public Welfare Committee, I have in- oduced in Committee amendments to S. 2515, the proposed "Equal Employ- ent Opportunities Enforcement Act of 1971," which are intended to deal with scrimination in Federal Government employment and to open up more high level sitions for minorities, particularly Mexican-Americans, blacks, Indians, ientals and women.

I am enclosing for your information a copy of the language of my amendment ntained in the bill as reported to the Senate (section 11) and the Committee port language explaining the amendment along with the Committee's views ages 12–17). I am also enclosing, for your examination and comment, charts pared by both your office and mine showing proportionate employment and ade level breakdown both statewide and for local SMSA's, along with a copy of *1970 Minority Group Study* (Civil Service Commission) describing in several arts the CSC's employment and advancement opportunity record in California. fortunately, in some instances I do not have the full in depth 1970 data on pulation size, especially in the cases of American Indians, Orientals and wom- (I have asked the Census Bureau to supply me with this information as soon it is available for the 1970 census.)

Although I do not have the statistics on the employment trends for women hin California, I do have information for the national level. These statistics ow employment discrepancies with women holding 76.5% of all white collar deral jobs at GS 2, 79.1% of the jobs at GS 3, and 75.9% at GS 4; yet at the her levels of employment they hold only 1.8% of the jobs at GS 16, 1.5% GS 17, and .6% at GS 18 (see enclosed charts). With respect to the employ- nt of American Indians, I note that whereas this minority makes up .46% of California population and comprises .5% of the State's Federal Govern- nt employment, the Civil Service Commission in California employs no erican Indians.

As a member of the Senate Committee on Labor and Public Welfare, and the nate Committee on Housing and Urban Affairs, I am particularly concerned out the minority employment trends for the Civil Service Commission and er Federal agencies in California. I, therefore, am requesting your com- nts on the comparison of local population statistics to the Federal minority ployment record for the areas mentioned in California, both for the Civil vice Commission itself and for each Federal Agency in California. In each ation where there are large discrepancies, I would also appreciate detailed ormation on the affirmative steps you and each agency concerned is taking improve both the upward mobility and the overall employment ratios for each nority group in each particular area.

To this end, I request that you send a special team to conduct a field study the Los Angeles Federal Government employment situation for minorities l prepare a special action plan to bring about prompt and substantial im- vement. (Jonathan R. Steinberg, my Committee counsel, has already dis- sed with Mr. Irving Kator, Assistant Executive Director of the Com- sion.) Therefore, I would hope this field study and plan, if successful, can extended to all other appropriate areas in the state.

I am sending similar letters to the heads of each Federal agency with instal- ons in California. I will be sending you a copy of each such letter for your iew and comment. I would greatly appreciate any assistance you can pro- these agencies to improve their minority employment ratios and upward bility opportunities.

I would also appreciate your forwarding a copy of this letter and the enclo- es to the head of each Civil Service Commission installation in California er your jurisdiction, and supplying me with a list of those addresses and ies of their reports.

Thank you for your valuable cooperation in this matter.

Sincerely,

ALAN CRANSTON.

MINORITY GROUP EMPLOYMENT IN THE FEDERAL GOVERNMENT, 1970—T
EMPLOYMENT STATISTICS FOR U.S. CIVIL SERVICE COMMISSION

CONTENTS (MINORITY GROUP EMPLOYMENT CHARTS)

Chart 1.—Total population chart for regions within California.
Chart 2.—Total Federal employment chart—California.
Chart 3.—Your individual agency's employment record—California.
Chart 4.—Upward mobility and trends in minority employment for yo
individual agency.
Chart 5.—Your agency's employment record for women—nationwide.
Chart 6.—Upward mobility and trends in employment of women for the Fe
eral Government—nationwide.

ATTACHMENTS

1. 1970 minority group study for your agency prepared by the U.S. Civ
Service Commission—November 1970. (Charts include: California statewid
statistics, and in some instances you will find SMSA charts for regions withi
California. Charts illustrate level of minority employment and upward mo
bility trends.)

2. S. 2515 "The Equal Employment Opportunities Enforcement Act of 1971
relating to nondiscrimination in Federal Government employment.

3. The committee report related to S. 2515 (section relating to nondiscrimi
nation in Federal Government employment). Senate Committee on Labor an
Public Welfare.

1.—CIVIL SERVICE COMMISSION—TOTAL POPULATION CHART

Area	Total population [1]	Spanish [2] surnamed (percent)	Blacks [1] (percent)	American India (percent
Statewide, California	19, 953, 134	15.6	7.0	0.4
Los Angeles Long Beach	7, 032, 075	18.0	10.8	.3
San Francisco	3, 109, 519	14.0	10.6	.4
Oakland (Alameda)		31.0		.5
Sacramento	800, 592	9.0	4.7	.4
Fresno	413, 053	25.0	4.9	.5
San Diego	1, 064, 714	13.0	4.6	.4
San Bernardino	1, 143, 146	16.0	4.4	.5
Ontario/Riverside		(3)		.6
San Jose (Santa Clara)	1, 064, 714	18.0	1.6	.3

[1] SMSA.
[2] County.
[3] Not available.

Note: All statistics are from official U.S. Census Bureau 1970.

2.—CIVIL SERVICE COMMISSION—TOTAL FEDERAL EMPLOYMENT CHART

Area (SMSA)	Total employment	Spanish surnamed (percent)	Blacks (percent)	American Indian (percent)	Other (perc
Statewide California	293, 770	5.6	14.9	0.5	75.0
Los Angeles/Long Beach	66, 475	6.2	25.0	.3	65.9
San Francisco	73, 408	3.8	22.8	.4	65.1
Oakland (Alameda)					
Sacramento	27, 390	4.6	7.5	.5	84.1
Fresno	2, 703	10.7	4.6	.6	81.8
San Diego	29, 272	6.2	8.0	.4	82.5
San Bernardino	13, 121	11.8	6.2	1.3	80.1
Ontario/Riverside					
San Jose (Santa Clara)	8, 442	6.8	6.6	.4	81.4

3. CIVIL SERVICE COMMISSION—AGENCY EMPLOYMENT CHART

Area (SMSA)	Total employment	Spanish surnamed (percent)	Blacks (percent)	American Indian (percent)	(Other) white (percent)
atewide California	504	5.4	11.7	0	80.0
s Angeles/Long Beach	116	8.6	22.4	0	66.4
n Francisco	272	4.0	10.3	0	82.4
kland (Alameda)					
cramento	36	2.8	5.6	0	88.9
esno	1	0	0	0	100.0
n Diego	36	2.8	8.3	0	83.3
n Bernadino	14	28.6	0	0	71.4
tario/Riverside					
n Jose (Santa Clara)	10	D	0	D	80.0

Note: Charts Nos. 2 and 3 contain statistics taken from U.S. Civil Service Commission minority group employment in e Federal Government, November 1970.

E STATE OF CALIFORNIA, U.S. CIVIL SERVICE COMMISSION, UPWARD MOBILITY, AND TRENDS IN MINORITY EMPLOYMENT

Total general schedule (pay system) [1]	Percent of total agency positions held			
	Spanish surnamed	Blacks	American Indian	White (other)
-1 through 4	8.2	16.9	0	71.0
-5 through 8	8.0	18.4	0	69.0
-9 through 11	1.6	4.8	0	88.8
-12 through 13	1.5	3.0	0	95.5
-14 through 15	0	0	0	100.0
-16 through 18	0	0	0	100.0
to $5,499				
500 through $6,999				
000 through $7,999				
000 through $8,999				
000 through $9,999				
,000 through $13,999				
.000 through $17,999				
,000 and above				

Statistics taken from the 1970 minority group study for your agency published by the U.S. Civil Service Commission— vember 1970.

TABLE 2—25.—WORLD/NATIONWIDE—1970 MINORITY GROUP STUDY, CIVIL SERVICE COMMISSION

FULL-TIME EMPLOYMENT AS OF NOV. 30, 1970

Pay system	Total full-time employees, number	Negro		Spanish surnamed		American Indian		Oriental		All other employees	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Pe ce
Total all pay systems	5,268	1,236	23.5	119	2.3	8	0.2	38	0.7	3,867	73
Total general schedule or similar	5,216	1,200	23.0	118	2.3	8	.2	38	.7	3,852	73.
GS-1 through GS-4	1,860	722	38.8	58	3.1	5	.3	16	.9	1,059	56.
GS-5 through GS-8	1,081	325	30.1	26	2.4			9	.8	721	66.
GS-9 through GS-11	1,124	104	9.3	15	1.3	1	.1	11	1.0	993	88.
GS-12 through GS-13	760	36	4.7	14	1.8	2	.3	1	.1	707	93.
GS-14 through GS-15	338	12	3.6	5	1.5			1	.3	320	94.
GS-16 through GS-18	53	1	1.9							52	98.
Total wage systems	48	35	72.9	1	2.1					12	25.
Up through $5,499	4	4	100.0								
$5,500 through $6,999	13	9	69.2	1	7.7					3	23.
$7,000 through $7,999	13	8	61.5							5	38.
$8,000 through $8,999	9	8	88.9							1	11.
$9,000 through $9,999	5	3	60.0							2	40.
$10,000 through $13,999	4	3	75.0							1	25.
$14,000 through $17,999											
$18,000 and over											
Total other pay systems	4	1	25.0							3	75.
Up through $6,499											
$6,500 through $9,999											
$10,000 through $13,999											
$14,000 through $17,999											
$18,000 through $25,999											
$26,000 and over	4	1	25.0							3	75.

TABLE 2-25A.—1969 MINORITY GROUP STUDY CIVIL SERVICE COMMISSION

FULL-TIME EMPLOYMENT AS OF NOV. 30, 1969

Pay system	Total full-time employees, number	Negro		Spanish surnamed		American Indian		Oriental		All other employees	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Per cen
Total all pay systems	4,886	1,123	23.0	118	2.4	6	0.1	29	0.6	3,610	73.
Total general schedule or similar	4,839	1,092	22.6	118	2.4	6	.1	29	.6	3,594	74.
GS-1 through GS-4	1,666	686	41.2	64	3.8	3	.2	12	.7	901	54.
GS-5 though GS-8	1,021	284	27.8	22	2.2	1	.1	7	.7	707	69
GS-9 through GS-11	1,126	78	6.9	18	1.6	1	.1	8	.7	1,021	90.
GS-12 through GS-13	686	33	4.8	9	1.3	1	.1	1	.1	642	93.
GS-14 through GS-15	293	11	3.8	5	1.7			1	.3	276	94.
GS-16 through GS-18	47									47	100
Total wage systems	43	30	69.8							13	30.
Up through $5,499	7	6	85.7							1	14.
$5,500 through $6,999	15	11	73.3							4	26.
$7,000 through $7,999	16	11	68.8							5	31.
$8,000 through $8,999	2	1	50.0							1	50.
$9,000 through $9,999	2	1	50.0							1	50.
$10,000 through $13,999	1									1	100
$14,000 through $17,999											
$18,000 and over											
Total other pay systems	4	1	25.0							3	75.
Up through $6,499											
$6,500 through $9,999											
$10,000 through $13,999											
$14,000 through $17,999											
$18,000 through $25,999											
$26,000 and over	4	1	25.0							3	75.

TABLE B.—ALL AGENCIES

FULL-TIME WHITE COLLAR EMPLOYMENT BY GENERAL SCHEDULE AND EQUIVALENT GRADES—WORLDWIDE

	Employment, Oct. 31, 1969			Employment, Oct. 31, 1966			Percent change	
		Women			Women			
rade[1]	Total	Number	Percent	Total	Number	Percent	Total	Women
.....	5,533	3,042	69.4	5,041	3,505	69.5	9.0	9.6
.....	25,512	19,900	76.4	59,811	44,900	80.5	54.3	56.6
.....	121,312	95,932	79.1	140,472	111,874	75.4	18.3	14.2
.....	100,134	142,876	75.9	214,936	134,810	62.7	12.5	6.0
.....	643,019	194,000	30.2	534,561	149,420	20.0	20.3	29.0
.....	133,262	61,457	46.1	106,099	40,472	45.7	25.6	26.8
.....	150,895	53,579	35.5	132,137	49,109	37.2	14.2	9.0
.....	47,062	11,402	29.8	31,252	7,836	25.1	53.1	45.9
.....	170,769	42,056	24.6	147,643	29,151	19.7	15.7	44.9
).....	25,570	3,560	13.9	21,102	2,649	12.0	21.2	34.7
1.....	155,386	10,332	11.8	136,868	19,409	9.9	19.5	35.9
2.....	191,724	9,136	6.9	109,216	6,814	6.2	20.0	34.1
3.....	98,667	4,290	4.9	78,442	3,155	4.0	25.0	36.0
4.....	49,127	1,009	3.0	39,741	1,396	3.5	29.6	35.9
5.....	26,410	717	2.7	20,412	494	2.4	29.4	45.1
6.....	6,344	115	1.8	6,060	111	1.0	4.7	9.6
7.....	2,498	37	1.5	2,391	94	1.4	4.5	8.9
8.....	700	4	.6	622	5	.8	12.5	20.0
bove 18...	656	17	2.6	583	11	1.9	12.5	54.5
ngraded..	6,402	2,553	39.9	45,673	9,939	21.0	6.0	74.9
Total[2]...	1,909,798	665,294	33.4	1,037,062	617,220	33.6	.3	7.0

[1] The grades or levels of the various pay systems have been considered equivalent to specific general schedule grades lely on the basis of comparison of salary rates, specifically, in most instances, by comparing the 4th step GS rates with mparable rates in other pay systems.
[2] Excludes employees of Central Intelligence Agency, National Security Agency, Board of Governors of Federal Reserve ystem and foreign nationals overseas.

TABLE C.—CIVIL SERVICE COMMISSION

FULL-TIME WHITE COLLAR EMPLOYMENT BY GENERAL SCHEDULE AND EQUIVALENT GRADES, WORLDWIDE—WOMEN

	Employment, Oct. 31, 1969			Employment, Oct. 31, 1966			Percent change	
		Women			Women			
ade[1]	Total	Number	Percent	Total	Number	Percent	Total	Women
.....	26	23	88.5	23	21	91.3	13.0	9.5
... ...	236	205	86.9	471	425	90.2	−49.9	−51.8
.....	711	634	89.2	728	630	86.5	−2.3	.6
....	698	609	87.2	491	433	88.2	42.2	40.6
....	577	486	84.2	484	375	77.5	19.2	29.6
... ...	140	124	88.6	76	63	82.9	84.2	96.8
.....	280	145	51.8	320	136	42.5	−12.5	6.6
....	18	15	83.3	8	5	62.5	125.0	200.0
... .	350	162	46.3	348	133	38.2	.6	21.8
....	25	16	64.0	18	7	38.9	38.9	128.6
..... .	773	128	16.6	744	57	7.7	3.9	124.6
... . .	341	71	20.8	280	48	17.1	21.8	47.9
.....	349	44	12.6	267	32	12.0	30.7	37.5
....	171	10	5.8	135	7	5.2	26.7	42.9
.....	124	4	3.2	87	4	4.6	42.5	0
.....	27	2	7.4	28	1	3.6	−3.6	100.0
....	14	1	7.1	6	.....	.....	133.3	*
.....	6	... .	.	3	.....	.....	100.0	0
ove 18...	4	.. ..		4	.....	.....	0	0
graded...	.. ..		. ..	.....	.....	.....	.....	.....
Total[2].	4,870	2,679	55.0	4,521	2,377	52.6	7.7	12.7

The grades or levels of the various pay systems have been considered equivalent to specific general schedule grades ely on the basis of comparison of salary rates, specifically, in most instances, by comparing the 6th step GS rates with mparable rates in other pay systems.
[2] Excludes foreign nationals overseas.

CIVIL SERVICE COMMISSION

1970 MINORITY GROUP STUDY, AGENCY WITHIN STATE, FULL-TIME EMPLOYMENT AS OF NOV. 30, 1970 (CALIFORNIA

Pay system	Total full-time employees, number	Negro		Spanish surnamed		American Indian		Oriental		All other employees	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Per cen
Total, all pay systems	504	59	11.7	27	5.4			18	3.6	400	79.
Total, general schedule or similar	504	59	11.7	27	5.4			18	3.6	400	79.
GS-1 through 4	207	35	16.9	17	8.2			8	3.9	147	71.
GS-5 through 8	87	16	18.4	7	8.0			4	4.6	60	69.
GS-9 through 11	125	6	4.8	2	1.6			6	4.8	111	88.
GS-12 through 13	66	2	3.0	1	1.5					63	95.
GS-14 through 15	18									18	100.
GS-16 through 18	1									1	100.
Total, wage systems											
Up through $5,499											
$5,500 through $6,999											
$7,000 through $7,999											
$8,000 through $8,999											
$9,000 through $9,999											
$10,000 through $13,999											
$14,000 through $17,999											
$18,000 and over											
Total, other pay systems											
Up through $6,499											
$6,500 through $9,999											
$10,000 through $13,999											
$14,000 through $17,999											
$18,000 through $25,999											
$26,000 and over											

AGENCY WITHIN STANDARD METROPOLITAN STATISTICAL AREA (SAN FRANCISCO-OAKLAND, CALIF.)

Total, all pay systems	272	28	10.3	11	4.0			9	3.3	224	82.4
Total, general schedule or similar	272	28	10.3	11	4.0			9	3.3	224	82.4
GS-1 through 4	121	17	14.0	7	5.8			5	4.1	92	76.0
GS-5 through 8	49	8	16.3	3	6.1			2	4.1	36	73.5
GS-9 through 11	50	2	4.0	1	2.0			2	4.0	45	90.0
GS-12 through 13	35	1	2.9							34	97.1
GS-14 through 15	16									16	100.0
GS-16 through 18	1									1	100.0
Total, wage systems											
Up through $5,499											
$5,500 through $6,999											
$7,000 through $7,999											
$8,000 through $8,999											
$9,000 through $9,999											
$10,000 through $13,999											
$14,000 through $17,999											
$18,000 and over											
Total, other pay systems											
Up through $6,499											
$6,500 through $9,999											
$10,000 through $13,999											
$14,000 through $17,999											
$18,000 through $25,999											
$26,000 and over											

AGENCY WITHIN STANDARD METROLOLITAN STATISTICA AREA (LOS ANGELES-LONG BEACH, CALIF.)

Pay system	Total full-time employees, number	Negro		Spanish surnamed		American Indian		Oriental		All other employees	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all pay systems	116	26	22.4	10	8.6			3	2.6	77	66.4
Total, general schedule or similar	116	26	22.4	10	8.6			3	2.6	77	66.4
S-1 through 4	46	15	32.6	6	13.0			1	2.2	24	52.2
S-5 through 8	22	7	31.8	3	13.6			1	4.5	11	50.0
S-9 through 11	33	3	9.1					1	3.0	29	87.9
S-12 through 13	13	1	7.7	1	7.7					11	84.6
S 14 through 15	2									2	100.0
S-16 through 18											
Total, wage systems											
o though $5,499											
,500 through $6,999											
,000 through $7,999											
,000 through $8,999											
,000 through $9,999											
0,000 through $13,999											
4,000 through $17,999											
8,000 and over											
Total, other pay systems											
o through $6,499											
,500 through $9,999											
0,000 through $13,999											
4,000 through $17,999											
8,000 through $25,999											
6,000 and over											

S. 2515

. bill to further promote equal employment opportunities for American workers

* * * * * * *

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 000e et seq.) is amended by adding at the end thereof the following new section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United tates) in military departments as defined in section 102 of title 5, United States ode, in executive agencies (other than the General Accounting Office) as defined n section 105 of title 5, United States Code (including employees and applicants or employment who are paid from nonappropriated funds) in the United States ostal Service and the Postal Rate Commission, in those units of the Government f the District of Columbia having positions in the competitive service, and in he legislative and judicial branches of the Federal Government having positions n the competitive service, shall be made free from any discrimination and based n race, color, religion, sex, or national origin.

"(b) The Civil Service Commission shall have authority to enforce the pro- isions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions s it deems necessary and appropriate to carry out its responsibilities under his section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and egional equal employment opportunity plan which each department and agency nd each appropriate unit referred to in section 717(a) shall submit in order to aintain an affirmative program of equal employment opportunity for all such mployees and applicants for employment;

(2) be responsible for the review and evaluation of the operations of all gency equal employment opportunity programs, periodically obtaining and

publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

"(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

"(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717 (a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

"(d) The provisions of section 706(q) through (w), as applicable, shall govern civil actions brought hereunder.

"(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

SEC. 12. Section 716 of the Civil Rights Act of 1964 (42 U.S.C. 2000(e)-15, 78 Stat. 266) is amended by adding at the end thereof the following new subsection:

"(d) In the performance of their responsibilities under this Act, the Attorney General, the Chairman of the Civil Service Commission and the Chairman of the Equal Employment Opportunity Commission shall consult regarding their rules, regulations, and policies."

SEC. 13. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall not be applicable to the charges filed with the Commission prior to the enactment of this Act.

S. REPT. NO. 92-415—EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

* * * * * * *

1. *Federal employment.* The bill adds to Title VII a new section 717 (section 11 of the bill) making clear the obligation of the Federal Government to make all personnel actions free from discrimination based on race, color, sex, religion or national origin. The Civil Service Commission, which presently has the responsibility under Executive Order 11478, is given the authority under this title to enforce equal employment opportunity in the Federal government.

The Federal government, with 2.6 million employees, is the single largest employer in the Nation. It also comprises the central policymaking and administrative network for the Nation. Consequently, its policies, actions, and programs strongly influence the activities of all other enterprises, organizations and groups. In no area is government action more important than in the area of civil rights.

The prohibition against discrimination by the Federal government, based upon the due process clause of the Fifth Amendment, was judicially recognized long before the enactment of the Civil Rights Act of 1964.[8] Congress itself has specifically provided for nondiscrimination in the Federal government by stating that it is "the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin . . ." (5 U.S.C. § 7151). The primary responsibility for implementing this stated National objective has been granted to the Civil Service Commission pursuant to Executive Order 11246 (1964), and more recently by Executive Order 11478 (1969). In his memorandum accompanying Executive Order 11478, President Nixon stated that "discrimination of any kind based on factors not relevant to job performance must be eradicated completely from Federal employment." This was an important step forward in the field of equal employment opportunity for Federal employees.

Progress has been made in this field, however, much remains to be done. Statistical evidence shows that minorities and women continue to be denied access to a large number of government jobs, particularly in the higher grade levels. The disparity can be clearly seen in figures presented in a recent report released by the Civil Service Commission, *Minority Group Employment in the Federal Government* (1970). On the basis of the figures presented therein, the following listing shows the percentage of minority group employees under the General Schedule by grade level:

	Negro	Spanish surnamed	American Indian	Oriental
GS–1 through GS–4	21.8	3.0	1.8	0.6
GS–5 through GS–8	13.5	2.2	.7	.8
GS–9 through GS–11	5.1	1.5	.5	1.0
GS–12 through GS–13	2.7	.8	.2	.9
GS–14 through GS–15	1.7	.7	.2	.8
GS–16 through GS–18	1.4	.3	.1	.2

Minorities represent 19.4% of the total employment in the Federal government (15.0% are Negroes, 2.9% are Spanish-surnamed, 0.7% are American Indians, and 0.8% are Oriental). Their concentration in the lower grade levels indicates that their ability to advance to the higher levels has been restricted.

In many areas, the pattern at regional levels is worse than the national pattern. For example, the committee notes with special concern the particularly low percentage of Federal jobs held by Spanish-surnamed persons in areas of high residential concentration of such persons, particularly in California and the Southwestern States, and expects the Commission to undertake a special study of this problem to develop programs to provide greater entry level and advancement employment opportunities for Spanish-surnamed persons.

The position of women in the Federal government has not fared any better. In testimony before the Senate Labor Subcommittee this year, Mrs. Daisy B. Fields, past president of Federally Employed Women (FEW), testified as to the distribution, by percent, of all women employed by the Federal government (approximately 665,000 or about 34%) as represented by the following breakdown:

	Percent
GS–1 through GS–6	76.1
GS–7 through GS–12	21.7
GS–13 and above	1.1

The inordinate concentration of women in the lower grade levels, and their conspicuous absence from the higher grades is again evident.

One feature of the present equal employment opportunity program which deserves special scrutiny by the Civil Service Commission is the complaint process. The procedure under the present system, intended to provide for the informal disposition of complaints, may have denied employees adequate opportunity for impartial investigation and resolution of complaints.

Under present procedures, in most cases, each agency is still responsible for investigating and judging itself. Although provision is made for the appointment of an outside examiner, the examiner does not have the authority to conduct an independent investigation, and his conclusions and findings are in the nature of recommedations to the agency head who makes the final agency determination

[8] See *Bolling* v. *Sharpe*, 347 U.S. 497 (1954) and cases therein.

on whether there is, in fact, discrimination in that particular case. The only appeal is to the Board of Appeals and Review in the Civil Service Commission.

The testimony before the Labor Subcommittee reflected a general lack of confidence in the effectiveness of the complaint procedure on the part of Federal employees. Complaints have indicated skepticism regarding the Commission's record in obtaining just resolutions of complaints and adequate remedies. This has, in turn, discouraged persons from filing complaints with the Commission for fear that doing so will only result in antagonizing their supervisors and impairing any future hope of advancement. The new authority given to the Civil Service Commission in the bill is intended to enable the Commission to reconsider its entire complaint structure and the relationships between the employees, agency and Commission in these cases.

Another task for the Civil Service Commission is to develop more expertise in recognizing and isolating the various forms of discrimination which exist in the system it administers. The Commission should be especially careful to ensure that its directives issued to Federal agencies address themselves to the various forms of systemic discrimination in the system. The Commission should not assume that employment discrimination in the Federal Government is solely a matter of malicious intent on the part of individuals. It apparently has not fully recognized that the general rules and procedures that it has promulgated may in themselves constitute systemic barriers to minorities and women. Civil Service selection and promotion techniques and requirements are replete with artificial requirements that place a premium on "paper" credentials. Similar requirements in the private sectors of business have often proven of questionable value in predicting job performance and have often resulted in perpetuating existing patterns of discrimination (see e.g. *Griggs* v. *Duke Power Co.*, supra n.1). The inevitable consequence of this kind of a technique in Federal employment, as it has been in the private sector, is that classes of persons who are socio-economically or educationally disadvantaged suffer a very heavy burden in trying to meet such artificial qualifications.

It is in these and other areas where discrimination is institutional rather than merely a matter of bad faith, that corrective measures appear to be urgently required. For example, the Committee expects the Civil Service Commission to undertake a thorough re-examination of its entire testing and qualification program to ensure that the standards enunciated in the *Griggs* case are fully met.

The Civil Service Commission's primary responsibility over all personnel matters in the Government does create a built-in conflict of interest for examining the Government's equal employment opportunity program for structural defects which may result in a lack of true equal employment opportunity. Yet, the Committee was persuaded that the Civil Service Commission is sincere in its dedication to the principles of equal employment opportunity enunciated in Executive Order 11478 and that the Commission has the will and desire to overcome any such conflict of interest. In order to assist the Commission in accomplishing its goals and to make clear the Congressional expectation that the Commission will take those further steps which are necessary in order to satisfy the goals of Executive Order 11478, the Committee adopted in Section 707(b) of the bill specific requirements under which the Commission is to function in developing a comprehensive equal employment opportunity program.

Thus the provision in section 717(b) for applying "appropriate remedies" is intended to strengthen the enforcement powers of the Civil Service Commission by providing statutory authority and support for ordering whatever remedies or actions by Federal agencies are needed to ensure equal employment opportunity in Federal employment. Remedies may be applied as a result of individual allegations of discrimination, CSC investigation of equal employment opportunity programs in Federal agencies or their field installations, or from review of agency plans of action and progress reports. Remedies may be in terms of action required to correct a situation regarding a single employee or group of employees or broader management action to correct systemic discrimination and to improve equal employment opportunity program effectiveness to bring about needed progress. The Commission is to provide Federal agencies with necessary guidance and authority to effectuate necessary remedies in individual cases, including the award of backpay, reinstatement or hiring, and immediate promotion where appropriate.

The bill also directs the Commission to require each Federal department and agency (including appropriate units of the District of Columbia Government) to prepare an equal employment opportunity affirmative plan of action at least

nually. The Commission is to review, modify, and approve each department or ency developed with full consideration of particular problems and employ- nt opportunity needs of individual minority group populations within each ographic area. These legislative directions are, of course, not intended to limit Commission in requiring the establishment of affirmative equal employment portunity plans for any agency level, including local installations as needed; leed, the Committee expects the Commission to require that agency plans in- de specific regional plans for particularly large Federal regional installations l other regional offices with deficient records of progress in equal employ- nt opportunity. The Committee recognizes that this new emphasis on regional tallation equal employment opportunities and action plans will require a ater commitment of both agency and Civil Service Commission personnel to nning and enforcement activities and expects the Civil Service Commission ensure that such staffing additions will be made both at the national and ional office levels. Finally, to lend the greatest credibility to its equal employ- nt opportunity efforts at a national and regional level, the Commission should iew and revise its own equal employment action plan and implementation, par- ularly at its regional offices and higher grade levels, to ensure that its own ord in this field is exemplary and thus a model for all other Federal agencies.

The bill requires the Commission to obtain, on at least a semi-annual basis, nority group employment and such other data as are necessary for effective luation by the Commission and the public of each department's, agency's or t's record of equal employment opportunity achievement and to publish at st semi-annually full statistical and other reports (comparable to the report published annually) of equal employment opportunity progress. In evaluat- agency plans for approval, the Commission is also directed to study and ermine the appropriate allocation of personnel and resources committed to, the qualifications to be established for top equal employment opportunity ials responsible for, carrying out program responsibilities, including neces- y affirmative action as well as processing of individual discrimination cases, both a central office and regional (SMSA) basis.

The Committee wishes to emphasize the significant reservoir of expertise eloped by the EEOC with respect to dealing with problems of discrimination. ordingly, the committee strongly urges the Civil Service Commission to take antage of this knowledge and experience and to work closely with EEOC in development and maintenance of its equal employment opportunity programs.

n important adjunct to the strengthened Civil Service Commission respon- lities is the statutory provision of a private right of action in the courts by eral employees who are not satisfied with the agency or Commission decision. he testimony of the Civil Service Commission not withstanding, the com- tee found that an aggrieved Federal employee does not have access to the rts. In many cases, the employee must overcome a U.S. Government defense sovereign immunity or failure to exhaust administrative remedies with no ainty as to the steps required to exhaust such remedies. Moreover, the re- ial authority of the Commission and the courts has also been in doubt. The isions adopted by the committee will enable the Commission to grant full ef to aggrieved employees, or applicants, including backpay and immediate ancement as appropriate. Aggrieved employees or applicants will also have full rights available in the courts as are granted to individuals in the private or under Title VII.

he bill (section 717(c)) enables the aggrieved Federal employee (or appli- for employment) to file an action in the appropriate U.S. district court r either a final order by his agency or a final order of the Civil Service Com- sion on an appeal from an agency decision or order in any personnel action hich the issue of discrimination on the basis of race, color, religion, sex or onal origin has been raised by the aggrieved person. It is intended that the loyee have the option to go to the appropriate district court or the District rt for the District of Columbia after either the final decision within his ncy on his appeal from the personnel action complained of or after an appro- te appeal to the Civil Service Commission or after the elapse of 180 days n the filing of the initial complaint or appeal with the Civil Service Commis-

CHANGES IN ENFORCEMENT PROVISIONS

ection 4 of the bill revises section 706 of the act to enable the EEOC to proc- a charge of employment discrimination through the investigation, conciliа- , administrative hearing, and judicial review stages.

The present act, which only allows the Commission to pursue charges throu the informal methods of presuasion and conciliation, has, as already show proven to be seriously defective in providing an effective Federal remedy f violations of Title VII. Since the compliance provisions of the present law, as gards the findings of the EEOC, are purely voluntary, and respondents have n generally been very agreeable to accepting EEOC decisions where discriminato practices are found, the burden of relief has been placed upon the aggrieved i dividual's private right of action in the Federal courts.

This method has generally worked to the disadvantage of the aggrieved i dividuals. Since most Title VII complainants are by the very nature of the complaint disadvantaged, the burden of going to court, initiating legal proce ings by retention of private counsel, and the attendant time delays and leg costs involved, have effectively precluded a very large percentage of valid Tit VII claims from ever being decided. This disparity between complaints and r spondents in the Title VII litigation has been recognized by the courts which ha characterized such litigation as a "modern day David and Goliath confrontation." In such situations, the public has an overriding interest in protecting the ind vidual from the denial of those rights which Congress has specifically provide

To accomplish the stated purpose of Title VII, the bill, while retaining th private right of action, provides, as well, for the elimination of unfair emplo ment practices through a system of administrative hearings, Commission de sions and orders, and ultimate court review in appropriate cases—the metho of enforcement which has long been utilized by other regulatory agencies.

The need to provide some form of direct enforcement power to the EEOC ha been voiced since the inception of the Commission. There is disagreement whet er this enforcement power should be through a Commission lawsuit in a U.S. district court, or by an administrative proceeding followed by a cease-and-desi order with review in the appropriate U.S. court of appeals. . . .

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum but I would like to retain my right to the floor.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that th order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I have had the opportunity to mee with the distinguished Senator from North Carolina (Mr. Ervin) and the distinguished Senator from Alabama (Mr. Allen) to lay befor them a proposal which after some consultation they both agree to.

I have also discussed this matter with the manager of the bill, th distinguished Senator from New Jersey (Mr. Williams) and the ranking Republican member of the committee, the distinguished Sen ator from New York (Mr. Javits) and others.

I hope this meets with the approval of the leadership on the Re publican side. I am sure it will but I would appreciate it if it would be possible for them to give their approval to the unanimous-consent request I am about to make.

Mr. President, I ask unanimous consent that immediately after the final passage of S. 2515, for which a conference will not be asked in the Senate until the House so requests, the Senate proceed without

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* *See Sanchez v. Standard Brands, Inc.*, 431 F. 2d 455 (C.A. 1970); *Jenkins v. United Gas Corp.*, 400 F. 2d 28 (C.A. 5, 1968); *Pettway v. American Cast Iron Pipe Co.*, 411 F. 2d 998 (C.A. 5, 1969).

ebate to the consideration of H.R. 1746, that the text of S. 2515, as assed by the Senate, be substituted for the text of H.R. 1746; that I.R. 1746, as amended, proceed immediately to third reading and ien immediately to final passage; and that a motion to reconsider ie vote on final passage of both be waived. I also ask unanimous con-ent that rule XII be waived.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. JAVITS. I wonder about the motion to reconsider being waived. Vhy is that included? We are perfectly agreeable to sending both bills o the other body but why waive a motion to reconsider?

Mr. MANSFIELD. If the Senator will allow me, knowing the rules of rocedure of this body as he does, if such a motion were made it could e held up, I understand, for 2 days. This way it faces up to the issue mmediately.

Mr. JAVITS. Both bills would go over at once?

Mr. MANSFIELD. Yes.

Mr. JAVITS. Do we understand, however, and in good faith we should now, there is no intent to make any motion to reconsider in the 2 ays?

Mr. MANSFIELD. Not that I know of.

Mr. JAVITS. This is a situation where everybody is agreeing?

Mr. MANSFIELD. This is in good faith. There are no cards under the ble, no angles, no openings.

Mr. ALLOTT. Mr. President, I have no objection to the request except e one part about a motion to reconsider. I have nothing in my ind and I do not know that anybody else would, but if a motion reconsider is made immediately, a motion to table can be made at y time, as we have done hundreds of times. I must say I am very, ry reluctant to waive this right by unanimous consent. If it were ft to the Senator from Colorado alone I would ask the Senator if he ould consider deleting that. Heaven knows I have no desire to delay e progress of this legislation.

Mr. MANSFIELD. I appreciate what the distinguished Senator from olorado, the acting Republican leader, just said. If I may make a rsonal request, I hope the Senator will allow me to proceed in this anner, with my assurance to him that this is no subterfuge, there is thing under the table, and it is one way of bringing this proposal, nich has encountered some difficulty, to a head, with the idea that is would not set a precedent.

Mr. ALLOTT. I am sure the Senator does not have anything under e table, or anything like that, but I stated my own view. If the Sen-or thinks it is necessary, I would be perfectly willing not to object, t I must say this should not be considered a precedent.

Mr. MANSFIELD. I agree. This is something that is not to be considered precedent.

Mr. ALLOTT. I thank the Senator.

Mr. ALLEN. Mr. President, reserving the right to object and I do t object, as I understand the agreement, House bill, H.R. 1746, would t be called up until after the passage of the Senate bill.

Mr. MANSFIELD. The Senator is correct.

Mr. ALLEN. Then, the Senate bill would go over to the House for fur-er consideration. Then the House bill, amended to conform to the

Senate bill as passed, would then be passed and also sent to the Hou
so that the House would have the option of acting again on the Hou
bill or to take up the Senate bill from the start, if it saw fit. It wou
give the House an option.

Mr. MANSFIELD. The Senator is correct, although the substance
both bills would be the same.

Mr. ALLEN. Yes, but the House could proceed to act again by usi
the Senate bill.

Mr. MANSFIELD. The Senator is correct.

Mr. ALLEN. I have no objection.

Mr. ERVIN. As I understand the request, there would be two vote
one on the passage of the Senate bill and one on the passage of th
House bill as amended, to conform to the Senate bill.

Mr. MANSFIELD. The Senator is correct.

Mr. ERVIN. I thank the Senator.

Mr. MANSFIELD. I ask for the yeas and nays on both.

The PRESIDING OFFICER. Without objection, rule XII will be waive

Mr. MANSFIELD. I ask that it be in order at this time to ask for th
yeas and nays, not only on the pending bill, which I understand is read
for the third reading, but on H.R. 1746.

The PRESIDING OFFICER. First, is there objection to the unanimous
consent request?

Mr. MANSFIELD. What unanimous-consent request does the Chai
refer to?

The PRESIDING OFFICER. The one the Senator just made.

Mr. MANSFIELD. That we vote on both?

The PRESIDING OFFICER. No; that we proceed to the House bill after
wards.

Is there objection? The Chair hears no objection, and it is so ordered

Mr. MANSFIELD. I ask for the yeas and nays on both bills.

The PRESIDING OFFICER. Is there a sufficient second to the reques
for the yeas and nays?

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I desire to speak for a moment on th
committee substitute. I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized

Mr. ALLEN. Mr. President, I plan to vote for the committee sub
stitute. I shall not call for the yeas and nays on the adoption of the
committee substitute, but I shall vote for it because it is a vast im
provement over the bill as introduced, because it does have the Domi
nick amendment in it. It has the increase from eight to 15 as the re
quired number of employees to put employers under the provisions of
the EEOC. It eliminates religious schools and educational institutions
from the religious aspect of discrimination. It is a vast improvement
over the bill as introduced, and I shall support the committee sub
stitute.

Mr. DOMINICK. Mr. President, I yield myself 2 minutes.

We have engaged in a pretty tough debate on this bill for a very
long period of time. I had thought when the bill came out that we
would have completed it long before this. I feel, however, that the
debate itself and the amendments which have been adopted have sub
stantially improved the bill. We now have all classifications of em
ployees having the right to redress employment grievances in the

ederal courts. We have not unfairly harassed the very small employ-
s by going to the extreme of extending the coverage of the bill to
nployers of eight or more employees. The present bill coverage of
nployers with 15 or more employees is much more reasonable. We
ave taken care of the situation brought out by the Senator from North
arolina and the Senator from Alabama on elected officials and their
ersonal staffs.

A number of other amendments have been adopted that, in my
inion, have so substantially improved the bill that I think we can
ork it out either by action of the House or in conference. As a result,
intend to support the bill on final passage.

In conclusion, I would like to thank colleagues who, despite strong
essures to the contrary, exercised great degrees of allegiance to
rinciple to make this bill truly a representative Senate bill. Addi-
nally, I wish to compliment my assistant, Mr. Daniel T. Moyle, Jr.,
r his excellent and persistent efforts on my behalf.

Mr. WILLIAMS. Mr. President, as I stated earlier, this is the 21st full
y of debate. We have had more than 30 rollcalls. But the Senate, in
voking cloture, has determined that it is time to get on with the
ssage of this bill. In a very few minutes we will be voting on the
al passage of that bill. I think it is clear to everyone here that the
ll represents the overwhelming will of the majority of the U.S.
nate.

I believe that this bill, as amended in the Senate, will assure a greater
easure of equality in employment opportunities to the Nation's wom-
workers and to its minorities. I believe it represents a major step
rward in the struggle to end job discrimination in our society.

I think it would be useful to review some of the steps that have
en taken in the Senate in modifying this bill and the significant
anges in the existing law made by this bill when it is finally passed.

First, as to the method of enforcement. This was a long and hard-
ught issue. The simple question was the appropriate and best method
enforcement powers for the Equal Employment Opportunity Com-
ission. Many of us felt that the best method of enforcement was the
ne-honored administrative agency approach which would have en-
led EEOC to conduct administrative hearings and issue judicially
forceable cease-and-desist orders. We debated this issue for 4 weeks.
e had a number of votes on the subject. The final vote came last
uesday, on an amendment offered by the Senator from Colorado
Mr. Dominick). That amendment provided an enforcement mecha-
sm which would allow the Equal Employment Opportunity Com-
ssion to seek injunctive relief in the Federal district courts for
arges of unlawful employment practices.

Mr. President, I vigorously opposed that method of enforcement
cause I felt that it would lead to unwarranted delays in the Federal
urts and would not provide the kind of agency expertise and guid-
ce needed in employment discrimination cases. However, Mr. Presi-
nt, the Senate made its judgment. I fully recognize, as I have stated
several occasions, that the enforcement mechanism that was so
unehly advocated by the distinguished Senator from Colorado was
workable mechanism. It was not a negative approach to this law. It
as a positive effort. I commend him for his diligence. Although I
rongly prefer the administrative mechanism, I think that the court

enforcement mechanism can work. However, it can only work if Co
gress provides the Commission and the courts with the resources th
are going to be necessary to make that program work.

Second, as to coverage. The bill will extend the coverage to thr
classes of employees. It will assure to employees of State and loc
governments the protections of Title VII of the Civil Rights Act.
does so, with one proviso, which exempts from coverage the elect
officials and their most personal advisers. I believe that the covera
of governmental employees is a monumentally important step f
the cause of equal employment opportunity. It was a hotly contest
issue. I am gratified that the Senate, by an overwhelming vote of
to 16, took this historical opportunity to assure a protective mechanis
for the more than 10 million workers employed in such capacities.

The bill also extends coverage to millions of teachers in our educ
tional system by eliminating the present exemption for employees
those institutions. It goes without saying that the opportunity to b
come a teacher in our society is one that should be cherished and value
Arbitrary and artificial restraints, which deny that opportunity, mu
be abolished. Inclusion of teachers, in this bill, is a major step towar
obtaining that goal. Finally, coverage is extended to employers with
or more employees and unions with 15 or more members instead of
or more. This figure represented a compromise between those of us wh
advocated coverage of employers and unions with even fewer em
ployees and members and those who were concerned with the impact
additional federal regulations on smaller businessmen. I think it
clear that no one really disputes the need for equal employment oppor
tunity at every level of our society. I do not believe that those who wer
advocating higher levels of coverage were suggesting that small bus
nessmen or unions should be engaged in discrimination on the basis
race, color, religion, sex, or national origin. I think, however, that ther
was a concern about the ability of the Commission to digest the ne
coverage that we are providing. I think, therefore, that the 15 level wi
be a useful and workable device and the extension of coverage in th
future can be reconsidered at an appropriate time.

Another significant part of the bill and one that has not had ver
much debate because it was so clearly accepted at the committee leve
concerns our Federal Government employees. The requirement of equa
employment opportunity is extended by statute to these employees, an
for the first time a clear remedy is provided enabling them to pursu
their claims in the district courts following a Civil Service Commissio
or agency hearing.

Moreover, and very importantly, the Civil Service Commission
given additional responsibilities to see that job discrimination in th
Federal service is brought to a halt. I cannot emphasize the concer
that was expressed in our committee over the need to have the Federa
Government as the model employer. Provision for a noncontroversia
method is due to the extensive efforts of the Senator from Colorad
(Mr. Dominick) and the Senator from California (Mr. Cranston)
and the good faith and desire for improvement and change reflected o
the part of the Civil Service Commission during our committee con
sideration of this matter.

Lastly, the bill makes a number of modifications in the administra
tive operation of EEOC. This includes the very important provision

for deferral of cases to to State agencies, modification of the record-keeping and investigative authority of the Commission and other similar housekeeping changes.

Mr. President, I ask unanimous consent that a section-by-section explanation of the scope of the bill that I have prepared be printed in the Record at the end of my remarks.

I firmly believe that we have a good bill before us. I believe this legislation is long overdue. I hope that we can look forward to its enactment in the very near future.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

SECTION-BY-SECTION ANALYSIS OF S. 2515, THE EQUAL EMPLOYMENT OPPORTUNITIES ACT OF 1972

The following analysis seeks to explain the major provisions of S. 2515, the Equal Employment Opportunities Act of 1972, as amended by the Senate during its debate on the bill. These explanations, which reflect the changes adopted by the Senate from the original bill as reported by the Committee, encompass the enforcement provisions of Title VII as now adopted by the Senate and the various procedural and jurisdictional changes which are also encompassed within the provisions of S. 2515.

In any area where the new law does not address itself, or in any areas where specific contrary intention is not indicated, it is assumed that the present case law as developed by the courts shall continue to determine the applicability of Title VII. It is also the intent of this legislation to remedy deficiencies in the current law.

SECTION 2

This section amends certain definitions contained in section 701 of the Civil Rights Act of 1964.

Section 701(a)—This subsection defines "person" as used in Title VII. Under the provisions of S. 2515, the term is now expanded to include State and local governments, governmental agencies, and political subdivisions.

Section 701(b)—This subsection defines the term "employer" as used in Title VII. This subsection would now include, within the meaning of the term "employer", all State and local governments, governmental agencies, and political subdivisions, and the District of Coumbia departments or agencies (except those subject by statute to the procedures of the Federal competitive service as defined in 5 U.S.C. § 2102, who along with all other Federal employees would now be covered by section 717 of the Act.)

This subsection would extend coverage of the term "employer," one year after enactment, to those employers with 15 or more employees. The standard for determining the number of employees of an employer, i.e., "employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year," would apply immediately upon enactment to all employers of 25 or more employees during the first year, as well as to the final coverage of 15 or more employees thereafter.

Section 701(c)—This subsection eliminates the exemption for agencies of the United States, States, or the political subdivisions of States from the definition of "employment agency" in order to conform with the expanded coverage of State and local governments in section 107 (a) and (b) above. State agencies, previously covered by reference to the United States Employment Services continue to be covered as employment agencies.

Section 701(e)—This subsection is revised to include labor organizations with 15 or more members within the coverage of Title VII, one year after the enactment of the present bill.

Section 701(f)—This subsection is intended to exclude from the definition of "employee" as used in Title VII those persons elected to public office in any State or political subdivision of any State by the qualified voters of such State or political subdivision. An additional exemption from the definition of "employee" is also provided for persons chosen by such officers as personal assistants or as immediate advisors in respect to the exercise of the Constitutional or legal powers of the office held by such elected officer. This exemption is intended to be

read very narrowly and is in no way intended to establish an overall narrowi
of the expanded coverage of State and local governmental employees as set for
in section 701 (a) and (b) above.

Section 701(j)—This subsection, which is new, defines "religion" to inclu
all aspects of religious observance, practice and belief, so as to prohibit di
crimination against employees whose "religion" requires observances, practic
and beliefs which differ from the employer's or potential employer's nor
Discrimination on this basis would be unlawful unless an employer can demo
strate that he cannot reasonably accommodate beliefs without undue hardsh
on the conduct of his business.

SECTION 3

This section amends the exemptions allowed in section 702 of the Civil Right
Act of 1964.

Section 702.—This section is amended to eliminate the exemption for em
ployees of educational institutions. Under the provisions of this section, a
private and public educational institutions, which are not religious educationa
institutions, would now be covered under the provisions of Title VII. Wit
the elimination of the exemption, the employment practices of such institution
most of which have previously been covered by other relevant state and federa
laws, would now be expected to conform to the standards of equal employmen
opportunity as established under Title VII, and employment practices such a
hiring, promotion, transfer, and termination would be subject to strict equa
employment standards.

The exemption in this section for religious corporations, associations, educa
tional institutions, or societies to allow such entities to employ individuals of
particular religion to perform work connected with the particular corporation
association, educational institution or society, has been broadened to allow suc
religious preference regardless of the particular job which the individual is bein
considered.

SECTION 4(a)

This section of the bill contains the major provisions for the enforcement
functions which are provided to the EEOC for the prevention of unlawful em
ployment practices. S. 2515 revises the present section 706 of Title VII of th
Civil Rights Act of 1964 to enable the EEOC to process a charge of employmen
discrimination through the investigation and conciliation stages of voluntary
compliance. In addition, however, the provisions of S. 2515 provide that if suc
should prove unsuccessful, then the EEOC would be empowered to file an actio
against the respondent in the appropriate Federal District Court.

The accomplishment of the stated purpose of Title VII, the elimination of em
ployment discrimination in all areas of employment in this Nation, has not bee
accomplished under the present system of voluntary compliance through EEO
procedures or, in the alternative, the private law suit. Under the provisions of
section 4 of the bill, the overriding public interest in equal employment oppor
tunity would be asserted through direct Federal enforcement. Accordingly, this
section amends sections 706 (a) through (g) of the Civil Rights Act of 1964.

Section 706(a).—This subsection would empower the Commission to prevent
persons from engaging in unlawful employment practices under sections 703 and
704 of Title VII of the Civil Rights Act of 1964. As these noted sections remain
largely unchanged, the unlawful employment practices which were enumerated
in 1964 in the original Act, and as defined and expanded by the courts in litiga
tion since that time, and by these amendments remain in effect.

Section 706(b).—This subsection sets out the procedures to be followed when
a charge of an unlawful employment practice is filed with the Commission. The
present requirement that charges must be in writing and under oath or affirma
tion has been retained. In order to accord respondents fair notice that charges
are pending against them, this subsection provides that the Commission must
serve a notice of the charge on the respondent within ten days; further, the
Commission would be expected to investigate the charge as quickly as possible
and to make its determination on whether there is reasonable cause to believe
that the charge is true. It is not intended that failure to give notice of the charge
to the respondent within ten days should prejudice the rights of the aggrieved
party.

If the Commission finds no reasonable cause, it must dismiss the charge; if
it finds reasonable cause it must attempt to conciliate the case. During the
Commission's investigation of the charge, the allegations would not be made

ublic by the Commission, and if it finds that there is not reasonable cause to elieve that the charge is true, it shall dismiss the charge and notify the com-ainant and the respondent of its decision.

This subsection also makes a number of other changes in existing law:

1. Under present law, a charge may be filed only by a person aggrieved under th or by a member of the Commission where that member has reasonable use to believe a violation has occurred. This subsection would permit a charge be filed under oath or affirmative by or on behalf of a person aggrieved or by officer or employee of the Commission upon the request of a person claim-g to be aggrieved. The purpose of this provision would enable aggrieved per-ns to have charges processed under circumstances where they are unwilling come forward publicly for fear of economic or physical reprisals. In this con-ction, it is intended that the device of a Commission charge may be used to aintain the confidential identify of the persons aggrieved and that no dis-osure need be made of the identity of person aggrieved.

2. The Commission would be required to make its determination on reasonable use as promptly as possible and, "so far as practicable," within 120 days from e filing of the charge or from the date upon which the Commission is au-orized to act on the charge under section 706 (c) or (d). The Commission, here appropriate, would be required in its determination of reasonable cause accord substantial weight to final findings and orders made by State or local thorities under State and local laws.

3. This subsection and section 8(c) of the bill, add appropriate provisions carry out the intent of the present statute to provide full coverage for joint bor-management committees controlling apprenticeship or other training or raining, including on-the-job training programs. While these joint labor-nagement committees are prohibited under section 703(d) of the present from discriminating, they were not expressly included in the prohibition ainst discriminatory advertising or retaliation against persons participating Commission proceedings, sec. 704 (a) and (b)) or in the procedures of filing anges in section 706(a).

Sec. 706(c)—This subsection retains the present requirement that the Com-ssion defer for a period of 60 days to State or local agencies which have a ate or local law prohibiting the unlawful employment practice alleged and ablishing or authorizing a State or local authority to grant or seek relief from ch practice or to institute criminal proceedings with respect thereto. (this riod for deferral is 120 days during the first year after the effective date of ch law).

The present law is changed by deleting the phrase "no charge may be filed" th the Commission by an aggrieved person in such State or locality until e deferral period has expired. The present law is somewhat unclear respecting e nature of Commission action on charges filed with it prior to resort to the ate or local agency. The new language clarifies the present law by permitting charge to be filed but prohibiting the Commission from taking any action th respect thereto until the prescribed deferral period has elapsed (see a nilar holding by the Supreme Court in *Love* v. *Pullman Co.*, decided on nuary 17, 1972 (No. 70-5033), where the Court held that a complaint filed th the Commission, then orally deferred to the State agency for the required ferral period, and then reactivated automatically after the deferral period had pired was proper procedure under the provisions of § 706 (b) and (d) of the esent Act.

Section 706(d).—This subsection requires deferral to State or local anti-crimination agencies, similar to provisions contained in subsection 703(c), the case of charges filed by an officer or employee of the Commission.

Section 706(e).—This subsection sets forth the time limits controlling certain ions by the Commission under the provisions of the bill.

Under the present law, charges must be filed within 90 days after an alleged lawful employment practice has occurred. In cases where the Commission fers to a State or local agency under the provisions of section 706 (c) or (d), charge must presently be filed within 30 days after the person aggrieved eives notice that the State or local agency has terminated its proceedings, within 210 days after the alleged unlawful employment practice occurred, ichever is earlier.

The amendments to this subsection would now provide that charges be filed thin 180 days of the alleged unlawful employment practice, a limitation period nilar to that contained in the Labor Management Relations Act, as amended

(29 U.S.C. § 160(b)). In establishing the new time period for the filing of charg it is not intended that existing law, which has shown an inclination to interp this type of time limitation to give the aggrieved person the maximum ben of the law, should be in any way circumscribed. Existing case law which has termined that certain types of violations are continuing in nature, thereby mo uring the running of the required time period from the last occurrence of discrimination and not from the first occurrence is continued, and other interp tations of the courts maximizing the coverage of the law are not affected. It intended by expanding the time period for filing charges in this subsection th aggrieved individuals, who frequently are untrained laymen who are not alwa aware of the discrimination which is practiced against them, should be given greater opportunity to prepare their charges and file their complaints, and th existent but undiscovered acts of discrimination should not escape the effect the law through a procedural oversight.

Similarly, the time period allowing a determination by a State or local ag discrimination agency has been extended to 300 days after the alleged unlaw employment practice occurred or within 30 days after the State or local agen has terminated proceedings under the State or local law, whichever is earlier.

This subsection also requires that notice of the charge be served on the spondent within 10 days after its having been filed.

Section 706(f).—This subsection, which is new, sets forth the procedures to followed, in those cases where the Commission is unable to achieve a satisfacto conciliation after a finding of reasonable cause, for securing compliance wi the provisions of Title VII. The procedures set forth in this subsection are tended to place the primary responsibility for enforcing violations of Title V in the Commission and to shift them from the private plaintiff where they ha been under the existing provisions of Title VII.

Section 706(f)(1)—Under this subparagraph, if the Commission is unable secure a conciliation agreement pursuant to section 706(b) that is acceptable the Commission within 30 days from the filing of the charge or within 30 da after expiration of any period of reference under subsection (c) or (d), it wou promptly so notify the General Counsel who may bring a civil action against t respondent in the appropriate district court, if the respondent is not a gover ment, governmental agency, or political subdivision.

In the case of a respondent that is a government, governmental agency, political subdivision, if conciliation fails, the Commission will take no furth action and will refer the case to the Attorney General who may bring a civ action in the appropriate district court.

With respect to cases arising under this subsection, if the Commission: (a has dismissed the charge, or (b) 150 days have elapsed from the filing of t charge or period of reference to State agencies under subsection 706 (c) or (d whichever is later, without the General Counsel or the Attorney General, as the case may be, having issued a complaint under section 706(f), or witho the Commission having entered into a conciliation agreement to which the perso aggrieved is a party, the person aggrieved may bring an action in the appr priate district court within 90 days after being notified thereof. Such civil actio are to be governed by sections 706 (f) through (k) as applicable. In providin this provision, it is intended that the individual who has been aggrieved by violation of Title VII should not be forced to abandon his claim merely becaus of a decision by the agency that there is insufficient grounds upon which to fi a complaint in court or that the person aggrieved should have to endure length delays if the agency does not act with due diligence and speed. Accordingly, th provisions described above would allow the person aggrieved to elect to pursu his or her own remedy in the courts where agency action does not prove satis factory.

In providing this remedy, it is intended that recourse to this form of remed will be the exception and not the rule, and that the vast majority of complaint will be handled through the offices of the EEOC. However, as the individual rights to redress are paramount under the provisions of Title VII, it is neces sary that all avenues of relief be left open for quick and effective relief.

In providing for the individual right to sue in the event that action by th Commission is unsatisfactory or unresponsive, it is not intended that duplicatio of proceedings should be allowed. Therefore, in any proceeding where the Gener Counsel or the Attorney General, as the case may be, is proceeding with du diligence within the time limits specified in this subsection, the person aggrieve would be precluded from instituting an individual action until such time as a of the specific conditions of this subsection are not met.

In any such complaint brought by the person named in the charge as claiming o be aggrieved or in the case of a charge filed by an officer or employee of the 'ommission, by any person whom the charge alleges was aggrieved by the alleged nlawful employment practice, the court may upon timely application of the com-lainant, appoint an attorney and authorize the commencement of the action vithout the payment of fees, costs, or security in such circumstances as it deems ust. The Attorney General or the General Counsel, upon timely application and ubject to the court's discretion, may intervene in such a private action if he ertifies that the private action is of general public importance. In addition, the ourt is given discretion to stay proceedings for not more than 60 days pending he termination of State or local proceedings or efforts by the Commission to btain voluntary compliance.

In establishing the enforcement provisions under this subsection and subsection 706(f) generally, it is not intended that any of the provisions contained therein re designed to affect the present use of class action lawsuits under Title VII n conjunction with Rule 23 of the Federal Rules of Civil Procedure. The courts ave been particularly cognizant of the fact that claims under Title VII involve he vindication of a major public interest, and that any action under the Act in-olves considerations beyond those raised by the individual claimant. As a con-equence, the leading cases in this area to date have recognized that Title VII laims are necessarily class action complaints and that, accordingly, it is not nec-ssary that each individual entitled to relief under the claim be named in the riginal charge or in the claim for relief.

Section 706(f)(2)—This subsection provides a procedure by which the General ounsel or the Attorney General in a case involving a government, governmental gency, or political subdivision, could secure a three-judge court to hear and de-ermine an action brought by him under this section, if such request is accom-anied by a certificate that the case is of general public importance. The chief udge of the court is responsible for appointing the three-judge court. Cases are o be expedited in every way, and appeals from the three-judge court are to e appealed directly to the Supreme Court.

Section 706(f)(3) and 706(f)(4)—Under these paragraphs, if a three-judge ourt is not requested, the chief judge is required to designate a district judge o hear the case. If no judge is available, then the chief judge of the circuit as-gns the judge. Cases are to be heard at the earliest practicable date and ex-edited in every way.

Section 706(f)(5)—This subsection authorizes the Commission or the Attorney eneral in a case involving a government, governmental agency or political sub-ivision based upon a preliminary investigation of a charge filed, to bring an ction for appropriate temporary or preliminary relief, pending the final disposi-on of the charge. Such actions are to be assigned for hearing at the earliest pos-ible date and expedited in every way.

Section 706(g)(1)—This subsection, which is the same as the present section 06(f) of the Act, grants the district courts jurisdiction over actions brought nder this title and provides the revenue requirements.

It is also intended that one of the fundamental jurisdictional attributes exer-sed by the court under any actions brought before it under this Act includes he ability to grant such temporary or preliminary relief as it deems just and roper.

Section 706(g)(2)—This subsection is similar to the present section 706(g) f the Act. It authorizes the court, upon a finding that the respondent has en-aged in or is engaging in an unlawful employment practice to enjoin the re-pondent from such unlawful conduct and order such affirmative relief including, ut not limited to, reinstatement or hiring of employees, with or without back ay as will effectuate the policies of the Act. The court's award of back pay is mited to that which accrues from a date not more than two years prior to the ing of a charge with the Commission. Interim earnings or amounts earnable ith reasonable diligence by the aggrieved person(s) would operate to reduce e back pay otherwise allowable.

The provisions of this subsection are intended to give the court wide discre-on, as has been generally exercised by the courts under existing law, in fashion-g the most complete relief possible. In dealing with the present section 706(g) e courts have stressed that the scope of relief under that section of the Act is tended to make the victims of unlawful discrimination whole, and that the tainment of this objective rests not only upon the elimination of the particular nlawful employment practice complained of *but* also requires that the conse-

quences and effects of the unlawful employment practice be, so far as possib restored to a position where they would have been were it not for the unlaw discrimination. This broad reading of the need for effective remedies under t subsection is intended to be preserved in this bill in order to effectively comb the presence of employment discrimination.

SECTION 4(b)

Section 706(k)—This subsection is similar to section 706(k) of the presc Act allowing the award of attorney's fees. It adds a provision allowing a p vailing party, in an action brought by the General Counsel or the Attorney Ge eral, who is an employer with less than 25 employees or a labor union with le than 25 members to be indemnified by the United States Treasury upon certifi tion of the Commission, in an amount not to exceed $5,000 for their defense, i cluding all expenses and reasonable attorney's fees incurred subsequent receiving notice of a charge filed against them. Any such prevailing party wi 25 to 100 employees whose average income from such employment is less tha $7,500, or in the case of a labor union with 25 to 100 members, would be inde nified for one-half of the cost of their defense in an amount not to exceed $2,5 Costs are to be submitted by application to the Commission evidenced by vouc ers and are to be deemed reasonable so long as they are comparable to the tot amount of the expenses and attorneys fees incurred by the Commission in i investigation and prosecution of the charge. Any district court with jurisdicti over the proceedings would have the authority to make the determination pr vided for by the subsection.

SECTION 5

This section amends section 707, concerning the Attorney General's "patte or practice" action, to provide for a transfer of this function to the Commissi two years after the enactment of the bill. The bill further provides for curre "pattern or practice" jurisdiction for the Commission from the date of enactme until the transfer is complete. The transfer is subject to change in accordan with a Presidential reorganization plan if not vetoed by Congress. The secti would provide that currently pending proceedings would continue without abat ment, that all court orders and decrees remain in effect, and that upon the tran fer the Commission would be substituted as a party for the United States America or the Attorney General as appropriate. The Commission would hav authority to investigate and act on pattern or practice charges except that an action would follow the procedures of section 706.

SECTION 6

This section amends section 709 of the Civil Rights Act of 1964, entitled "Inve tigations, Inspections, Records, State Agencies."

Section 709(a)—This subsection, which gives the Commission the right examine and copy documents in connection with its investigation of a charg would remain unchanged.

Section 709(b)—This subsection would authorize the Commission to cooperat with State and local fair employment practice agencies in order to carry out th purposes of the title, and to enter into agreements with such agencies und which the Commission would refrain from processing certain types of charges relieve persons from the recordkeeping requirements. This subsection woul make two changes in the present statute. Under this subsection, the Commissio could within the limitations of funds appropriated for the purpose, also engag in and contribute to the cost of research and other projects undertaken by thes State and local agencies and pay these agencies in advance for services rendere to the Commission. The subsection also deletes the reference to private civ actions under section 706(e) of the present statute.

Section 709(c)—This subsection, like the present statute, would require em ployers, employment agencies, labor organizations, and joint labor-managemen apprenticeship committees subject to the title to make and keep certain record and to make reports therefrom to the Commission. Under the present statute, party required to keep records could seek an exemption from these requirement on the ground of undue hardship either by applying to the Commission or bringin a civil action in the district court. This subsection would require the party seekin the exemption first to make an application to the Commission and only if th

ommission denies the request could the party bring an action in the district ourt. This subsection would also authorize the Commission to apply for a court der compelling compliance with the recordkeeping and reporting obligations t forth in the subsection.

Section 709(d)—This subsection would eliminate the present exemption from ecordkeeping requirements for those employers in States and political subdivi- ons with fair employment practice laws or for employers subject to Federal xecutive order or agency recordkeeping requirements. Under this subsection, the ommission would consult with interested State and other Federal agencies in rder to coordinate the Federal recordkeeping requirement under section 709(c) ith those adopted by such agencies. The subsection further provides that the ommission furnish to such agencies information pertaining to State and local ir employment agencies, on condition that the information would not be made ublic prior to the institution of State or local proceedings.

Section 709(e)—Under this subsection, the Commission or the Attorney Gen- al would have the authority to direct the person having custody of any record paper required by section 709(c) to be preserved or maintained to make such ecord or paper available for inspection or copying by the Commission or the torney General. The district court of the judicial district where the demand made or the papers are located would have jurisdiction by appropriate proc- s to compel the production of such record or paper. The subsection further ovides that the members of the Commission and its representatives or the torney General and his representatives, could not, unless ordered by the court, sclose any record or paper produced except to Congress or a congressional mmittee, to other government agencies, or in the presentation of cases before ourt or a grand jury.

SECTION 7

This section would amend section 710 of the Civil Rights Act of 1964 to make ction 11 of the National Labor Relations Act (29 U.S.C. § 161), to the extent propriate, applicable to Commission investigations. The person served by the ommission with the subpoena could petition the Commission to revoke the sub- ena within 5 days. On application of the Commission, an appropriate district urt could order a person to obey a subpoena and failure to comply with the urt order would be punishable in contempt proceedings. Section 11 of the Na- onal Labor Relations Act also contains provisions relating to privileges of wit- sses, immunity from prosecution, fees, process, service, and return, and infor- ation and assistance from other agencies.

SECTION 8(a) AND (b)

These subsections would amend sections 703(a) and 703(c)(2) of the present atute to make it clear that discrimination against applicants for employment d applicants for membership in labor organizations is an unlawful employment actice. This subsection would merely be declaratory of present law.

SECTION 8(c) (1) AND (2)

These subsections would amend section 704 (a) and (b) of the present statute make clear that joint labor-management apprenticeship committees are cov- ed by those provisions which relate to discriminatory advertising and retalia- n against individuals participating in Commission proceedings.

SECTION 8(d)

This subsection would amend section 705(a) of the present statute to permit a mber of the Commission to serve until his successor is appointed but not for re than 60 days when Congress is in session unless the successor has been minated and the nomination submitted to the Senate, or after the adjournment *e die* of the session of the Senate in which such nomination was submitted.

The rest of the subsection provides that the Chairman of the Commission on alf of the Commission, would be responsible, except as provided in section 5(b), for the administrative operations of the Commission and for the appoint- nt of officers, agents, attorneys, hearing examiners, and other employees of the mmission, and Regional Directors, with the concurrence of the General Coun- , in accordance with Federal law, as he deems necessary.

SECTION 8(e)

This subsection would provide a new section 705(b) of the Act which est
lishes a General Counsel appointed by the President, with the advice and c
sent of the Senate, for a four (4) year term. The responsibilites of the Gene
Counsel would include, in addition to those the Commission may prescribe a
provided by law, the prosecution and the conduct of all litigation as so provi
in sections 706 and 707 of the Act. The General Counsel would appoint regio
attorneys with the concurrence of the Chairman and other employees in
Office of the General Counsel in order to effectively carry out his functions a
responsibilities.

Furthermore, this subsection would continue the General Counsel on the eff
tive date of the act in that position until a successor has been appointed a
qualified. Subsections (b) through (j) of section 705 of the act are redesignat
as Subsections (e) through (k), respectively.

SECTION 8(f)

This subsection would amend section 705(g)(1) of the present Act to perm
the Commission to accept uncompensated services for the purpose of publicizi
its activities in the media.

SECTION 8(g)

This subsection would eliminate the provision in present section 705(g) a
thorizing the Commission to request the Attorney General to intervene in p
vate civil actions and instead permit the Commission itself to intervene in su
civil actions as provided in section 706.

SECTION 8(h)

This subsection would, subject to one exception, permit the Commission to del
gate any of its functions, duties and powers to such persons as it may designa
by regulation. A number of other Federal agencies have similar broad authori
to delegate functions, e.g., the Securities and Exchange Commission (15 U.S.
§ 78(d)(1)), the Interstate Commerce Commission (49 U.S.C. § 17(5)), and t
Federal Communications Commission (47 U.S.C. § 155(d)). The exception
as follows:

The Commission could not delegate its authority under section 709(b)
make agreements with States under which the Commission agrees to refra
from processing certain charges or to relieve certain persons from the recor
keeping requirements. The Commission would however be authorized to delega
this power or any of its other powers to groups of three or more members
the Commission.

SECTION 8(i)

This subsection would afford additional protection to officers, agents, and em
ployees of the Commission in the performance of their official duties by makin
18 U.S.C. 1114 applicable to them.

SECTION 9 (a), (b), (c), AND (d)

These subsections would make certain modifications in the position of th
Chairman of the Commission and the members of the Commission and includ
the General Counsel in the executive pay scale, so as to place them in a positio
of parity with officials in comparable positions in agencies having substantiall
equivalent powers such as the National Labor Relations Board, the Federa
Trade Commission, and the Federal Power Commission.

SECTION 10

Section 715 This section, which is new, establishes an Equal Employment
Opportunity Council (Council) composed of the Secretary of Labor, the Chair
man of the Equal Employment Opportunity Commission, the Attorney General
the Chairman of the United States Civil Service Commission and the Chairma

f the United States Civil Rights Commission or their respective designees. The ouncil will have the responsibility to coordinate and implement programs to romote the efficiency of all the various branches of government with responsi- ility for equal employment opportunities. The Council will submit an annual eport to the President and Congress including a report of its activities and rec- mmendations as to legislative or administrative changes it considers desirable.

SECTION 11

Section 717(a)—This subsection would make clear that all personnel actions f the U.S. Government affecting employees or applicants for employment shall e made free from any discrimination based on race, color, religion, sex, or ational origin. All employees of any agency, department, office or commission aving positions in the competitive service are covered by this section.

Section 717(b)—Under this subsection the Civil Service Commission is given e authority to enforce the provisions of subsection (a) through appropriate emedies. These remedies may include but are not limited to backpay for ap- icants as well as employees denied promotion opportunities, reinstatement, re, and immediate promotion. Any remedy needed to fully recompense the em- oyee for his loss, both financially and professionally is considered appropriate der this subsection. The Civil Service Commission is also given authority to sue rules and regulations necessary to carry out its responsibilities under this ction. The Civil Service Commission also shall annually review national and gional equal employment opportunity plans and be responsible for review and aluation of all agency equal employment opportunity programs. Finally, agency d executive department heads and officers of the District of Columbia shall mply with such rules and regulations, submit an annual equal employment portunity plan and notify any employee or applicant of any final action taken any complaint of discrimination filed by him.

Sections 717 (c) and (d)—The provisions of sections 706 (f) through (k) as ap- cable, concerning private civil actions by aggrieved persons, are made ap- cable to aggrieved Federal employees or applicants. They could file a civil tion within 30 days of notice of final action on a complaint made pursuant to ction 717(b), or after 180 days from the filing of an initial charge, or an appeal th the Commission. The authority given to the Commission or the limitations aced upon the Commission under sections 706 (f) through (k) would apply to e Civil Service Commission or the agencies, as appropriate, in connection with ivil action brought under section 707(c). So, for example, if the Civil Service mmission or agency does not issue an order within 180 days after a complaint appeal is filed, the aggrieved person may also institute a civil action. If such tion is instituted within one year of the filing of the complaint or appeal, the vil Service Commission or agency may request that the action be stayed or missed upon a showing that it has been acting with due diligence, that it ticipates issuance of an order within a reasonable time on the complaint or peal, that the case or proceeding is exceptional and that extension of exclu- e jurisdiction of the Civil Service Commission or agency is warranted.

Section 717(e)—This subsection provides that nothing in this act relieves any vernment agency or official of his existing nondiscriminating obligations un- the Constitution, other statutes, or his or its responsibilities under Executive der 11478 relating to equal employment opportunity in the Federal Government.

SECTION 12

Section 716 is amended to provide for consultation of the Attorney General, Chairman of the Civil Service Commission, and the Chairman of the Equal ployment Opportunity Commission regarding rules, regulations and policy the performance of their responsibilities under this act. It does not in any y limit each of the officials in independently carrying out their respective ob- ations under this title.

SECTION 13

This section provides that the amended provisions of Section 706 would apply charges filed with the Commission prior to the effective date of this Act. In dition, those new or amended sections of Title VII not specifically made in plicable to current charges, would be applicable to such existing charges.

SECTION 14

This section provides that no government contract, or portion thereof, can denied, withheld, terminated, or superseded by a government agency under t Executive Order 11246 or any other order of law without according the resp tive employer a full hearing and adjudication pursuant to 5 U.S.C. § 554 et s where such employer has an affirmative action program for the same facili which had been accepted by the Government within the prior twelve mont Such plan shall be deemed to be accepted by the Government if the appropri compliance agency has accepted such plan and the Office of Federal Contra Compliance has not disapproved of such plan within 45 days. However, an e ployer who substantially deviates from the previously accepted plan is exclud from the protection afforded by this section.

The PRESIDING OFFICER. The question now is on agreeing to the co mittee amendment in the nature of a substitute, as amended.

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question now is on the engrossme and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and w read the third time.

The PRESIDING OFFICER. The bill having been read the third tim the question is, shall it pass?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that th order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on final passage of S. 2515. On this question the yea and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from In diana (Mr. Bayh), the Senator from Indiana (Mr. Hartke), the Sen ator from Washington (Mr. Jackson), the Senator from Arkansa (Mr. McClellan), the Senator from South Dakota (Mr. McGovern) the Senator from Maine (Mr. Muskie), and the Senator from Arkan sas (Mr. Fulbright) are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. Fulbright), the Senator from Washington (Mr. Jack son), the Senator from South Dakota (Mr. McGovern), and the Sen ator from Maine (Mr. Muskie) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr Baker) is absent by leave of the Senate on official committee business

The Senator from Wyoming (Mr. Hansen) and the Senator from Iowa (Mr. Miller) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The result was announced—yeas 73, nays 16, as follows:

[No. 56 Leg.]

YEAS—73

ken	Fong	Nelson
lott	Gambrell	Packwood
derson	Gravel	Pastore
all	Griffin	Pearson
llmon	Gurney	Pell
nnett	Harris	Percy
ntsen	Hart	Proxmire
ble	Hatfield	Randolph
ggs	Hollings	Ribicoff
ooke	Hruska	Roth
ckley	Hughes	Saxbe
rdick	Humphrey	Schweiker
rd, W. Va.	Inouye	Scott
nnon	Javits	Smith
se	Jordan, Idaho	Spong
iles	Kennedy	Stafford
urch	Magnuson	Stevens
ok	Mansfield	Stevenson
pper	Mathias	Symington
tton	McGee	Taft
nston	McIntyre	Tunney
rtis	Metcalf	Weicker
le	Mondale	Williams
miniek	Montoya	
gleton	Moss	

NAYS—16

en	Fannin	Talmadge
ck	Goldwater	Thurmond
rd, Va.	Jordan, N.C.	Tower
stland	Long	Young
ender	Sparkman	
rin	Stennis	

NOT VOTING—11

ker	Hartke	Miller
rh	Jackson	Mundt
bright	McClellan	Muskie
nsen	McGovern	

So the bill (S. 2515) was passed, as follows:

S. 2515

An act to further promote equal employment opportunities for American workers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1972".

SEC. 2. Section 701 of the Civil Rights Act of 1961 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

"(b) The term 'employer' means a person engaged in an industry affec
commerce who has fifteen or more employees for each working day in eac
twenty or more calendar weeks in the current or preceding calendar year,
any agent of such a person, but such terms does not include (1) the United St
a corporation wholly owned by the Government of the United States, an In
tribe, or any department or agency of the District of Columbia subject by sta
to procedures of the competitive service (as defined in section 2102 of title
the United States Code), or (2) a bona fide private membership club (other t
a labor organization) which is exempt from taxation under section 501(c) of
Internal Revenue Code of 1954, except that during the first year after the da
enactment of the Equal Employment Opportunity Enforcement Act of 1971,
sons having fewer than twenty-five employees (and their agents) shall no
considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the w
"assistance".

(4) In subsection (e) strike out between "(A)" and "and such labor organ
tion." and insert in lieu thereof "twenty-five or more during the first year a
the date of enactment of the Equal Employment Opportunities Enforcement
of 1972, or (B) fifteen or more thereafter.".

(5) In subsection (f), change the period at the end of the subsection t
colon, and add thereafter the following words: "*Provided, however*, That
term 'employee' shall not include any person elected to public office in any S
or political subdivision of any State by the qualified voters thereof, or any per
chosen by such officer to be a personal assistant, or an immediate adviser in
spect to the exercise of the constitutional or legal powers of the office."

(6) At the end of subsection (h) insert before the period a comma and the
lowing: "and further includes any governmental industry, business, or activi

(7) After subsection (i) insert the following new subsection (j):

"(j) The term 'religion' includes all aspects of religious observance and p
tice, as well as belief, unless an employer demonstrates that he is unable to r
sonably accommodate to an employee's or prospective employee's, religious
servance or practice without undue hardship on the conduct of the employ
business."

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S
2000e–1) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the
ployment of aliens outside any State, or to a religious corporation, associati
educational institution, or society with respect to the employment of individu
of a particular religion to perform work connected with the carrying on by s
corporation, association, educational institution, or society of its religious
tivities."

SEC. 4. (a) Subsections (a) through (g) of section 706 of the Civil Rig
Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5(a)–(g)) are amended to read
follows:

"(a) The Commission is empowered, as hereinafter provided, to prevent a
person from engaging in any unlawful employment practice as set forth
section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to
aggrieved, or by an officer or employee of the Commission upon the request
any person claiming to be aggrieved, alleging that an employer, employm
agency, labor organization, or joint labor-management committee controllin
apprenticeship or other training or retraining, including on-the-job training p
grams, has engaged in an unlawful employment practice, the Commission sh
serve a notice of the charge (including the date, place, and circumstances of t
alleged unlawful employment practice) on such employer, employment agen
labor organization, or joint labor-management committee (hereinafter refer
to as the 'respondent') within ten days, and shall make an investigation there
Charges shall be in writing under oath or affirmation and shall contain su
information and be in such form as the Commission requires. Charges shall n
be made public by the Commission. If the Commission determines after su
investigation that there is not reasonable cause to believe that the charge
true, it shall dismiss the charge and promptly notify the person claiming to b
aggrieved and the respondent of its action. In determining whether reasonab

ause exists, the Commission shall accord substantial weight to final findings nd orders made by State or local authorities in proceedings commenced under tate or local law pursuant to the requirements of subsections (c) and (d). If ne Commission determines after such investigation that there is reasonable cause o believe that the charge is true, the Commission shall endeavor to eliminate ny such alleged unlawful employment practice by informal methods of con- erence, conciliation, and persuasion. Nothing said or done during and as a part f such informal endeavors may be made public by the Commission, its officers r employees, or used as evidence in a subsequent proceeding without the writ- en consent of the persons concerned. Any person who makes public informa- on in violation of this subsection shall be fined not more than $1,000 or im- risoned for not more than one year, or both. The Commission shall make its etermination on reasonable cause as promptly as possible and, so far as prac- cable, not later than one hundred and twenty days from the filing of the charge r, where applicable under subsection (c) or (d), from the date upon which ne Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be ggrieved alleging an unlawful practice occurring in a State or political sub- vision of a State which has a State or local law prohibiting the unlawful em- oyment practice alleged and establishing or authorizing a State or local uthority to grant or seek relief from such practice or to institute criminal pro- eedings with respect thereto upon receiving notice thereof the Commission shall ke no action with respect to the investigation of such charge before the expira- on of sixty days after proceedings have been commenced under the State or local w, unless such proceedings have been earlier terminated, except that such sixty- ay period shall be extended to one hundred and twenty days during the first ear after the effective date of such State or local law. If any requirement for e commencement of such proceedings is imposed by a State or local authority her than a requirement of the filing of a written and signed statement of e facts upon which the proceedings is based, the proceeding shall be deemed to ave been commenced for the purposes of this subsection at the time such state- ent is sent by registered or certified mail to the appropriate State or local uthority.

"(d) In the case of any charge filed by an officer or employee of the Com- ission alleging an unlawful employment practice occurring in a State or po- ical subdivision of a State which has a State or local law prohibiting the ractice alleged and establishing or authorizng a State or local authority to ant or seek relief from such practice or to institute criminal proceedings with spect thereto upon receiving notice thereof the Commission shall, before taking y action with respect to such charge, notify the appropriate State or local ficials and, upon request, afford them a reasonable time, but not less than sixty ys (provided that such sixty-day period shall be extended to one hundred and enty days during the first year after the effective date of such State or local w), unless a shorter period is requested, to act under such State or local law remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and ghty days after the alleged unlawful practice occurred and notice of the charge ncluding the date, place and circumstances of the alleged unlawful employment actice) shall be served upon the person against whom such charge is made thin ten days thereafter, except that in a case of an unlawful employment prac- e with respect to which the person aggrieved has initially instituted proceed- gs with a State or local agency with authority to grant or seek relief from ch practice or to institute criminal proceedings with respect thereto upon re- iving notice thereof, such charge shall be filed by or on behalf of the person grieved within three hundred days after the alleged unlawful employment atice occurred, or within thirty days after receiving notice that the State or al agency has terminated the proceedings under the State or local law, hichever is earlier, and a copy of such charge shall be filed by the Commission th the State or local agency.

"(f) (1) If within thirty days after a charge is filed with the Commission or thin thirty days after expiration of any period of reference has been unable secure from the respondent a conciliation agreement acceptable to the Com- ssion, the Commission shall so notify the General Counsel who may bring a il action against any respondent not a government, governmental agency, or litical subdivision named in the charge. In the case of a respondent which is a vernment, governmental agency, or political subdivision, the Commission shall

take no further action and shall refer the case to the Attorney General who
bring a civil action against such respondent in the appropriate United States
trict court. The person or persons aggrieved shall have the right to interven
a civil action brought by the General Counsel or the Attorney General in a
involving a government, governmental agency, or political subdivision. I
charge filed with the Commission pursuant to subsection (b) is dismissed
the Commission, or if within one hundred and fifty days from the filing of s
charge or the expiration of any period of reference under subsection (c) or
which ever is later, the General Counsel has not filed a civil action under
section or the Attorney General has not filed a civil action in a case involvin
government, governmental agency, or political subdivision, or the Commission
not entered into a conciliation agreement to which the person aggrieved i
party, the Commission or the Attorney General in a case involving a gove
ment, governmental agency or political subdivision shall so notify the per
aggrieved and within ninety days after the giving of such notice a civil act
may be brought against the respondent named in the charge (1) by the per
named in the charge as claiming to be aggrieved or (2) if such charge was fi
by an officer or employee of the Commission, by any person whom the cha
alleges was aggrieved by the alleged unlawful employment practice. Upon ap
cation by the complainant and in such circumstances as the court may de
just, the court may appoint an attorney for such complainant and may auth
ize the commencement of the action without the payment of fees, costs, or
curity. Upon timely application, the court may, in its discretion, permit the
torney General to intervene in such civil action if he certifies that the case
of general public importance. Upon request, the court may, in its discreti
stay further proceedings for not more than sixty days pending the terminati
of State or local proceedings described in subsections (c) or (d) of this secti
or further efforts of the Commission to obtain voluntary compliance.

"(2) In any such proceeding the General Counsel or the Attorney General
a case involving a government, governmental agency or political subdivision n
file with the clerk of such court a request that a court of three judges be c
vened to hear and determine the case. Such request by the General Counsel
the Attorney General shall be accompanied by a certificate that, in his opini
the case is of general public importance. A copy of the certificate and request f
a three-judge court shall be immediately furnished by such clerk, to the chi
judge of the circuit (or in his absence, the presiding circuit judge of the circui
in which the case is pending. Upon receipt of the copy of such request it shall
the duty of the chief judge of the circuit or the presiding circuit judge, as t
case may be, to designate immediately three judges in such circuit, of whom
least one shall be a circuit judge and another of whom shall be a district jud
of the court in which the proceeding was instituted, to hear and determine su
case, and it shall be the duty of the judges so designated to assign the case f
hearing at the earliest practicable date, to participate in the hearing and dete
mination thereof, and to cause the case to be in every way expedited. An appe
from the final judgment of such court will lie to the Supreme Court.

"(3) In the event the General Counsel or the Attorney General fails to file su
a request in any such proceeding, it shall be the duty of the chief judge of th
district (or in his absence, the acting chief judge) in which the case is pendi
immediately to designate a judge in such district to hear and determine the cas
In the event that no judge in the district is available to hear and determine th
case, the chief judge of the district, or the acting chief judge, as the case may b
shall certify this fact to the chief judge of the circuit (or in his absence, th
acting chief judge) who shall then designate a district or circuit judge of th
circuit to hear and determine the case.

"(4) It shall be the duty of the judge designated pursuant to this subsectio
to assign the case for hearing at the earliest practicable date and to cause th
case to be in every way expedited.

"(5) Whenever a charge is led with the Commission and the Commission co
cludes on the basis of a preliminary investigation that prompt judicial action
necessary to carry out the purposes of this Act, the Commission or the Attorne
General in a case involving a government, governmental agency, or politica
subdivision, may bring an action for appropriate temporary or preliminary re
lief pending final disposition of such charge. It shall be the duty of a court havi
jurisdiction over proceedings under this section to assign cases for hearing a
the earliest practicable date and to cause such cases to be in every way expedited

"(6) The provisions of section 706 (f) through (k), as applicable, shall gover
civil actions brought hereunder.

"(g)(1) Each United States district court and each United States court of place subject to the jurisdiction of the United States shall have jurisdiction of tions brought under this title. Such an action may be brought in any judicial strict in the State in which the unlawful employment practice as alleged to ve been committed, in the judicial district in which the employment records levant to such practice are maintained and administered, or in the judicial dis- ct in which the injured person would have worked but for the alleged unlawful ployment practice, but if the respondent is not found within any such district, ch an action may be brought within the judicial district in which the re- ondent has his principal office. For purposes of sections 1404 and 1406 of title 28 the United States Code, the judicial district in which the respondent has s principal office shall in all cases be considered a district in which the action ght have been brought.

"(2) If the court finds that the respondent has engaged in or is engaging in unlawful employment practice charged in the complaint, the court may enjoin respondent from engaging in such unlawful employment practice, and order h affirmative action as may be appropriate, which may include, but is not ited to, reinstatement or hiring of employees, with or without backpay (pay- e by the employer, employment agency, or labor organization, as the case may responsible for the unlawful employment practice), or any other equitable ief as the court deems appropriate. Backpay liability shall not exceed that ich accrues from a date more than two years prior to the filing of a charge h the Commission. Interim earnings or amounts earnable with reasonable gence by the person or persons discriminated against shall operate to reduce backpay otherwise allowable."

(b) Subsection (k) of section 706 of such Act is amended to read as follows: (k) In any action or proceeding under this title the Commission or court, the case may be, may allow the prevailing party, other than the Commission the United States, a reasonable attorney's fee as part of the costs, and the mission and the United States shall be liable for costs the same as a private son. Any prevailing party in any proceeding brought by or against the Com- ssion of the United States under this title, that is an employer of less than enty-five employees or a labor organization of less than twenty-five members ll, upon application to the Commission, be indemnified by the United States the cost of his defense against the charge in an amount not to exceed $5,000, luding all reasonable expenses and attorney's fees incurred after the serving notice on him of the charge.

Any prevailing party in such a proceeding that is an employer of twenty-five one hundred employees whose average income from such employment is less n $7,500, or a labor organization with twenty-five to one hundred members, ll, upon application to the Commission, be indemnified by the United States one-half of the cost of his defense against the charge not to exceed $2,500, uding all reasonable expenses and attorney's fees incurred after the serving notice on him of the charge. The costs evidenced by respondent's vouchers of expenses and attorney's fees shall be deemed reasonable so long as they are parable to the total amount of the expenses and attorney's fees incurred by Commission in investigating and prosecuting the charge. Disallowance of part of such request shall be made a part of the Commission's order in such ceedings. Any United States court before which a proceeding under this title ll be brought may upon request by the respondent make the determination vided for in this subsection. The Treasurer of the United States shall indem- the respondent as provided for herein upon certification by the Commission."

EC. 4A. The fifth sentence of section 706(f)(1) of the Civil Rights Act of 4, as amended by the previous section, is amended to read as follows: "Upon ely application, the court may, in its discretion, permit the General Counsel, he Attorney General in a case involving a government, government agency, olitical subdivision, to intervene in such civil action if he certifies that the is of general public importance."

EC. 4B. Section 706 of the Civil Rights Act of 1964 is amended by adding at end thereof the following new subsection:

1) If the judge designated pursuant to subsection (f)(3) of this section not assigned the case for trial within one hundred and twenty days after e has been joined, that judge may appoint a master pursuant to rule 53 of Federal Rules of Civil Procedure."

EC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at end thereof the following new subsection:

"(c) Effective two years after the date of enactment of the Equal Emp
ment Opportunities Enforcement Act of 1972, the functions of the Attorney
eral under this section shall be transferred to the Commission, together
such personnel, property, records, and unexpended balances of appropriati
allocations, and other funds employed, used, held, available, or to be made av
able in connection with such functions unless the President submits, and neit
House of Congress vetoes, a reorganization plan pursuant to chapter 9, of tit
United States Code, inconsistent with the provisions of this subsection.
Commission shall carry out such functions in accordance with the provision
subsections (d) and (e) of this section.

"(d) Upon the transfer of functions provided for in subsection (c) of
section, in all suits commenced pursuant to this section prior to the date of
transfer, proceedings shall continue without abatement, all court orders
decrees shall remain in effect, and the Commission shall be substituted a
party for the United States of America, the Attorney General, or the Act
Attorney General, as appropriate.

"(e) Subsequent to the date of enactment of the Equal Employment Opp
tunities Enforcement Act of 1972, the Commission shall have authority to
vestigate and act on a charge of a pattern or practice of discrimination, whet
filed by or on behalf of a person claiming to be aggrieved or by an officer
employee of the Commission. All such actions shall be conducted in accorda
with the procedures set forth in section 706."

SEC. 6. (a) Subsections (b), (c), and (d) of section 709 of the Civil Rig
Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) are amended to read
follows:

"(b) The Commission may cooperate with State and local agencies charg
with the administration of State fair employment practices laws and, with
consent of such agencies, may, for the purpose of carrying out its functions a
duties under this title and within the limitation of funds appropriated specifica
for such purpose, engage in and contribute to the cost of research and ot
projects of mutual interest undertaken by such agencies, and utilize the servi
of such agencies and their employees, and, notwithstanding any other provisi
of law, pay by advance or reimbursement such agencies and their employe
for services rendered to assist the Commission in carrying out this title. In f
therance of such cooperative efforts, the Commission may enter into writt
agreements with such State or local agencies and such agreements may inclu
provisions under which the Commission shall refrain from processing a cha
in any cases or class of cases specified in such agreements or under which
Commission shall relieve any person or class of persons in such State or locali
from requirements imposed under this section. The Commission shall resci
any such agreement whenever it determines that the agreement no longer serv
the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject
this title shall (1) make and keep such records relevant to the determinatio
of whether unlawful employment practices have been or are being committe
(2) preserve such records for such periods, and (3) make such reports therefr
as the Commission shall prescribe by regulation or order, after public hearin
as reasonable, necessary, or appropriate for the enforcement of this title or
regulations or orders thereunder. The Commission shall, by regulation, requi
each employer, labor organization, and joint labor-management committee subje
to this title which controls an apprenticeship or other training program to mai
tain such records as are reasonably necessary to carry out the purposes of th
title, including, but not limited to, a list of applicants who wish to particip
in such program, including the chronological order in which applications we
received, and to furnish to the Commission upon request, a detailed descriptio
of the manner in which persons are selected to participate in the apprenticesh
or other training program. Any employer, employment agency, labor organiz
tion, or joint labor-management committee which believes that the applicatio
to it of any regulation or order issued under this section would result in undu
hardship may apply to the Commission for an exemption from the applicatio
of such regulation or order, and, if such application for an exemption is denie
bring a civil action in the United States district court for the district whe
such records are kept. If the Commission or the court, as the case may be, find
that the application of the regulation or order to the employer, employment
agency, or labor organization in question would impose an undue hardship, th
Commission or the court, as the case may be, may grant appropriate relief.
any person required to comply with the provisions of this subsection fails

uses to do so, the United States district court for the district in which such rson is found, resides, or transacts business, shall, upon application of the mmission, or the Attorney General in a case involving a government, governntal agency or political subdivision, have jurisdiction to issue to such person order requiring him to comply.

(d) In prescribing requirements pursuant to subsection (c) of this section, Commission shall consult with other interested State and Federal agencies l shall endeavor to coordinate its requirements with those adopted by such encies. The Commission shall furnish upon request and without cost to any te or local agency charged with the administration of a fair employment actice law information obtained pursuant to subsection (c) of this section m any employer, employment agency, labor organization, or joint labor-manement committee subject to the jurisdiction of such agency. Such information ll be furnished on condition that it not be made public by the recipient agency or to the institution of a proceeding under State or local law involving such ormation. If this condition is violated by a recipient agency, the Commission y decline to honor subsequent requests pursuant to this subsection."

b) Section 709 or the Civil Rights Act of 1964 is amended by: (1) redesignatsubsection (e) as subsection (f) and (2) by adding immediately after sec- 709(d) as amended, the following subsection (e):

(e) Any record or paper required by section 709(c) of this title to be preved or maintained shall be made available for inspection, reproduction, and ying by the Commission or its representative, or by the Attorney General or representative, upon demand in writing directed to the person having cusy, possession, or control of such record or paper. Unless otherwise ordered by ourt of the United States, neither the members of the Commission or its repntative nor the Attorney General or his representative shall disclose any ord or paper produced pursuant to this title, or any reproduction or copy, ept to Congress or any committee thereof, or to a governmental agency, or in presentation of any case or proceeding before any court or grand jury. The ited States district court for the district in which a demand is made or in ich a record or paper so demanded is located, shall have jurisdiction to compel ppropriate process the production of such record or paper."

EC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 0e–9) is amended to read as follows:

"INVESTIGATORY POWERS

SEC. 710. For the purpose of all hearings and investigations conducted by Commission or its duly authorized agents or agencies, section 11 of the Naal Labor Relations Act (49 Stat. 455 29 U.S.C. 161) shall apply."

EC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1961 (78 Stat. 255; U.S.C. 2000e–2(a)(2)) is amended by inserting the words "or applicants for loyment" after the words "his employees".

b) Section 703(c)(2) of such Act is amended by inserting the words "or licants for membership" after the word "membership".

c)(1) Section 704(a) of such Act is amended by inserting "or joint labornagement committee controlling apprenticeship or other training or retraining, uding on-the-job training programs," after "employment agency" in section (a).

2) Section 704(b) of such Act is amended by (A) striking out "or employnt agency" and inserting in lieu thereof "employment agency, or joint labornagement committee controlling apprenticeship or other training or retrainincluding on-the-job training programs,", and (B) inserting a comma and words "or relating to admission to, or employment in, any program estabed to provide apprenticeship or other training by such a joint labornagement committee" before the word "indicating".

d) Section 705(a) of the Civil Rights Act of 1964 (785 Stat. 258, 42 U.S.C. e–4(a)) is amended to read as follows:

SEC. 705. (a) There is hereby created a Commission to be known as the al Employment Opportunity Commission, which shall be composed of five nbers, unless additional members are appointed as hereinafter provided in subsection. Not more than the least number of members sufficient to consti- a majority of the members of the Commission shall be members of the same tical party. Members of the Commission shall be appointed by the President and with the advice and consent of the Senate for a term of five years. individual chosen to fill a vacancy shall be appointed only for the unexpired

term of the member whom he shall succeed, and all members of the Commis
shall continue to serve until their successors are appointed and qualified, ex
that no such member of the Commission shall continue to serve (1) for n
than sixty days when the Congress is in session unless a nomination to fill s
vacancy shall have been submitted to the Senate, or (2) after the adjournm
sine die of the session of the Senate in which such nomination was submit
The President shall designate one member to serve as Chairman of the C
mission, and one member to serve as Vice Chairman. The Chairman shall
responsible on behalf of the Commission for the administrative operations
the Commission, and, except as provided in subsection (b), shall appoint
accordance with the provisions of title 5, United States Code, governing appo
ments in the competitive service, such officers, agents, attorneys, hearing ex
iners, and employees, except that regional directors of the Commission shall
appointed by the Chairman with the concurrence of the General Counsel, as
deems necessary to assist it in the performance of its functions and to fix th
compensation in accordance with the provisions of chapter 51 and subchap
III of chapter 53 of title 5, United States Code, relating to classification
General Schedule pay rates: *Provided*, That assignment, removal, and comp
sation of hearing examiners shall be in accordance with sections 3105, 33
5362, and 7521 of title 5, United States Code. At any time after one year fr
the effective date of the Equal Employment Opportunities Enforcement Act
1972, the Chairman of the Commission, if he determines that the appointment
additional members of the Commission would help to effectuate the purposes
this title, may request the President to appoint up to four additional memb
of the Commission. Upon receiving such a request, the President may appo
up to four additional members of the Commission by and with the advice a
consent of the Senate. Such additional members shall be appointed for a te
of five years. Upon the expiration of the term of appointment of any such ad
tional member no further appointment to the same position shall be made, a
the total number of members of the Commission shall be reduced accordin
unless the Chairman of the Commission determines that the appointment
one or more additional members of the Commission continues to be necessa
to better effectuate the purposes of this title and so advises the President."

(c)(1) Section 705 of the Act is amended by inserting the following n
subsection (b):

"(b) There shall be a General Counsel of the Commission appointed by t
President, by and with the advice and consent of the Senate, for a term of fo
years. The General Counsel shall have responsibility for the filing of complai
and the conduct of litigation as provided in sections 706 and 707 of this tit
The General Counsel shall have such other duties as the Commission may pr
scribe or as may be provided by law. The General Counsel shall appoint region
attorneys with the concurrence of the Chairman, and shall appoint such oth
employees in the Office of the General Counsel as may be necessary to assi
in carrying out the General Counsel's responsibilities and functions under th
title. The General Counsel of the Commission on the effective date of this A
shall continue in such position and perform the functions specified in this subse
tion until a successor is appointed and qualified."

(2) Subsections (b) through (j) of section 705 of such Act are redesignate
as subsections (c) through (k), respectively.

(f) Section 705(h)(1) of such Act is amended by inserting at the end there
the following: ", and to accept voluntary and uncompensated services, for th
limited purpose of publicizing in the media the Commission and its activities no
withstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C
665(b))".

(g) Section 705(h)(6) of such Act, as redesignated by this section, is amende
to read as follows:

"(6) to intervene in a civil action brought by an aggrieved party under sectio
706."

(h) Section 713 of such Act is amended by adding at the end thereof the fo
lowing new subsections:

"(c) Except for the rulemaking power as defined in subchapter II of chapte
5 of title 5, United States Code, with reference to general rules as distinguishe
from rules of specific applicability, and the power to enter into or rescind agree
ments with State and local agencies, as provided in subsection (b) of section 70

under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter. Nothing in this subsection authorizes the Commission to provide for person other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

(i) Section 714 of such Act is amended by striking out "section 11" and inserting in lieu thereof "sections 111 and 1114".

SEC. 9. (a) Section 5314 of title 5, of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (8)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

SEC. 10. Section 715 of the Civil Rights Act of 1964 is amended to read as follows:

"SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this paragraph as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applications for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having position in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency

and each appropriate unit referred to in section 717(a) shall submit in orde to maintain an affirmative program of equal employment opportunity for all suc employees and applicants for employment;

"(2) be responsible for the review and evaluation of the operation of a agency equal employment opportunity programs, periodically obtaining an publishing (on at least a semiannual basis) progress reports from each suc department, agency, or unit; and

"(3) consult with and solicit the recommendations of interested individuals groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules regulations, orders, and instructions which shall include a provision that an em ployee or applicant for employment shall be notified of any final action taken o any complaint of discrimination filed by him thereunder. The plan submitted b each department, agency, and unit shall include, but not be limited to—

"(1) provisions for the establishment of training and education program designed to provide a maximum opportunity for employees to advance so as t perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience re lating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equa employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

"(c) Within thirty days of receipt of notice of final action taken by a depart ment, agency, or unit referred to in subsection 717 (a), or by the Civil Service Commission upon an appeal from a decision, or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex, or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

"(d) The provisions of section 706 (f) through (k), as applicable, shall govern civil actions brought hereunder.

"(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government."

SEC. 12. Section 716 of the Civil Rights Act of 1964 (42 U.S.C. 2000(e)-15, 76 Stat. 266) is amended by adding at the end thereof the following new subsection:

"(d) In the performance of their responsibilities under this Act, the Attorney General, the Chairman of the Civil Service Commission and the Chairman of the Equal Employment Opportunity Commission shall consult regarding their rules, regulations, and policies."

SEC. 13. Section 5108(c) of title 5, United States Code, is amended by

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it appears therein the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission

in GS 16, GS–17, and GS–18 for the purposes of carrying out Title VII of the Civil Rights Act of 1964."

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.

SEC. 15. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

SEC. 16. The Chairman of the United States Civil Service Commission, or his delegate, shall be a member of the Equal Employment Opportunity Coordinating Council established by section 715 of the Civil Rights Act of 1964, as amended by this Act.

The PRESIDING OFFICER. Under the previous unanimous-consent agreement, the Senate will now proceed to the consideration of H.R. 1746, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 1746) to further promote equal opportunity for American workers.

The PRESIDING OFFICER. Under the agreement, all after the enacting clause is stricken, and the language of S. 2515 as passed by the Senate is substituted therefor.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Arkansas (Mr. Fulbright), the Senator from Indiana (Mr. Hartke), the Senator from Washington (Mr. Jackson), the Senator from Arkansas (Mr. McClellan), the Senator from South Dakota (Mr. McGovern), and the Senator from Maine (Mr. Muskie) are necessarily absent.

I further announced that, if present and voting, the Senator from Arkansas (Mr. Fulbright), the Senator from Washington (Mr. Jackson), the Senator from South Dakota (Mr. McGovern), and the Senator from Maine (Mr. Muskie) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. Baker) is absent by leave of the Senate on official committee business.

The Senator from Wyoming (Mr. Hansen) and the Senator from Iowa (Mr. Miller) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The result was announced—yeas 72, nays 17, as follows:

[No. 57 Leg.]

YEAS—72

Aiken	Fong	Moss
Allott	Gambrell	Nelson
Anderson	Gravel	Packwood
Beall	Griffin	Pastore
Bellmon	Gurney	Pearson
Bennett	Harris	Pell
Bentsen	Hart	Percy
Bible	Hatfield	Proxmire
Boggs	Hollings	Randolph
Brooke	Hruska	Ribicoff
Burdick	Hughes	Roth
Byrd, W. Va.	Humphrey	Saxbe
Cannon	Inouye	Schweiker
Case	Javits	Scott
Chiles	Jordan, Idaho	Smith
Church	Kennedy	Spong
Cook	Magnuson	Stafford
Cooper	Mansfield	Stevens
Cotton	Mathias	Stevenson
Cranston	McGee	Symington
Curtis	McIntyre	Taft
Dole	Metcalf	Tunney
Dominick	Mondale	Weicker
Eagleton	Montoya	Williams

NAYS—17

Allen	Ervin	Stennis
Brock	Fannin	Talmadge
Buckley	Goldwater	Thurmond
Byrd, Va.	Jordan, N.C.	Tower
Eastland	Long	Young
Ellender	Sparkman	

NOT VOTING—11

Baker	Hartke	Miller
Bayh	Jackson	Mundt
Fulbright	McClellan	Muskie
Hansen	McGovern	

So the bill (H.R. 1746) was passed.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that in the engrossment of the Senate amendments to H.R. 1746, the Secretary of the Senate be authorized to make necessary technical and clerical corrections.

The PRESIDING OFFICER (Mr. Roth). Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that H.R. 1746 as amended by the Senate be printed as passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I simply wish to extend the gratitude of the Senate to the distinguished Senator from New Jersey (Mr. Williams), the able chairman of the Committee on Labor and Public Welfare.

Day after day for the past month or more he pressed here on the floor for the successful adoption of the equal opportunity proposal. Today's overwhelming vote indicates beyond all doubt the effectiveness of his efforts. The Senate is deeply grateful.

The Senate is grateful as well for the splendid cooperative efforts of the distinguished Senator from New York (Mr. Javits), the able ranking minority member of the committee. His support and assistance were indispensable to such an outstanding achievement.

To be singled out for special tribute as well, are the Senators from North Carolina (Mr. Ervin) and Alabama (Mr. Allen). To be sure, they employed the procedures of the Senate to protect to the utmost their positions on this measure, but they did so fairly and openly. They expressed their views strongly and they did so sincerely and they are to be commended.

The distinguished Senator from Colorado (Mr. Dominick) is to be singled out also. It was through his efforts and those of many other Members that the Senate was able to reach final disposition of the equal opportunities proposal.

Finally, the Senate as a whole may be commended. In the final analysis, all Members joined to assure final action today.

Mr. WILLIAMS. Mr. President, I want to express my deep appreciation for the remarkable work of so many people in the passage of this bill after 5 weeks of consideration.

My personal appreciation goes to all the individuals concerned, specially the tireless staffs who carried the workload for such a long period of time, on both sides of the aisle, both majority and minority staffs, Mr. Gerald Feder, counsel to the Labor Subcommittee, Mr. Donald Elisburg, associate counsel, Mr. Eugene Mittelman, minority counsel to the Labor Committee, and Mr. Dan Moyle, legislative assistant to Senator Dominick.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yield?

Mr. WILLIAMS. I yield.

Mr. JAVITS. I should like to express my appreciation for the opportunity to work again in such close cooperation with the distinguished Senator from New Jersey (Mr. Williams). This was a monumental labor. All of us can look back on it with pride and satisfaction. I believe that it will result in a bill which will be an immeasurable improvement over the present administration of the statute.

Our relations have been excellent. The Senator from New Jersey has given every fiber of his being to the work which was involved, and I think the entire country will appreciate that as the days go by.

I should also like to state my own satisfaction at having gotten over the preliminary difference with the distinguished Senator from Colorado (Mr. Dominick). He was most cooperative and pitched in during the final efforts to pass this bill, as he said he would, once his real concern about the method of enforcement had been surmounted.

The staffs who served us, both majority and minority, Mr. Eugene Mittelman, minority counsel to the committee, for me, and Mr. Williams' assistant, Mr. Gerald Feder, counsel to the subcommittee, now in the Chamber, and Mr. Donald Elisburg, associate counsel, and Mr. Dan Moyle as well as all the other backup people, deserve the highest praise and greatest commendation because they were so much involved in the fashioning of this work. I hope very much that they will derive the same satisfaction that the Senator from New Jersey and I and our other colleagues will derive from final consummation of this bill.

The bill will now go over to the other body. I express every confidence that the other body will send the bill promptly to conference and that

we, as the conferees, will be able to bring back a finished product to t
Senate very shortly, have it agreed to by the Senate and then sent
to the President for his signature. I believe that it will immeasural
improve the economic opportunities for millions of Americans and
a critically important factor in the economic as well as the social st
bility of the country.

I again express my pleasure at having worked so closely with t
chairman of the committee, the Senator from New Jersey (M
Williams).

Mr. WILLIAMS. I appreciate the kind comments of the Senator fr
New York.

Mr. President, this has been a long and grueling 5 weeks. It has be
a worthwhile and rewarding experience, however, and the millions
minorities and women in our country have been well served by t
passage of this bill.

Many, many people were involved in this effort and I would li
to express my deep appreciation to all of them at this time.

First, to the Senate leadership for bearing with this measure for t
5 weeks of debate and to all the Members of the Senate for the
cooperation during the debates and for their action in finally passi
the bill.

A special note of personal thanks should go to Senator Javits f
being a tower of strength to me throughout the consideration of th
bill. As always, it has been gratifying to have his continuous suppo
every step of the way. Senator Dominick has my appreciation f
his diligence and tireless efforts. Even though we had a strong disagre
ment on certain features of the measure, he certainly assisted us
expediting consideration wherever possible.

Senators Ervin and Allen showed the utmost courtesy during th
most difficult days and I appreciate their consideration.

The entire membership of the Labor and Public Welfare Commit
tee was most helpful during consideration of this bill in committe
and their diligence helped us in reporting the measure soon afte
introduction. My special thanks go to Senator Taft for his cooperatio
in the committee and for his authorship of the general counsel amend
ment. Senator Schweiker for his assistance in handling the genera
counsel amendment on the floor. Senators Mondale and Gambrell fo
their work on the small business and union legal fees amendment
Senator Randolph for authoring the Sabbath observer amendment
Senator Cranston for his efforts on behalf of Federal employees, an
Senator Chiles for his efforts on the controversial voluntary service
amendment.

Senator Hruska has my appreciation for the gentlemanly manne
in which he approached the two amendments that he offered, though
they were not adopted.

Finally, I must extend my deep personal thanks to the Leadership
Conference on Civil Rights and each of its constituent groups. Th
labor movement is to be commended for its support of our efforts i
this and previous civil rights measures, despite the fact that labo
unions may be respondents under the law. The women's groups hav
been a source of exceptional assistance in support of this bill as have
the many church and church related groups.

Most importantly, I must express my special thanks to Clarence Mitchell of the NAACP, without whose efforts over the last 30 years, there would be no such legislation. This bill is a tribute to his efforts over the many years in behalf of all the Nation's minorities.

Announcement of Position on Vote

Mr. Gambrell. Mr. President, I was necessarily absent when a record vote was taken on the Allen amendment (Leg. 42) to S. 2515, the Equal Employment Opportunity Commission's bill.

Had I been present on February 14, when a vote on this amendment was taken, I would have voted "yea."

[From the Congressional Record—House, Feb. 23, 1972]

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1971

Message From the Senate

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with an amendment in which the ncurrence of the House is requested, a bill of the House of the following title:

H.R. 1746. An act to further promote equal employment opportunities for nerican workers.

* * * * * * *

Appointment of Conferees on H.R. 1746, Equal Employment Opportunity Act of 1971

Mr. Perkins. Mr. Speaker, I ask unanimous consent to take from e Speaker's table the bill (H.R. 1746) to further promote equal emoyment opportunities for American workers, with a Senate amendent thereto, disagree to the Senate amendment, and request a conrence with the Senate thereon.

The Speaker. Is there objection to the request of the gentleman om Kentucky?

The Chair hears none, and appoints the following conferees: Messrs. erkins, Dent, Hawkins, Mrs. Mink, Messrs. Burton, Clay, Gaydos, illiam D. Ford, Biaggi, Mazzoli, Pucinski, Brademas, Quie, Erborn, Bell, Esch, Landgrebe, Hansen of Idaho, Steiger of Wisconn, and Kemp.

[From the Congressional Record—Senate, Feb. 23, 1972]

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1971

A message from the House of Representatives, by Mr. Berry, one f its reading clerks, announced that the House had disagreed to the mendment of the Senate to the bill (H.R. 1746) to further promote qual employment opportunities for American workers; asked a con- erence with the Senate on the disagreeing votes of the two Houses ereon, and that Mr. Perkins, Mr. Dent, Mr. Hawkins, Mrs. Mink, r. Burton, Mr. Clay, Mr. Gaydos, Mr. William D. Ford, Mr. Biaggi, r. Mazzoli, Mr. Pucinski, Mr. Brademas, Mr. Quie, Mr. Erlenborn, r. Bell, Mr. Esch, Mr. Landgrebe, Mr. Hansen of Idaho, Mr. Steiger Wisconsin, and Mr. Kemp were appointed managers on the part the House at the conference.

* * * * * * *

Mr. Byrd of West Virginia. I ask that the Chair lay before the Sen- e a message from the House of Representatives on H.R. 1746.

The Presiding Officer (Mr. Brock) laid before the Senate a mes- ge from the House of Representatives that the House had disagreed the amendment of the Senate to the bill (H.R. 1746) to further pro- ote equal employment opportunities for American workers and re- uested a conference with the Senate on the disagreeing votes of the vo Houses thereon.

Mr. Byrd of West Virginia. Mr. President, I move that the Senate sist on its amendments and agree to the conference requested by the ouse of Representatives on the disagreeing votes of the two Houses, nd that the Chair be authorized to appoint the conferees on the part the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. illiams, Mr. Randolph, Mr. Pell, Mr. Nelson, Mr. Eagleton, Mr. evenson, Mr. Hughes, Mr. Javits, Mr. Schweiker, Mr. Packwood, r. Taft, and Mr. Stafford conferees on the part of the Senate.

[From the Congressional Record—House, Feb. 24, 1972]

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1971

Message From the Senate

A message from the Senate by Mr. Arrington one of its clerks announced that the Senate insists upon its amendment to the bill (H.R. 746) entitled "An act to further promote equal employment opportunities for American workers," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Williams, Mr. Randolph, Mr. Dell, Mr. Nelson, Mr. Eagleton, Mr. Stevenson, Mr. Hughes, Mr. Javits, Mr. Schweiker, Mr. Packwood, Mr. Taft, and Mr. Stafford to be the conferees on the part of the Senate.

92D CONGRESS
2d Session
SENATE
REP
No. 92-6

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 197

MARCH 2, 1972.—Ordered to be printed

Mr. WILLIAMS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 1746]

The committee of conference on the disagreeing votes of the t Houses on the amendment of the Senate to the bill (H.R. 1746) Act to further promote equal employment opportunities for Americ workers, having met, after full and free conference, have agreed recommend and do recommend to their respective Houses as follo

That the House recede from its disagreement to the amendme of the Senate and agree to the same with an amendment as follo

In lieu of the matter proposed to be inserted by the Senate amen ment insert the following:

That this Act may be cited as the "Equal Employment Opportun Act of 1972".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agenci political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

"(b) The term 'employer' means a person engaged in an indust affecting commerce who has fifteen or more employees for each worki day in each of twenty or more calendar weeks in the current or preced calendar year, and any agent of such a person, but such term does n include (1) the United States, a corporation wholly owned by the Gover ment of the United States, an Indian tribe, or any department or agen of the District of Columbia subject by statute to procedures of the competiti service (as defined in section 2102 of title 5 of the United States Code), (2) a bona fide private membership club (other than a labor organizatio which is exempt from taxation under section 501(c) of the Interna

Revenue Code of 1954, except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (e) strike out between "(A)" and "and such labor organization", and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, or (B) fifteen or more thereafter,".

(5) In subsection (f), insert before the period a comma and the following: 'except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision."

(6) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

(7) After subsection (i) insert the following new subsection (j):

"(j) The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–1) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

SEC. 4. (a) Subsections (a) through (g) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5(a)–(g)) are amended to read as follows:

"SEC. 705. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organiza-

tion, or joint labor-management committee (hereinafter referred to as t 'respondent') within ten days, and shall make an investigation there Charges shall be in writing under oath or affirmation and shall conta such information and be in such form as the Commission requires Charg shall not be made public by the Commission. If the Commission determi after such investigation that there is not reasonable cause to believe th the charge is true, it shall dismiss the charge and promptly notify the pe son claiming to be aggrieved and the respondent of its action. In dete mining whether reasonable cause exists, the Commission shall acco substantial weight to final findings and orders made by State or loc authorities in proceedings commenced under State or local law pursua to the requirements of subsections (c) and (d). If the Commission dete mines after such investigation that there is reasonable cause to believe th the charge is true, the Commission shall endeavor to eliminate any su alleged unlawful employment practice by informal methods of conferenc conciliation, and persuasion. Nothing said or done during and as a pa of such informal endeavors may be made public by the Commission, t officers or employees, or used as evidence in a subsequent proceedi without the written consent of the persons concerned. Any person wh makes public information in violation of this subsection shall be fined n more than $1,000 or imprisoned for not more than one year, or both. Th Commission shall make its determination on reasonable cause as prompt as possible and, so far as practicable, not later than one hundred an twenty days from the filing of the charge or, where applicable under su section (c) or (d), from the date upon which the Commission is authorize to take action with respect to the charge.

"(c) In the case of an alleged unlawful employment practice occurrin in a State, or political subdivision of a State, which has a State or loc law prohibiting the unlawful employment practice alleged and establishin or authorizing a State or local authority to grant or seek relief from suc practice or to institute criminal proceedings with respect thereto upo receiving notice thereof, no charge may be filed under subsection (a) by th person aggrieved before the expiration of sixty days after proceeding have been commenced under the State or local law, unless such proceeding have been earlier terminated, provided that such sixty-day period shall b extended to one hundred and twenty days during the first year after th effective date of such State or local law. If any requirement for the com mencement of such proceedings is imposed by a State or local authorit other than a requirement of the filing of a written and signed statement o the facts upon which the proceeding is based, the proceeding shall b deemed to have been commenced for the purposes of this subsection at th time such statement is sent by registered mail to the appropriate State o local authority.

"(d) In the case of any charge filed by a member of the Commissio alleging an unlawful employment practice occurring in a State or politica subdivision of a State which has a State or local law prohibiting th practice alleged and establishing or authorizing a State or local authorit to grant or seek relief from such practice or to institute criminal pro ceedings with respect thereto upon receiving notice thereof, the Commissio shall, before taking any action with respect to such charge, notify th appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty- day period shall be extended to one hundred and twenty days durin

e first year after the effective day of such State or local law), unless a horter period is requested, to act under such State or local law to remedy e practice alleged.

"(e) A charge under this section shall be filed within one hundred and ighty days after the alleged unlawful employment practice occurred and otice of the charge (including the date, place and circumstances of the lleged unlawful employment practice) shall be served upon the person gainst whom such charge is made within ten days thereafter, except that n a case of an unlawful employment practice with respect to which the erson aggrieved has initially instituted proceedings with a State or local gency with authority to grant or seek relief from such practice or to in-itute criminal proceedings with respect thereto upon receiving notice ereof, such charge shall be filed by or on behalf of the person aggrieved ithin three hundred days after the alleged unlawful employment practice curred, or within thirty days after receiving notice that the State or local gency has terminated the proceedings under the State or local law, which-er is earlier, and a copy of such charge shall be filed by the Commission ith the State or local agency.

"(f) (1) If within thirty days after a charge is filed with the Commission within thirty days after expiration of any period of reference under sub-ction (c) or (d), the Commission has been unable to secure from the spondent a conciliation agreement acceptable to the Commission, the ommission may bring a civil action against any respondent not a gov-nment, governmental agency, or political subdivision named in the harge. In the case of a respondent which is a government, governmental gency, or political subdivision, if the Commission has been unable to cure from the respondent a conciliation agreement acceptable to the ommission, the Commission shall take no further action and shall refer e case to the Attorney General who may bring a civil action against such spondent in the appropriate United States district court. The person or ersons aggrieved shall have the right to intervene in a civil action brought the Commission or the Attorney General in a case involving a govern-ent, governmental agency, or political subdivision. If a charge filed with e Commission pursuant to subsection (b) is dismissed by the Commission, if within one hundred and eighty days from the filing of such charge or e expiration of any period of reference under subsection (c) or (d), hichever is later, the Commission has not filed a civil action under this ction or the Attorney General has not filed a civil action in a case involv-g a government, governmental agency, or political subdivision, or the ommission has not entered into a conciliation agreement to which the rson aggrieved is a party, the Commission, or the Attorney General in a se involving a government, governmental agency, or political subdivision, all so notify the person aggrieved and within ninety days after the ving of such notice a civil action may be brought against the respondent amed in the charge (A) by the person claiming to be aggrieved or (B) if ch charge was filed by a member of the Commission, by any person whom e charge alleges was aggrieved by the alleged unlawful employment actice. Upon application by the complainant and in such circumstances the court may deem just, the court may appoint an attorney for such mplainant and may authorize the commencement of the action without e payment of fees, costs, or security. Upon timely application, the court ay, in its discretion, permit the Commission, or the Attorney General in a se involving a government, governmental agency, or political subdivision,

to intervene in such civil action upon certification that the case is of gene public importance. Upon request, the court may, in its discretion, s further proceedings for not more than sixty days pending the terminat of State or local proceedings described in subsections (c) or (d) of t section or further efforts of the Commission to obtain voluntary complian

"(2) Whenever a charge is filed with the Commission and the Commiss concludes on the basis of a preliminary investigation that prompt judic action is necessary to carry out the purposes of this Act, the Commissi or the Attorney General in a case involving a government, governmen agency, or political subdivision, may bring an action for appropri temporary or preliminary relief pending final disposition of such char Any temporary restraining order or other order granting prelimin or temporary relief shall be issued in accordance with rule 65 of Federal Rules of Civil Procedure. It shall be the duty of a court hav jurisdiction over proceedings under this section to assign cases for hear at the earliest practicable date and to cause such cases to be in every w expedited.

"(3) Each United States district court and each United States co of a place subject to the jurisdiction of the United States shall have jur diction of actions brought under this title. Such an action may be brou in any judicial district in the State in which the unlawful employm practice is alleged to have been committed, in the judicial district in wh the employment records relevant to such practice are maintained a administered, or in the judicial district in which the aggrieved pers would have worked but for the alleged unlawful employment practice, b if the respondent is not found within any such district, such an acti may be brought within the judicial district in which the respondent h his principal office. For purposes of sections 1404 and 1406 of title of the United States Code, the judicial district in which the respond has his principal office shall in all cases be considered a district in wh the action might have been brought.

"(4) It shall be the duty of the chief judge of the district (or in h absence, the acting chief judge) in which the case is pending immediate to designate a judge in such district to hear and determine the case. the event that no judge in the district is available to hear and determi the case, the chief judge of the district, or the acting chief judge, as t case may be, shall certify this fact to the chief judge of the circuit (or his absence, the acting chief judge) who shall then designate a distri or circuit judge of the circuit to hear and determine the case.

"(5) It shall be the duty of the judge designated pursuant to this su section to assign the case for hearing at the earliest practicable date a to cause the case to be in every way expedited. If such judge has n scheduled the case for trial within one hundred and twenty days aft issue has been joined, that judge may appoint a master pursuant to ru 53 of the Federal Rules of Civil Procedure.

"(g) If the court finds that the respondent has intentionally engaged or is intentionally engaging in an unlawful employment practice charg in the complaint, the court may enjoin the respondent from engaging such unlawful employment practice, and order such affirmative action may be appropriate, which may include, but is not limited to, reinstat ment or hiring of employees, with or without back pay (payable by th employer, employment agency, or labor organization, as the case may b responsible for the unlawful employment practice), or any other equitab

relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a)."

(b)(1) Subsection (i) of section 706 of such Act is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

(2) Subsection (j) of such section is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

"(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

"(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act."

SEC. 6. Subsections (b), (c), and (d) of section 709 of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In

furtherance of such cooperative efforts, the Commission may enter in written agreements with such State or local agencies and such agreemen may include provisions under which the Commission shall refrain fr processing a charge in any cases or class of cases specified in such agre ments or under which the Commission shall relieve any person or class persons in such State or locality from requirements imposed under th section. The Commission shall rescind any such agreement whenever determines that the agreement no longer serves the interest of effecti enforcement of this title.

"(c) Every employer, employment agency, and labor organization subje to this title shall (1) make and keep such records relevant to the determin tions of whether unlawful employment practices have been or are bei committed, (2) preserve such records for such periods, and (3) make su reports therefrom as the Commission shall prescribe by regulation or orde after public hearing, as reasonable, necessary, or appropriate for t enforcement of this title or the regulations or orders thereunder. Th Commission shall, by regulation, require each employer, labor organiz tion, and joint labor-management committee subject to this title whic controls an apprenticeship or other training program to maintain su records as are reasonably necessary to carry out the purposes of this titl including, but not limited to, a list of applicants who wish to participa in such program, including the chronological order in which applicatio were received, and to furnish to the Commission upon request, a detaile description of the manner in which persons are selected to participate i the apprenticeship or other training program. Any employer, employme agency, labor organization, or joint labor-management committee whic believes that the application to it of any regulation or order issued und this section would result in undue hardship may apply to the Commissio for an exemption from the application of such regulation or order, an if such application for an exemption is denied, bring a civil action in th United States district court for the district where such records are kep If the Commission or the court, as the case may be, finds that the applica tion of the regulation or order to the employer, employment agency, o labor organization in question would impose an undue hardship, th Commission or the court, as the case may be, may grant appropriate relie If any person required to comply with the provisions of this subsectio fails or refuses to do so, the United States district court for the district i which such person is found, resides, or transacts business, shall, upo application of the Commission, or the Attorney General in a case involvin a government, governmental agency or political subdivision, have jurisdic tion to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of thi section, the Commission shall consult with other interested State an Federal agencies and shall endeavor to coordinate its requirements wit those adopted by such agencies. The Commission shall furnish upo request and without cost to any State or local agency charged with th administration of a fair employment practice law information obtaine pursuant to subsection (c) of this section from any employer, employme agency, labor organization, or joint labor-management committee subjec to the jurisdiction of such agency. Such information shall be furnished o condition that it not be made public by the recipient agency prior to th institution of a proceeding under State or local law involving such informa tion. If this condition is violated by a recipient agency, the Commissio may decline to honor subsequent requests pursuant to this subsection."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e–9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply."

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c)(1) Section 704(a) of such Act is amended by inserting a comma and the following: "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency".

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) Section 705(a) of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e–4(a)) is amended to read as follows:

"SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(e)(1) Section 705 of such Act is amended by inserting after subsectio
(a) the following new subsection (b):

"(b)(1) There shall be a General Counsel of the Commission appointe
by the President, by and with the advice and consent of the Senate, for
term of four years. The General Counsel shall have responsibility for th
conduct of litigation as provided in sections 706 and 707 of this title. Th
General Counsel shall have such other duties as the Commission ma
prescribe or as may be provided by law and shall concur with the Chairma
of the Commission on the appointment and supervision of regiona
attorneys. The General Counsel of the Commission on the effective da
of this Act shall continue in such position and perform the function
specified in this subsection until a successor is appointed and qualified.

"(2) Attorneys appointed under this section may, at the direction o
the Commission, appear for and represent the Commission in any cas
in court, provided that the Attorney General shall conduct all litigatio
to which the Commission is a party in the Supreme Court pursuant t
this title."

(2) Subsections (e) and (h) of such section 705 are repealed.

(3) Subsections (b), (c), (d), (i), and (j) of such section 705, and a
references thereto, are redesignated as subsections (c), (d), (e), (h), and (i)
respectively.

(f) Section 705(g)(6) of such Act, is amended to read as follows:

"(6) to intervene in a civil action brought under section 706 by a
aggrieved party against a respondent other than a government, govern
mental agency or political subdivision."

(g) Section 714 of such Act is amended to read as follows:

"FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

"SEC. 714. The provisions of sections 111 and 1114, title 18, United
States Code, shall apply to officers, agents, and employees of the Commis-
sion in the performance of their official duties. Notwithstanding the
provisions of sections 111 and 1114 of title 18, United States Code,
whoever in violation of the provisions of section 1114 of such title kills
a person while engaged in or on account of the performance of his official
functions under this Act shall be punished by imprisonment for any
term of years or for life."

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended
by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as
follows:

"(72) Members, Equal Employment Opportunity Commission
(4)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof
the following new clause:

"(131) General Counsel of the Equal Employment Opportunity
Commission."

SEC. 10. Section 715 of the Civil Rights Act of 1964 is amended to
read as follows:

"EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

"SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

"(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically

obtaining and publishing (on at least a semiannual basis) progre reports from each such department, agency, or unit; and

"(3) consult with and solicit the recommendations of interest individuals, groups, and organizations relating to equal employme opportunity.

The head of each such department, agency, or unit shall comply with su rules, regulations, orders, and instructions which shall include a provisi that an employee or applicant for employment shall be notified of any fin action taken on any complaint of discrimination filed by him thereunde The plan submitted by each department, agency, and unit shall includ but not be limited to—

"(1) provision for the establishment of training and educatio programs designed to provide a maximum opportunity for employe to advance so as to perform at their highest potential; and

"(2) a description of the qualifications in terms of training an experience relating to equal employment opportunity for the princip and operating officials of each such department, agency, or un responsible for carrying out the equal employment opportunity pr gram and of the allocation of personnel and resources proposed b such department, agency, or unit to carry out its equal employme opportunity program.

With respect to employment in the Library of Congress, authoritie granted in this subsection to the Civil Service Commission shall be exercise by the Librarian of Congress.

"(c) Within thirty days of receipt of notice of final action taken by department, agency, or unit referred to in subsection 717(a), or by th Civil Service Commission upon an appeal from a decision or order of suc department, agency, or unit on a complaint of discrimination based o race, color, religion, sex or national origin, brought pursuant to subsectio (a) of this section, Executive Order 11478 or any succeeding Executiv orders, or after one hundred and eighty days from the filing of the initia charge with the department, agency, or unit or with the Civil Service Com mission on appeal from a decision or order of such department, agency, o unit until such time as final action may be taken by a department, agency or unit, an employee or applicant for employment, if aggrieved by the fina disposition of his complaint, or by the failure to take final action on hi complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate shall be the defendant.

"(d) The provisions of section 706 (f) through (k), as applicable, shal govern civil actions brought hereunder.

"(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employ ment opportunity in the Federal Government."

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and in serting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS–16, GS–17, and GS–18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

Sec. 13. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; U.S.C. 2000e et seq.) is further amended by adding at the end reof the following new section:

PECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

'Sec. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency officer of the United States under any equal employment opportunity or order, where such employer has an affirmative action plan which previously been accepted by the Government for the same facility hin the past twelve months without first according such employer full ring and adjudication under the provisions of title 5, United States le, section 554, and the following pertinent sections: Provided, That such employer has deviated substantially from such previously agreed ffirmative action plan, this section shall not apply: Provided further, at for the purposes of this section an affirmative action plan shall be med to have been accepted by the Government at the time the appropriate pliance agency has accepted such plan unless within forty-five days reafter the Office of Federal Contract Compliance has disapproved h plan."

Sec. 14. The amendments made by this Act to section 706 of the Civil hts Act of 1964 shall be applicable with respect to charges pending h the Commission on the date of enactment of this Act and all charges l thereafter.

d the Senate agree to the same.

H. A. Williams,
Jennings Randolph,
Claiborne Pell,
Gaylord Nelson,
Thomas F. Eagleton,
Adlai E. Stevenson III,
Harold E. Hughes,
Jacob Javits,
Richard S. Schweiker,
Bob Packwood,
Robert Taft, Jr.,
Robert T. Stafford,
Managers on the Part of the Senate.

CARL D. PERKINS,
JOHN H. DENT,
AUGUSTUS F. HAWKINS,
PATSY T. MINK,
PHILLIP BURTON,
WM. L. (BILL) CLAY,
JOSEPH M. GAYDOS,
WILLIAM D. FORD,
MARIO BIAGGI,
ROMANO L. MAZZOLI,
ROMAN C. PUCINSKI,
JOHN BRADEMAS,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
ALPHONZO BELL,
MARVIN L. ESCH,
EARL F. LANDGREBE,
ORVAL HANSEN,
WILLIAM A. STEIGER,
JACK KEMP,
Managers on the Part of the House.

OINT EXPLANATORY STATEMENT OF MANAGERS AT THE CONFERENCE ON H.R. 1746 TO FURTHER PROMOTE EQUAL EMPLOYMENT OPPORTUNITIES FOR AMERICAN WORKERS

The managers on the part of the House and Senate at the conference n the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1746) an Act to further promote equal employ- ient opportunities for American workers, submit the following joint tatement to the House and Senate in explanation of the effect of the rtion agreed upon by the managers and recommended in the accom- anying conference report.

The points in disagreement and the conference resolution of them re as follows:

The House bill provided the short title "Equal Employment Op- ortunity Act of 1971". The Senate amendment provided the short tle "Equal Employment Opportunities Enforcement Act of 1972". he Senate receded with an amendment changing the date in the ouse provision to 1972.

Under the House bill, there was no provision for an expansion of verage of Title VII.

The Senate amendment expanded coverage to include:

(1) State and local governments, governmental agencies, political subdivisions (except for elected officials, their personal assistants and immediate advisors) and the District of Columbia departments and agencies (except where such are subject by law to the Federal competitive service). State agencies previously covered by reference to the United States Employment Service continue to be covered; and

(2) employers who employ 15 or more full-time employees and labor organizations with 15 or more members beginning one year after enactment.

In addition, the Senate amendment included a new definition of religion" to include all aspects of religious observance and practice, well as belief, unless an employer demonstrates that he is unable reasonably accommodate to an employee's or prospective employee's ligious observance or practice without undue hardship on the conduct the employer's business.

The House receded with an amendment exempting, in addition to tate and local government elected officials, persons chosen by such ficials to be on their personal staffs, appointees of such officials on policymaking level or immediate advisors of such elected officials. he exemption does not include civil service employees.

It is the intention of the conferees to exempt elected officials and embers of their personal staffs, and persons appointed by such

elected officials as advisors or to policymaking positions at the high levels of the departments or agencies of State or local governmen such as cabinet officers, and persons with comparable responsibilit at the local level. It is the conferees intent that this exemption shall construed narrowly. Also, all employees subject to State or local ci service laws are not exempted.

The Senate amendment eliminated the present exemption fr Title VII for educational institutions. Also, the Senate provisi expanded the exemption for religious organizations from coverage u der this title with respect to the employment of individuals of a p ticular religion in all their activities instead of the present limitati to religious activities. The House bill did not change the existi exemptions. The House receded.

Both the House bill and Senate amendment contained procedu for filing of charges. The Senate amendment provided for charges be filed by or on behalf of a person claiming to be aggrieved, or an officer or employee of the Commission upon request of any pers claiming to be aggrieved. Charges were to be in writing under oa or affirmation and in the specific form required by the Commissio The Senate amendment further provided that the Commission ser a notice of the charge including the date, place and circumstanc of the alleged unlawful employment practice on the respondent wit in 10 days. Under the Senate amendment, the Commission would di miss the charge if it determined after investigation that there w not reasonable cause to believe the charge was true and would be r quired to accord substantial weight to the decision of state and loc authorities under state and local equal employment opportunity la in making such reasonable cause determination. The Senate amen ment also required the Commission to make its determination so f as practicable not later than 120 days from the date the Commi sion was authorized to act on the charge.

The House bill provided for charges to be filed by the person clai ing to be aggrieved or by a member of the Commission if he ha reasonable cause to believe a violation occurred. The Commissioner charge had to set forth the facts upon which it was based and th person or persons aggrieved. The House bill also provided that th Commission furnish the respondent with a copy of the charge withi five days. Both the House bill and the Senate amendment prohibite disclosure of anything said or done during informal conciliation e forts without the consent of the parties.

The Senate receded with an amendment providing that charges b filed by or on behalf of the person claiming to be aggrieved or by member of the Commission, alleging that an unlawful employmen practice occurred. Charges are to be in writing under oath or affirma tion and in such form as the Commission requires. A notice of a charg including the date, place and circumstances of the alleged unlawfu employment practice is to be served on the respondent within 1 days. If the Commission determines after investigation that there i not reasonable cause to believe the charge is true, it shall dismiss th charge and notify the parties. The Commission is required to accor substantial weight to the decision of state or local authorities unde state or local equal employment opportunity laws and to make th determination on reasonable cause as promptly as possible and so fa

s practicable not later than 120 days from the date the Commission vas authorized to act on the charge. If the Commission determines hat there is reasonable cause to believe the charge is true, it shall ttempt conciliation in conformity with the requirements of existing aw. Nothing said or done during conciliation may be disclosed with- ut the consent of the parties.

The Senate amendment contained two provisions allowing the Com- nission to defer to state and local equal employment opportunity gencies. It deleted the language of existing law providing that no harge may be filed during the 60-day period allowed for the deferral nd substituted a provision prohibiting the Commission from acting n such a charge until the expiration of the 60-day period. The House ill made no change in existing law. The Senate receded with an mendment that would re-state the existing law on the deferral of harges to state agencies. The conferees left existing law intact with he understanding that the decision in *Love* v. *Pullman*, — *U.S.* —— February 7, 1972) interpreting the existing law to allow the Commis- on to receive a charge (but not act on it) during such deferral period controlling.

Both the House bill and the Senate amendment provided that harges be filed within 180 days. The Senate allowed an additional 20 days if a charge is deferred to a state agency and the House allowed nly 30 additional days. The Senate amendment required that notice f the charge be served in 10 days. The House bill provided that harges under Title VII are the exclusive remedy for unlawful em- loyment practices. The House receded.

Both the House bill and the Senate amendment authorized the inging of civil actions in Federal district courts in cases involving nlawful employment practices.

The Senate amendment provided that the Attorney General bring tions against state and local governments. As to other respondents, its were to be brought by the Commission. The Senate amendment ermitted suits by the Commission or the Attorney General if the ommission was unable to secure from the respondent "a conciliation greement acceptable to the Commission" while the House bill permit- d the Commission to sue if it is unable to obtain "voluntary com- iance." The Senate amendment permitted aggrieved persons to in- rvene in suits and allowed a private action if no case is brought by e Commission or Attorney General within 150 days. The House ll permitted a private action after 180 days. The Senate amendment lowed the General Counsel or Attorney General to intervene in pri- ate actions; the House bill permitted only the Attorney General to tervene. The Senate amendment permitted a private action in a se where the Commission entered into a conciliation agreement to hich the aggrieved person was not a party (i.e. a signatory).

The conferees adopted a provision allowing the Commission, or e Attorney General in a case against a state or local government ency, to bring an action in Federal district courts if the Commis- on is unable to secure from the respondent "a conciliation agree- ent acceptable to the Commission." Aggrieved parties are permitted intervene. They may bring a private action if the Commission or ttorney General has not brought suit within 180 days or the Com- ission has entered into a conciliation agreement to which such ag-

grieved party is not a signatory. The Commission, or the Attorn General in a case involving state and local governments, may interve in such private action.

The Senate amendment provided for the appointment of a thr judge district court in cases certified to be of general public impo ance, provided for the immediate designation of a single judge if three judge court was requested, and required cases to be assigned f hearing at the earliest practicable date and to be expedited in eve way. The House bill contained no such provision. The Senate reced with an amendment which provides that the chief judge of the distr in which a case is filed designate the judge to hear the case which is be assigned for hearing at the earliest practicable date and expedit in every way. The amendment deleted the provision for the thr judge district court. Such a court is now provided for in "pattern practice" cases.

The Senate amendment authorized the Commission or the Attorn General to seek preliminary injunctive relief. The House bill autho ized the Commission to seek preliminary relief and required a sho ing that substantial and irreparable injury to the aggrieved par would be unavoidable. The Senate receded with an amendment th authorizes the Commission or the Attorney General to seek prelin nary injunctive relief and a provision that Rule 65 of the Feder Rules of Civil Procedure should govern all actions brought und this subsection.

The Senate amendment restated existing law as to venue for civ actions except that the term "aggrieved person" was substituted f the word "plaintiff." The House bill left existing law intact. Th House receded.

The House bill and the Senate amendment provided for the scop of relief that could be granted by the district courts. The differenc were as follows:

1. The Senate amendment required a finding that the responde engaged in an unlawful employment practice and the House bi required a finding that respondent "intentionally" engaged in suc unlawful employment practice.

2. The Senate amendment added the phrase "or any other equitab relief that the court deems appropriate" to the description of th relief available from the court.

3. The Senate amendment limited back pay liability to that whic accrues from a date not more than two years prior to the filing o a charge with the Commission; the House bill limited back pa liability to that which accrues not more than two years before th filing of a complaint with the court. Both the House bill and the Senat amendment provided that interim earnings shall operate to reduce th back pay otherwise allowable.

4. The House bill restated the provisions of existing law prohibit ing court ordered remedies based on any adverse action except unlaw ful employment practices prohibited under Title VII.

5. The House bill prohibited class action lawsuits.

The Senate receded with an amendment that provides the following

1. A finding that the respondent has intentionally engaged or i intentionally engaging in an unlawful employment practice, as th language of the current law reads.

2. Authority for the court to enjoin the respondent from such prac-
ces, order such affirmative action as may be appropriate and any
ther equitable relief that the court deems appropriate.

3. The court is authorized to award back pay except that such
ack pay liability is limited to that which accrues from the date not
ore than two years prior to the filing of a charge with the Commis-
on. Interim earnings shall operate to reduce the back pay otherwise
llowable.

4. The provisions of existing law prohibiting court ordered remedies
sed on any adverse action except unlawful employment practices
der Title VII are retained.

The Senate amendment permitted payment of costs and counsel
es to small employers or labor organizations if they prevailed in
tions brought against them by the Commission or the United States.
n employer or union with 25 or fewer employees or members would
ve been entitled to up to $5000, and an employer or labor organiza-
n with from 25 to 100 employees or members whose average income
om such employment was less than $7500, would have been entitled
one-half the cost of its defense up to $2500. The House bill had no
mparable provisions. The Senate receded.

The Senate amendment authorized the courts to appoint a special
aster if the district court had not assigned a case for trial within
0 days after issue had been joined. There was no comparable House
ovision. The House receded.

The Senate amendment provided for a transfer of the Attorney
neral's "pattern or practice" jurisdiction to the Commission two
ars after enactment. In the interim period there would be concurrent
risdiction. The transfer would be subject to change in accordance
th a presidential reorganization plan if not vetoed by Congress. The
use bill left pattern or practice jurisdiction with the Attorney Gen-
l. The House receded.

The Senate amendment revised the Commission's procedures for
perating with State and local agencies and in its record keeping
quirements and provided procedures for compelling compliance with
ch requirements. The House bill did not amend the provisions of the
rrent law. The House receded.

The Senate amendment simplified procedures for subpoenaing wit-
sses or records by providing the same investigative authority as is
ntained in the National Labor Relations Act. The House bill made
changes in existing authority. The House receded.

The Senate amendment provided for the appointment, with the ad-
e and consent of the Senate, of up to four new commission mem-
rs at any time after one year from the effective date of the act. The
portion of commissioners of one political party to another would
nain the same. Regional Directors were to be appointed by the
airman of the Commission with the concurrence of the General
unsel. The Senate amendment also placed a limit on the time that
Commissioner may serve after the appointment expires and the Sen-
has not acted. The House bill contained no such provisions. The
nate receded with an amendment limiting the time that a Com-
ssioner may serve after the appointment expires and the Senate
s not acted.

The Senate amendment established the office of General Counsel be appointed by the President for a term of four years with the adv and consent of the Senate. The General Counsel was given the respo sibility for filing complaints and the conduct of all litigation for t Commission. Also the General Counsel was given authority to appo regional attorneys, with the concurrence of the Chairman, and oth necessary employees. The House bill did not establish a General Cou sel, and required that the Attorney General conduct all litigation which the Commission is a party in the Supreme Court or in t United States Court of Appeals. All other litigation in which the Co mission was a party was to be conducted by the Commission. T Senate receded with an amendment establishing the Office of Gener Counsel to be appointed by the President for a term of four years wi the advice and consent of the Senate giving the General Counsel r sponsibility for litigation and concurrence with the Chairman in t appointment and supervision of regional attorneys but reserving to t Attorney General the conduct of all litigation to which the Commi sion is a party in the Supreme Court.

The Senate amendment permitted the Commission to accept uncon pensated services for the limited purpose of publicizing in the med the Commission and its activities. The House bill did not provi such authority. The Senate receded.

The Senate amendment permitted the Commission to delegate ce tain functions, except for rulemaking and the power to make agre ments with States. The House bill did not contain such a provisio The Senate receded.

The Senate amendment afforded additional protection to office and employees of the Commission in the performance of their offici duties by including them within section 1114 of Title 18, U.S.C. Th House bill contained no such provision. The Senate receded with a amendment affording this new protection but excluding capital pu ishment for offenders.

The Senate amendment raised the level of the position of the Chai man and members of the Commission and established the position General Counsel in the executive pay scale. The House bill made n provision for such change. The House receded.

The Senate amendment established an Equal Employment Oppor tunity Coordinating Council. The House bill had no such provisio The House receded.

The Commitee of Conference believes that there are instances i which more than one agency may have legitimate interests in the em ployment standards applicable to a number of employees. So for ex ample, the merit system standards of the Civil Service Commissio should be considered by the Coordinating Council in relation to thei effect on the conciliation and enforcement efforts of the Equal Employ ment Opportunity Commission and the Attorney General with respec to employees of governments, governmental agencies or politica subdivisions.

The Senate amendment provided that all personnel actions involv ing Federal employees be free from discrimination. This policy wa to be enforced by the United States Civil Service Commission. Eac agency of the Federal Government would be responsible for estab

lishing an internal grievance procedure and programs to train personnel so as to enable them to advance under the supervision of the Civil Service Commission. If final action had been taken by an agency or the Civil Service Commission, an aggrieved party could bring a civil action under the provisions of section 706. The House bill did not cover Federal employees. The House receded. In providing the statutory basis for such appeal or court access, it is not the intent of the Committee to subordinate any discretionary authority or final judgment now reposed in agency heads by, or under, statute for national security reasons in the interests of the United States.

The Senate amendment required consultation among the Executive branch agencies on Equal Employment matters. The House bill had no similar provision. The Senate receded in light of the action of the Conferees in establishing the Equal Employment Opportunity Coordinating Council.

The Senate amendment provided the Commission with authorization for an additional 10 positions at GS–16, GS–17, and GS–18 level. The House bill had no such provision. The House receded.

The Senate amendment provided that the new enforcement provisions of section 706 apply to charges pending before the Commission on enactment. The House bill was silent. The House receded.

The Senate amendment provided that no Government contract, whether subject to Executive Order 11246 or any other equal employment opportunity law such as section 3 of the Housing and Urban Development Act of 1968, as amended, could be terminated, denied, or withheld without a full hearing, where the employer had an affirmative action plan previously accepted within the past twelve months. The House bill had no such provision. The House receded.

H. A. Williams,
Jennings Randolph,
Claiborne Pell,
Gaylord Nelson,
Thomas F. Eagleton,
Adlai E. Stevenson III,
Harold E. Hughes,
Jacob Javits,
Richard S. Schweiker,
Bob Packwood,
Robert Taft, Jr.,
Robert T. Stafford,
Managers on the Part of the Senate.

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CARL D. PERKINS,
JOHN H. DENT,
AUGUSTUS F. HAWKINS,
PATSY T. MINK,
PHILLIP BURTON,
WM. L. (BILL) CLAY,
JOSEPH M. GAYDOS,
WILLIAM D. FORD,
MARIO BIAGGI,
ROMANO L. MAZZOLI,
ROMAN C. PUCINSKI,
JOHN BRADEMAS,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
ALPHONZO BELL,
MARVIN L. ESCH,
EARL F. LANDGREBE,
ORVAL HANSEN,
WILLIAM A. STEIGER,
JACK KEMP,

Managers on the Part of the House.

[From the Congressional Record—House, Mar. 2, 1972]

Conference Report on H.R. 1746, Equal Employment Opportunity Act of 1972

Mr. Perkins submitted the following conference report and statement on the bill (H.R. 1746) to further promote equal employment opportunities for American workers:

(A copy of the report follows:)

92D CONGRESS } HOUSE OF REPRESENTATIVES { REPO
2d Session } { No. 92-8

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

MARCH 2, 1972.—Ordered to be printed

Mr. PERKINS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 1746]

The committee of conference on the disagreeing votes of the tw Houses on the amendment of the Senate to the bill (H.R. 1746) A Act to further promote equal employment opportunities for America workers, having met, after full and free conference, have agreed t recommend and do recommend to their respective Houses as follow

That the House recede from its disagreement to the amendmer of the Senate and agree to the same with an amendment as follow

In lieu of the matter proposed to be inserted by the Senate amend ment insert the following:

That this Act may be cited as the "Equal Employment Opportuni Act of 1972".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 4 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencie political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

"(b) The term 'employer' means a person engaged in an industr affecting commerce who has fifteen or more employees for each workin day in each of twenty or more calendar weeks in the current or precedin calendar year, and any agent of such a person, but such term does no include (1) the United States, a corporation wholly owned by the Govern ment of the United States, an Indian tribe, or any department or agenc of the District of Columbia subject by statute to procedures of the competitiv service (as defined in section 2102 of title 5 of the United States Code), o (2) a bona fide private membership club (other than a labor organization which is exempt from taxation under section 501(c) of the Interna

Revenue Code of 1954, except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (e) strike out between "(A)" and "and such labor organization", and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, or (B) fifteen or more thereafter,".

(5) In subsection (f), insert before the period a comma and the following: "except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision."

(6) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

(7) After subsection (i) insert the following new subsection (j):

"(j) The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–1) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

SEC. 4. (a) Subsections (a) through (g) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5(a)–(g)) are amended to read as follows:

"SEC. 705. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organiza-

tion, or joint labor-management committee (hereinafter referred to as 'respondent') within ten days, and shall make an investigation ther Charges shall be in writing under oath or affirmation and shall cont such information and be in such form as the Commission requires. Char shall not be made public by the Commission. If the Commission determi after such investigation that there is not reasonable cause to believe t the charge is true, it shall dismiss the charge and promptly notify the p son claiming to be aggrieved and the respondent of its action. In det mining whether reasonable cause exists, the Commission shall acc substantial weight to final findings and orders made by State or lo authorities in proceedings commenced under State or local law pursu to the requirements of subsections (c) and (d). If the Commission det mines after such investigation that there is reasonable cause to believe t the charge is true, the Commission shall endeavor to eliminate any su alleged unlawful employment practice by informal methods of conferen conciliation, and persuasion. Nothing said or done during and as a p of such informal endeavors may be made public by the Commission, officers or employees, or used as evidence in a subsequent proceedi without the written consent of the persons concerned. Any person w makes public information in violation of this subsection shall be fined more than $1,000 or imprisoned for not more than one year, or both. T Commission shall make its determination on reasonable cause as promp as possible and, so far as practicable, not later than one hundred a twenty days from the filing of the charge or, where applicable under su section (c) or (d), from the date upon which the Commission is authoriz to take action with respect to the charge.

"(c) In the case of an alleged unlawful employment practice occurri in a State, or political subdivision of a State, which has a State or loc law prohibiting the unlawful employment practice alleged and establishi or authorizing a State or local authority to grant or seek relief from su practice or to institute criminal proceedings with respect thereto up receiving notice thereof, no charge may be filed under subsection (a) by t person aggrieved before the expiration of sixty days after proceedin have been commenced under the State or local law, unless such proceedin have been earlier terminated, provided that such sixty-day period shall extended to one hundred and twenty days during the first year after t effective date of such State or local law. If any requirement for the co mencement of such proceedings is imposed by a State or local authori other than a requirement of the filing of a written and signed statement the facts upon which the proceeding is based, the proceeding shall deemed to have been commenced for the purposes of this subsection at t time such statement is sent by registered mail to the appropriate State local authority.

"(d) In the case of any charge filed by a member of the Commissio alleging an unlawful employment practice occurring in a State or politic subdivision of a State which has a State or local law prohibiting th practice alleged and establishing or authorizing a State or local authori to grant or seek relief from such practice or to institute criminal pr ceedings with respect thereto upon receiving notice thereof, the Commissio shall, before taking any action with respect to such charge, notify th appropriate State or local officials and, upon request, afford them reasonable time, but not less than sixty days (provided that such sixty day period shall be extended to one hundred and twenty days durin

the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision,

to intervene in such civil action upon certification that the case is of gener public importance. Upon request, the court may, in its discretion, st further proceedings for not more than sixty days pending the terminati of State or local proceedings described in subsections (c) or (d) of th section or further efforts of the Commission to obtain voluntary complianc

"(2) Whenever a charge is filed with the Commission and the Commissi concludes on the basis of a preliminary investigation that prompt judici action is necessary to carry out the purposes of this Act, the Commissio or the Attorney General in a case involving a government, governmen agency, or political subdivision, may bring an action for appropria temporary or preliminary relief pending final disposition of such charg Any temporary restraining order or other order granting preliminar or temporary relief shall be issued in accordance with rule 65 of th Federal Rules of Civil Procedure. It shall be the duty of a court havi jurisdiction over proceedings under this section to assign cases for hearin at the earliest practicable date and to cause such cases to be in every wa expedited.

"(3) Each United States district court and each United States cou of a place subject to the jurisdiction of the United States shall have juri diction of actions brought under this title. Such an action may be brough in any judicial district in the State in which the unlawful employmen practice is alleged to have been committed, in the judicial district in whic the employment records relevant to such practice are maintained an administered, or in the judicial district in which the aggrieved perso would have worked but for the alleged unlawful employment practice, b if the respondent is not found within any such district, such an actio may be brought within the judicial district in which the respondent ha his principal office. For purposes of sections 1404 and 1406 of title 2 of the United States Code, the judicial district in which the responden has his principal office shall in all cases be considered a district in whic the action might have been brought.

"(4) It shall be the duty of the chief judge of the district (or in hi absence, the acting chief judge) in which the case is pending immediatel to designate a judge in such district to hear and determine the case. I the event that no judge in the district is available to hear and determin the case, the chief judge of the district, or the acting chief judge, as th case may be, shall certify this fact to the chief judge of the circuit (or i his absence, the acting chief judge) who shall then designate a distric or circuit judge of the circuit to hear and determine the case.

"(5) It shall be the duty of the judge designated pursuant to this sub section to assign the case for hearing at the earliest practicable date an to cause the case to be in every way expedited. If such judge has no scheduled the case for trial within one hundred and twenty days afte issue has been joined, that judge may appoint a master pursuant to rul 53 of the Federal Rules of Civil Procedure.

"(g) If the court finds that the respondent has intentionally engaged i or is intentionally engaging in an unlawful employment practice charge in the complaint, the court may enjoin the respondent from engaging i such unlawful employment practice, and order such affirmative action a may be appropriate, which may include, but is not limited to, reinstate ment or hiring of employees, with or without back pay (payable by th employer, employment agency, or labor organization, as the case may be responsible for the unlawful employment practice), or any other equitable

lief as the court deems appropriate. Back pay liability shall not accrue m a date more than two years prior to the filing of a charge with the mmission. Interim earnings or amounts earnable with reasonable ligence by the person or persons discriminated against shall operate to duce the back pay otherwise allowable. No order of the court shall quire the admission or reinstatement of an individual as a member of a ion, or the hiring, reinstatement, or promotion of an individual as an ployee, or the payment to him of any back pay, if such individual was fused admission, suspended, or expelled, or was refused employment advancement or was suspended or discharged for any reason other than scrimination on account of race, color, religion, sex, or national origin in violation of section 704(a)."

(b)(1) Subsection (i) of section 706 of such Act is amended by striking "subsection (e)" and inserting in lieu thereof "this section".

(2) Subsection (j) of such section is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by ding at the end thereof the following new subsection:

"(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General der this section shall be transferred to the Commission, together with h personnel, property, records, and unexpended balances of appropiations, allocations, and other funds employed, used, held, available, to be made available in connection with such functions unless the esident submits, and neither House of Congress vetoes, a reorganization in pursuant to chapter 9 of title 5, United States Code, inconsistent th the provisions of this subsection. The Commission shall carry out h functions in accordance with subsections (d) and (e) of this section.

"(d) Upon the transfer of functions provided for in subsection (c) of s section, in all suits commenced pursuant to this section prior to the te of such transfer, proceedings shall continue without abatement, all urt orders and decrees shall remain in effect, and the Commission shall be bstituted as a party for the United States of America, the Attorney Gen-l, or the Acting Attorney General, as appropriate.

"(e) Subsequent to the date of enactment of the Equal Employment portunity Act of 1972, the Commission shall have authority to investie and act on a charge of a pattern or practice of discrimination, whether d by or on behalf of a person claiming to be aggrieved or by a member the Commission. All such actions shall be conducted in accordance with procedures set forth in section 706 of this Act."

SEC. 6. Subsections (b), (c), and (d) of section 709 of the Civil Rights t of 1964 (78 Stat. 263; 42 U.S.C. 2000e–8(b)–(d)) are amended to d as follows:

"(b) The Commission may cooperate with State and local agencies rged with the administration of State fair employment practices vs and, with the consent of such agencies, may, for the purpose of rrying out its functions and duties under this title and within the nitation of funds appropriated specifically for such purpose, engage in d contribute to the cost of research and other projects of mutual interest dertaken by such agencies, and utilize the services of such agencies d their employees, and, notwithstanding any other provision of law, y by advance or reimbursement such agencies and their employees for rvices rendered to assist the Commission in carrying out this title. In

furtherance of such cooperative efforts, the Commission may enter
written agreements with such State or local agencies and such agreem
may include provisions under which the Commission shall refrain f
processing a charge in any cases or class of cases specified in such ag
ments or under which the Commission shall relieve any person or clas
persons in such State or locality from requirements imposed under
section. The Commission shall rescind any such agreement whenev
determines that the agreement no longer serves the interest of effec
enforcement of this title.

"(c) Every employer, employment agency, and labor organization sub
to this title shall (1) make and keep such records relevant to the determi
tions of whether unlawful employment practices have been or are be
committed, (2) preserve such records for such periods, and (3) make s
reports therefrom as the Commission shall prescribe by regulation or or
after public hearing, as reasonable, necessary, or appropriate for
enforcement of this title or the regulations or orders thereunder.
Commission shall, by regulation, require each employer, labor organi
tion, and joint labor-management committee subject to this title wh
controls an apprenticeship or other training program to maintain s
records as are reasonably necessary to carry out the purposes of this ti
including, but not limited to, a list of applicants who wish to particip
in such program, including the chronological order in which applicati
were received, and to furnish to the Commission upon request, a detai
description of the manner in which persons are selected to participate
the apprenticeship or other training program. Any employer, employm
agency, labor organization, or joint labor-management committee wh
believes that the application to it of any regulation or order issued un
this section would result in undue hardship may apply to the Commiss
for an exemption from the application of such regulation or order, a
if such application for an exemption is denied, bring a civil action in
United States district court for the district where such records are ke
If the Commission or the court, as the case may be, finds that the appli
tion of the regulation or order to the employer, employment agency,
labor organization in question would impose an undue hardship,
Commission or the court, as the case may be, may grant appropriate reli
If any person required to comply with the provisions of this subsecti
fails or refuses to do so, the United States district court for the district
which such person is found, resides, or transacts business, shall, up
application of the Commission, or the Attorney General in a case involvi
a government, governmental agency or political subdivision, have jurisd
tion to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of th
section, the Commission shall consult with other interested State a
Federal agencies and shall endeavor to coordinate its requirements wi
those adopted by such agencies. The Commission shall furnish up
request and without cost to any State or local agency charged with t
administration of a fair employment practice law information obtain
pursuant to subsection (c) of this section from any employer, employme
agency, labor organization, or joint labor-management committee subje
to the jurisdiction of such agency. Such information shall be furnished
condition that it not be made public by the recipient agency prior to t
institution of a proceeding under State or local law involving such inform
tion. If this condition is violated by a recipient agency, the Commissi
may decline to honor subsequent requests pursuant to this subsection."

Sec. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 2 U.S.C. 2000e–9) is amended to read as follows:

"INVESTIGATORY POWERS

"Sec. 710. For the purpose of all hearings and investigations conducted the Commission or its duly authorized agents or agencies, section 11 the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) all apply."

Sec. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 at. 255; 42 U.S.C. 2000e–2(a)(2)) is amended by inserting the words r applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by inserting the words r applicants for membership" after the word "membership".

(c)(1) Section 704(a) of such Act is amended by inserting a comma and following: "or joint labor-management committee controlling apprentice- p or other training or retraining, including on-the-job training ograms," after "employment agency".

(2) Section 704(b) of such Act is amended by (A) striking out "or ployment agency" and inserting in lieu thereof "employment agency, joint labor-management committee controlling apprenticeship or other ining or retraining, including on-the-job training programs,", and) inserting a comma and the words "or relating to admission to, or ployment in, any program established to provide apprenticeship or er training by such a joint labor-management committee" before the rd "indicating".

(d) Section 705(a) of the Civil Rights Act of 1964 (78 Stat. 258; 42 S.C. 2000e–4(a)) is amended to read as follows:

'Sec. 705. (a) There is hereby created a Commission to be known as the ual Employment Opportunity Commission, which shall be composed of members, not more than three of whom shall be members of the same itical party. Members of the Commission shall be appointed by the sident by and with the advice and consent of the Senate for a term five years. Any individual chosen to fill a vacancy shall be appointed y for the unexpired term of the member whom he shall succeed, and members of the Commission shall continue to serve until their successors appointed and qualified, except that no such member of the Commission ll continue to serve (1) for more than sixty days when the Congress is in sion unless a nomination to fill such vacancy shall have been submitted to Senate, or (2) after the adjournment sine die of the session of the Senate which such nomination was submitted. The President shall designate member to serve as Chairman of the Commission, and one member to e as Vice Chairman. The Chairman shall be responsible on behalf of the nmission for the administrative operations of the Commission, and, ept as provided in subsection (b), shall appoint, in accordance with the visions of title 5, United States Code, governing appointments in the petitive service, such officers, agents, attorneys, hearing examiners, and loyees as he deems necessary to assist it in the performance of its ctions and to fix their compensation in accordance with the provisions hapter 51 and subchapter III of chapter 53 of title 5, United States le, relating to classification and General Schedule pay rates: Provided, t assignment, removal, and compensation of hearing examiners shall in accordance with sections 3105, 3344, 5362, and 7521 of title 5, ited States Code."

(e)(1) Section 705 of such Act is amended by inserting after subsec
(a) the following new subsection (b):

"(b)(1) There shall be a General Counsel of the Commission appoi
by the President, by and with the advice and consent of the Senate, f
term of four years. The General Counsel shall have responsibility for
conduct of litigation as provided in sections 706 and 707 of this title.
General Counsel shall have such other duties as the Commission
prescribe or as may be provided by law and shall concur with the Chair
of the Commission on the appointment and supervision of regi
attorneys. The General Counsel of the Commission on the effective
of this Act shall continue in such position and perform the funct
specified in this subsection until a successor is appointed and qualifi

"(2) Attorneys appointed under this section may, at the direction
the Commission, appear for and represent the Commission in any
in court, provided that the Attorney General shall conduct all litigat
to which the Commission is a party in the Supreme Court pursuan
this title."

(2) Subsections (e) and (h) of such section 705 are repealed.

(3) Subsections (b), (c), (d), (i), and (j) of such section 705, and
references thereto, are redesignated as subsections (c), (d), (e), (h), and
respectively.

(f) Section 705(g)(6) of such Act, is amended to read as follows:

"(6) to intervene in a civil action brought under section 706 by
aggrieved party against a respondent other than a government, gove
mental agency or political subdivision."

(g) Section 714 of such Act is amended to read as follows:

"FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVE

"SEC. 714. The provisions of sections 111 and 1114, title 18, Uni
States Code, shall apply to officers, agents, and employees of the Comm
sion in the performance of their official duties. Notwithstanding
provisions of sections 111 and 1114 of title 18, United States Co
whoever in violation of the provisions of section 1114 of such title k
a person while engaged in or on account of the performance of his offic
functions under this Act shall be punished by imprisonment for a
term of years or for life."

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amend
by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read
follows:

"(72) Members, Equal Employment Opportunity Commissi
(4)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end ther
the following new clause:

"(131) General Counsel of the Equal Employment Opportun
Commission."

SEC. 10. Section 715 of the Civil Rights Act of 1964 is amended
read as follows:

"EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

"SEC. 715. There shall be established an Equal Employment Opportu-ty Coordinating Council (hereinafter referred to in this section as the ouncil) composed of the Secretary of Labor, the Chairman of the Equal nployment Opportunity Commission, the Attorney General, the Chair-an of the United States Civil Service Commission, and the Chairman the United States Civil Rights Commission, or their respective dele-tes. The Council shall have the responsibility for developing and plementing agreements, policies and practices designed to maximize ort, promote efficiency, and eliminate conflict, competition, duplication d inconsistency among the operations, functions and jurisdictions of various departments, agencies and branches of the Federal Government ponsible for the implementation and enforcement of equal employment portunity legislation, orders, and policies. On or before July 1 of each ar, the Council shall transmit to the President and to the Congress a port of its activities, together with such recommendations for legislative administrative changes as it concludes are desirable to further promote purposes of this section."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 S.C. 2000e et seq.) is amended by adding at the end thereof the following v section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants employment (except with regard to aliens employed outside the limits the United States) in military departments as defined in section 102 title 5, United States Code, in executive agencies (other than the General counting Office) as defined in section 105 of title 5, United States Code cluding employees and applicants for employment who are paid from nappropriated funds), in the United States Postal Service and the stal Rate Commission, in those units of the Government of the District Columbia having positions in the competitive service, and in those its of the legislative and judicial branches of the Federal Government ving positions in the competitive service, and in the Library of Congress ull be made free from any discrimination based on race, color, religion, r, or national origin.

"(b) Except as otherwise provided in this subsection, the Civil Service mmission shall have authority to enforce the provisions of subsection through appropriate remedies, including reinstatement or hiring of ployees with or without back pay, as will effectuate the policies of this tion, and shall issue such rules, regulations, orders and instructions it deems necessary and appropriate to carry out its responsibilities der this section. The Civil Service Commission shall—

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

"(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically

obtaining and publishing (on at least a semiannual basis) prog reports from each such department, agency, or unit; and

"(3) consult with and solicit the recommendations of interes individuals, groups, and organizations relating to equal employm opportunity.

The head of each such department, agency, or unit shall comply with rules, regulations, orders, and instructions which shall include a provi that an employee or applicant for employment shall be notified of any f action taken on any complaint of discrimination filed by him thereun The plan submitted by each department, agency, and unit shall incl but not be limited to—

"(1) provision for the establishment of training and educa programs designed to provide a maximum opportunity for emplo to advance so as to perform at their highest potential; and

"(2) a description of the qualifications in terms of training experience relating to equal employment opportunity for the princ and operating officials of each such department, agency, or responsible for carrying out the equal employment opportunity gram and of the allocation of personnel and resources proposed such department, agency, or unit to carry out its equal employm opportunity program.

With respect to employment in the Library of Congress, authori granted in this subsection to the Civil Service Commission shall be exerc by the Librarian of Congress.

"(c) Within thirty days of receipt of notice of final action taken b department, agency, or unit referred to in subsection 717(a), or by Civil Service Commission upon an appeal from a decision or order of s department, agency, or unit on a complaint of discrimination based race, color, religion, sex or national origin, brought pursuant to subsect (a) of this section, Executive Order 11478 or any succeeding Execu orders, or after one hundred and eighty days from the filing of the ini charge with the department, agency, or unit or with the Civil Service C mission on appeal from a decision or order of such department, agency unit until such time as final action may be taken by a department, agen or unit, an employee or applicant for employment, if aggrieved by the fi disposition of his complaint, or by the failure to take final action on complaint, may file a civil action as provided in section 706, in wh civil action the head of the department, agency, or unit, as appropri shall be the defendant.

"(d) The provisions of section 706 (f) through (k), as applicable, sh govern civil actions brought hereunder.

"(e) Nothing contained in this Act shall relieve any Government agen or official of its or his primary responsibility to assure nondiscriminat in employment as required by the Constitution and statutes or of its or responsibilities under Executive Order 11478 relating to equal empl ment opportunity in the Federal Government."

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and serting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS–16, GS–17, and GS–18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

Sec. 13. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 2 U.S.C. 2000e et seq.) is further amended by adding at the end hereof the following new section:

SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

"Sec. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan."

Sec. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.

And the Senate agree to the same.

CARL D. PERKINS,
JOHN H. DENT,
AUGUSTUS F. HAWKINS,
PATSY T. MINK,
PHILLIP BURTON,
WM. L. (BILL) CLAY,
JOSEPH M. GAYDOS,
WILLIAM D. FORD,
MARIO BIAGGI,
ROMANO L. MAZZOLI,
ROMAN C. PUCINSKI,
JOHN BRADEMAS,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
ALPHONZO BELL,
MARVIN L. ESCH,
EARL F. LANDGREBE,
ORVAL HANSEN,
WILLIAM A. STEIGER,
JACK KEMP,

Managers on the Part of the House.

H. A. Williams,
Jennings Randolph,
Claiborne Pell,
Gaylord Nelson,
Thomas F. Eagleton,
Adlai E. Stevenson III,
Harold E. Hughes,
Jacob Javits,
Richard S. Schweiker,
Bob Packwood,
Robert Taft, Jr.,
Robert T. Stafford,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF MANAGERS AT THE CONFERENCE ON H.R. 1746 TO FURTHER PROMOTE EQUAL EMPLOYMENT OPPORTUNITIES FOR AMERICAN WORKERS

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1746) an Act to further promote equal employment opportunities for American workers, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The points in disagreement and the conference resolution of them are as follows:

The House bill provided the short title "Equal Employment Opportunity Act of 1971". The Senate amendment provided the short title "Equal Employment Opportunities Enforcement Act of 1972". The Senate receded with an amendment changing the date in the House provision to 1972.

Under the House bill, there was no provision for an expansion of coverage of Title VII.

The Senate amendment expanded coverage to include:

(1) State and local governments, governmental agencies, political subdivisions (except for elected officials, their personal assistants and immediate advisors) and the District of Columbia departments and agencies (except where such are subject by law to the Federal competitive service). State agencies previously covered by reference to the United States Employment Service continue to be covered; and

(2) employers who employ 15 or more full-time employees and labor organizations with 15 or more members beginning one year after enactment.

In addition, the Senate amendment included a new definition of "religion" to include all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

The House receded with an amendment exempting, in addition to State and local government elected officials, persons chosen by such officials to be on their personal staffs, appointees of such officials on a policymaking level or immediate advisors of such elected officials. The exemption does not include civil service employees.

It is the intention of the conferees to exempt elected officials and members of their personal staffs, and persons appointed by such

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elected officials as advisors or to policymaking positions at the high levels of the departments or agencies of State or local governme such as cabinet officers, and persons with comparable responsibili at the local level. It is the conferees intent that this exemption shal construed narrowly. Also, all employees subject to State or local c service laws are not exempted.

The Senate amendment eliminated the present exemption fr Title VII for educational institutions. Also, the Senate provis expanded the exemption for religious organizations from coverage der this title with respect to the employment of individuals of a p ticular religion in all their activities instead of the present limitat to religious activities. The House bill did not change the exist exemptions. The House receded.

Both the House bill and Senate amendment contained procedu for filing of charges. The Senate amendment provided for charges be filed by or on behalf of a person claiming to be aggrieved, or an officer or employee of the Commission upon request of any per claiming to be aggrieved. Charges were to be in writing under o or affirmation and in the specific form required by the Commissi The Senate amendment further provided that the Commission se a notice of the charge including the date, place and circumstan of the alleged unlawful employment practice on the respondent wi in 10 days. Under the Senate amendment, the Commission would d miss the charge if it determined after investigation that there w not reasonable cause to believe the charge was true and would be quired to accord substantial weight to the decision of state and lo authorities under state and local equal employment opportunity la in making such reasonable cause determination. The Senate amer ment also required the Commission to make its determination so as practicable not later than 120 days from the date the Comm sion was authorized to act on the charge.

The House bill provided for charges to be filed by the person clai ing to be aggrieved or by a member of the Commission if he h reasonable cause to believe a violation occurred. The Commissione charge had to set forth the facts upon which it was based and t person or persons aggrieved. The House bill also provided that t Commission furnish the respondent with a copy of the charge with five days. Both the House bill and the Senate amendment prohibit disclosure of anything said or done during informal conciliation e forts without the consent of the parties.

The Senate receded with an amendment providing that charges filed by or on behalf of the person claiming to be aggrieved or by member of the Commission, alleging that an unlawful employme practice occurred. Charges are to be in writing under oath or affirm tion and in such form as the Commission requires. A notice of a char including the date, place and circumstances of the alleged unlawf employment practice is to be served on the respondent within days. If the Commission determines after investigation that there not reasonable cause to believe the charge is true, it shall dismiss t charge and notify the parties. The Commission is required to acco substantial weight to the decision of state or local authorities und state or local equal employment opportunity laws and to make t determination on reasonable cause as promptly as possible and so f

as practicable not later than 120 days from the date the Commission was authorized to act on the charge. If the Commission determines that there is reasonable cause to believe the charge is true, it shall attempt conciliation in conformity with the requirements of existing law. Nothing said or done during conciliation may be disclosed without the consent of the parties.

The Senate amendment contained two provisions allowing the Commission to defer to state and local equal employment opportunity agencies. It deleted the language of existing law providing that no charge may be filed during the 60-day period allowed for the deferral and substituted a provision prohibiting the Commission from acting on such a charge until the expiration of the 60-day period. The House bill made no change in existing law. The Senate receded with an amendment that would re-state the existing law on the deferral of charges to state agencies. The conferees left existing law intact with the understanding that the decision in *Love* v. *Pullman*, — *U.S.* —— (February 7, 1972) interpreting the existing law to allow the Commission to receive a charge (but not act on it) during such deferral period is controlling.

Both the House bill and the Senate amendment provided that charges be filed within 180 days. The Senate allowed an additional 120 days if a charge is deferred to a state agency and the House allowed only 30 additional days. The Senate amendment required that notice of the charge be served in 10 days. The House bill provided that charges under Title VII are the exclusive remedy for unlawful employment practices. The House receded.

Both the House bill and the Senate amendment authorized the bringing of civil actions in Federal district courts in cases involving unlawful employment practices.

The Senate amendment provided that the Attorney General bring actions against state and local governments. As to other respondents, suits were to be brought by the Commission. The Senate amendment permitted suits by the Commission or the Attorney General if the Commission was unable to secure from the respondent "a conciliation agreement acceptable to the Commission" while the House bill permitted the Commission to sue if it is unable to obtain "voluntary compliance." The Senate amendment permitted aggrieved persons to intervene in suits and allowed a private action if no case is brought by the Commission or Attorney General within 150 days. The House bill permitted a private action after 180 days. The Senate amendment allowed the General Counsel or Attorney General to intervene in private actions; the House bill permitted only the Attorney General to intervene. The Senate amendment permitted a private action in a case where the Commission entered into a conciliation agreement to which the aggrieved person was not a party (i.e. a signatory).

The conferees adopted a provision allowing the Commission, or the Attorney General in a case against a state or local government agency, to bring an action in Federal district courts if the Commission is unable to secure from the respondent "a conciliation agreement acceptable to the Commission." Aggrieved parties are permitted to intervene. They may bring a private action if the Commission or Attorney General has not brought suit within 180 days or the Commission has entered into a conciliation agreement to which such ag-

grieved party is not a signatory. The Commission, or the Attor General in a case involving state and local governments, may interv in such private action.

The Senate amendment provided for the appointment of a th judge district court in cases certified to be of general public impo ance, provided for the immediate designation of a single judge if three judge court was requested, and required cases to be assigned hearing at the earliest practicable date and to be expedited in ev way. The House bill contained no such provision. The Senate rece with an amendment which provides that the chief judge of the distr in which a case is filed designate the judge to hear the case which is be assigned for hearing at the earliest practicable date and expedi in every way. The amendment deleted the provision for the th judge district court. Such a court is now provided for in "pattern practice" cases.

The Senate amendment authorized the Commission or the Attorn General to seek preliminary injunctive relief. The House bill auth ized the Commission to seek preliminary relief and required a sho ing that substantial and irreparable injury to the aggrieved pa would be unavoidable. The Senate receded with an amendment th authorizes the Commission or the Attorney General to seek preli nary injunctive relief and a provision that Rule 65 of the Fede Rules of Civil Procedure should govern all actions brought und this subsection.

The Senate amendment restated existing law as to venue for ci actions except that the term "aggrieved person" was substituted the word "plaintiff." The House bill left existing law intact. T House receded.

The House bill and the Senate amendment provided for the sco of relief that could be granted by the district courts. The differenc were as follows:

1. The Senate amendment required a finding that the respondent engaged in an unlawful employment practice and the House b required a finding that respondent "intentionally" engaged in su unlawful employment practice.

2. The Senate amendment added the phrase "or any other equitab relief that the court deems appropriate" to the description of th relief available from the court.

3. The Senate amendment limited back pay liability to that whic accrues from a date not more than two years prior to the filing a charge with the Commission; the House bill limited back pa liability to that which accrues not more than two years before th filing of a complaint with the court. Both the House bill and the Sena amendment provided that interim earnings shall operate to reduce th back pay otherwise allowable.

4. The House bill restated the provisions of existing law prohibi ing court ordered remedies based on any adverse action except unlaw ful employment practices prohibited under Title VII.

5. The House bill prohibited class action lawsuits.

The Senate receded with an amendment that provides the following

1. A finding that the respondent has intentionally engaged or intentionally engaging in an unlawful employment practice, as th language of the current law reads.

2. Authority for the court to enjoin the respondent from such practices, order such affirmative action as may be appropriate and any other equitable relief that the court deems appropriate.

3. The court is authorized to award back pay except that such back pay liability is limited to that which accrues from the date not more than two years prior to the filing of a charge with the Commission. Interim earnings shall operate to reduce the back pay otherwise allowable.

4. The provisions of existing law prohibiting court ordered remedies based on any adverse action except unlawful employment practices under Title VII are retained.

The Senate amendment permitted payment of costs and counsel fees to small employers or labor organizations if they prevailed in actions brought against them by the Commission or the United States. An employer or union with 25 or fewer employees or members would have been entitled to up to $5000, and an employer or labor organization with from 25 to 100 employees or members whose average income from such employment was less than $7500, would have been entitled to one-half the cost of its defense up to $2500. The House bill had no comparable provisions. The Senate receded.

The Senate amendment authorized the courts to appoint a special master if the district court had not assigned a case for trial within 120 days after issue had been joined. There was no comparable House provision. The House receded.

The Senate amendment provided for a transfer of the Attorney General's "pattern or practice" jurisdiction to the Commission two years after enactment. In the interim period there would be concurrent jurisdiction. The transfer would be subject to change in accordance with a presidential reorganization plan if not vetoed by Congress. The House bill left pattern or practice jurisdiction with the Attorney General. The House receded.

The Senate amendment revised the Commission's procedures for cooperating with State and local agencies and in its record keeping requirements and provided procedures for compelling compliance with such requirements. The House bill did not amend the provisions of the current law. The House receded.

The Senate amendment simplified procedures for subpoenaing witnesses or records by providing the same investigative authority as is contained in the National Labor Relations Act. The House bill made no changes in existing authority. The House receded.

The Senate amendment provided for the appointment, with the advice and consent of the Senate, of up to four new commission members at any time after one year from the effective date of the act. The proportion of commissioners of one political party to another would remain the same. Regional Directors were to be appointed by the Chairman of the Commission with the concurrence of the General Counsel. The Senate amendment also placed a limit on the time that a Commissioner may serve after the appointment expires and the Senate has not acted. The House bill contained no such provisions. The Senate receded with an amendment limiting the time that a Commissioner may serve after the appointment expires and the Senate has not acted.

The Senate amendment established the office of General Counsel be appointed by the President for a term of four years with the adv and consent of the Senate. The General Counsel was given the respo sibility for filing complaints and the conduct of all litigation for t Commission. Also the General Counsel was given authority to appoi regional attorneys, with the concurrence of the Chairman, and oth necessary employees. The House bill did not establish a General Cou sel, and required that the Attorney General conduct all litigation which the Commission is a party in the Supreme Court or in t United States Court of Appeals. All other litigation in which the Co mission was a party was to be conducted by the Commission. T Senate receded with an amendment establishing the Office of Gener Counsel to be appointed by the President for a term of four years wi the advice and consent of the Senate giving the General Counsel r sponsibility for litigation and concurrence with the Chairman in t appointment and supervision of regional attorneys but reserving to t Attorney General the conduct of all litigation to which the Commi sion is a party in the Supreme Court.

The Senate amendment permitted the Commission to accept uncor pensated services for the limited purpose of publicizing in the med the Commission and its activities. The House bill did not provi such authority. The Senate receded.

The Senate amendment permitted the Commission to delegate ce tain functions, except for rulemaking and the power to make agre ments with States. The House bill did not contain such a provisio The Senate receded.

The Senate amendment afforded additional protection to office and employees of the Commission in the performance of their offici duties by including them within section 1114 of Title 18, U.S.C. Th House bill contained no such provision. The Senate receded with a amendment affording this new protection but excluding capital pu ishment for offenders.

The Senate amendment raised the level of the position of the Chai man and members of the Commission and established the position o General Counsel in the executive pay scale. The House bill made n provision for such change. The House receded.

The Senate amendment established an Equal Employment Oppor tunity Coordinating Council. The House bill had no such provisio The House receded.

The Commitee of Conference believes that there are instances i which more than one agency may have legitimate interests in the em ployment standards applicable to a number of employees. So for ex ample, the merit system standards of the Civil Service Commissio should be considered by the Coordinating Council in relation to thei effect on the conciliation and enforcement efforts of the Equal Employ ment Opportunity Commission and the Attorney General with respec to employees of governments, governmental agencies or politica subdivisions.

The Senate amendment provided that all personnel actions involv ing Federal employees be free from discrimination. This policy wa to be enforced by the United States Civil Service Commission. Each agency of the Federal Government would be responsible for estab

lishing an internal grievance procedure and programs to train personnel so as to enable them to advance under the supervision of the Civil Service Commission. If final action had been taken by an agency or the Civil Service Commission, an aggrieved party could bring a civil action under the provisions of section 706. The House bill did not cover Federal employees. The House receded. In providing the statutory basis for such appeal or court access, it is not the intent of the Committee to subordinate any discretionary authority or final judgment now reposed in agency heads by, or under, statute for national security reasons in the interests of the United States.

The Senate amendment required consultation among the Executive branch agencies on Equal Employment matters. The House bill had no similar provision. The Senate receded in light of the action of the Conferees in establishing the Equal Employment Opportunity Coordinating Council.

The Senate amendment provided the Commission with authorization for an additional 10 positions at GS–16, GS–17, and GS–18 level. The House bill had no such provision. The House receded.

The Senate amendment provided that the new enforcement provisions of section 706 apply to charges pending before the Commission on enactment. The House bill was silent. The House receded.

The Senate amendment provided that no Government contract, whether subject to Executive Order 11246 or any other equal employment opportunity law such as section 3 of the Housing and Urban Development Act of 1968, as amended, could be terminated, denied, or withheld without a full hearing, where the employer had an affirmative action plan previously accepted within the past twelve months. The House bill had no such provision. The House receded.

CARL D. PERKINS,
JOHN H. DENT,
AUGUSTUS F. HAWKINS,
PATSY T. MINK,
PHILLIP BURTON,
WM. L. (BILL) CLAY,
JOSEPH M. GAYDOS,
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JACK KEMP,
Managers on the Part of the House.

H. A. Williams,
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Adlai E. Stevenson III,
Harold E. Hughes,
Jacob Javits,
Richard S. Schweiker,
Bob Packwood,
Robert Taft, Jr.,
Robert T. Stafford,
Managers on the Part of the Senate.

[From the Congressional Record—Senate—March 6, 1972]

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972—CONFERENCE REPORT

Mr. Williams. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1746) to further promote equal employment opportunities for American workers. I ask unanimous consent for the present consideration of the report.

The Presiding Officer (Mr. Mansfield). Is there objection to proceeding to consider the report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the Congressional Record of March 2, 1972, at pp. H1694–H1697; page S22 of this volume.)

Mr. Williams. Mr. President, I ask unanimous consent that a section-by-section analysis, together with a statement, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Mr. President, I anticipate the Senate's overwhelming acceptance of the Conference Report on H.R. 1746, the Equal Employment Opportunity Act of 1972.

Today's action will represent a vital step toward the realization of equal employment opportunities for millions of Americans.

The conferees were all mindful of the importance of this measure; and while we did not have a lengthy conference, each difference between the Senate and the House bills was carefully considered. In some instances the Senate version prevailed, in others, we receded to the House. In the major provisions dealing with enforcement, the conferees adopted amendments that included provisions from both bills.

I am delighted that the report contains all of the key provisions of the Senate bill extending coverage. This will bring many millions of Americans under the protection of title VII—State and local government employees, employees of private, and public educational institutions as well as employees in smaller businesses and unions than those covered by the existing law.

Furthermore, I think that the provision giving the EEOC the power to go to court is going to get the job done. This process may be somewhat slower and more cumbersome than the cease and desist procedure we originally sought. But, in the final analysis, I most firmly believe that we will get the desired enforcement.

Mr. President, this bill had a long journey through the Senate, but there were some historic "firsts" during the consideration of the measure.

It was the first time a Civil Rights bill was reported unanimously out of the Labor and Public Welfare Committee, and after five weeks of extended debate involving 38 roll call votes, fifty-three Senators signed the final successful cloture petition—a record for a Civil Rights bill—and 73 Senators voted in behalf of cloture—another Civil Rights record.

Mr. President, the House will consider this report within the next few days, favorably I am sure. I hope that upon completion of final Congressional action the President will act as fast as humanly possible to sign the legislation and to seek the funding necessary to implement the enforcement procedure.

I would like to mention that unfortunately the Senator from New York (Mr. Javits) had no notice that this matter would come up today and is not able to be here for this vote. We did consult him when we learned of the leadership's

plan to bring this conference report up today, and he urged us to proceed, e
though he would miss the opportunity to cast his vote at this last stage of w
has been a long, arduous struggle, in which he played a key role.

Mr. President, I ask unanimous consent that an analysis of H.R. 1746 as repo
from the conference, that the Senator from New York (Mr. JAVITS) and my
have prepared to be included in the RECORD following my remarks.

SECTION-BY-SECTION ANALYSIS OF H.R. 1746, THE EQUAL EMPLOYMENT OPPO
NITY ACT OF 1972

This analysis explains the major provisions of H.R. 1746, the Equal Emp
ment Opportunity Act of 1972, as agreed to by the Conference Committee of
House and Senate on February 29, 1972. The explanation reflects the enfo
ment provisions of Title VII, as amended by the procedural and jurisdictio
provisions of H.R. 1746, recommended by the Conference Committee.

In any area where the new law does not address itself, or in any areas whe
specific contrary intention is not indicated, it was assumed that the present c
law as developed by the courts would continue to govern the applicability a
construction of Title VII.

SECTION 2

This section amends certain definitions contained in section 701 of the C
Rights Act of 1964.

Section 701(a)—This subsection defines "person" as used in Title VII. Un
the provisions of H.R. 1746, the term is now expanded to include State and lo
governments, governmental agencies, and political subdivisions.

Section 701(b)—This subsection defines the term "employer" as used in T
VII. This subsection would now include, within the meaning of the term "e
ployer," all State and local governments, governmental agencies, and politi
subdivisions, and the District of Columbia departments or agencies (except th
subject by statute to the procedures of the Federal competitive service as defi
in 5 U.S.C. § 2102, who along with all other Federal employees would now
covered by section 717 of the Act.)

This subsection would extend coverage of the term "employer," one year af
enactment, to those employers with 15 or more employees. The present stand
for determining the number of employees of an employer, i.e., "employees for e
working day in each of 20 or more calendar weeks in the current or preced
calendar year," presently applicable to all employers of 25 or more employ
would apply to the expanded coverage of employers of 15 or more employe

Section 701(c)—This subsection eliminates the present language that provi
a partial exemption for agencies of the United States, States or the political s
divisions of States from the definition of "employment agency" to reflect t
provisions of section 701(a) and (b) above. State agencies, previously cove
by reference to the United States Employment Service, continue to be cove
as employment agencies under this section.

Section 701(e)—This subsection is revised to include labor organizations w
15 or more members within the coverage of Title VII, one year after enactme

Section 701(f)—This subsection is intended to exclude from the definition
"Employee" as used in Title VII those persons elected to public office in a
State or political subdivision. The exemption extends to persons chosen by su
officials to be on their personal staffs, appointees of such officials to be on th
personal staff, appointees of such officials on the highest policymaking lev
such as cabinet members or other immediate advisers of such elected offici
with respect to the exercise of the Constitutional or legal powers of the off
held by such elected officer. The exemption does not include civil service e
ployees. This exemption is intended to be construed very narrowly and is in
way intended to establish an overall narrowing of the expanded coverage
State and local governmental employees as set forth in section 701(a) and (
above.

Section 701(j)—This subsection, which is new, defines "religion" to inclu
all aspects of religious observance, practice and belief, so as to require e
ployers to make reasonable accommodations for employees whose "religion" m
include observances, practices and beliefs such as sabbath observance, whi
differ from the employer's or potential employer's requirements regarding sta
ards, schedules, or other business-related employment conditions.

Failure to make such accommodation would be unlawful unless an employer can demonstrate that he cannot reasonably accommodate such beliefs, practices, or observances without undue hardship on the conduct of his business.

The purpose of this subsection is to provide the statutory basis for EEOC to formulate guidelines on discrimination because of religion such as those challenged in *Dewey v. Reynolds Metals Company*, 429 F2d 325 (6th Cir. 1970), *affirmed by an equally divided court*, 402 U.S. 689 (1971).

SECTION 3

This section amends the exemptions allowed in section 702 of the Civil Rights Act of 1964.

Section 702—This section is amended to eliminate the exemption for employees of educational institutions. Under the provisions of this section, all private and public educational institutions would be covered under the provisions of Title VII. The special provision relating to religious educational institutions in Section 703(e)(2) is not disturbed.

The limited exemption from coverage in this section for religious corporations, associations, educational institutions or societies has been broadened to allow such entities to employ individuals of a particular religion in all their activities instead of the present limitation to religious activities. Such organizations remain subject to the provisions of Title VII with regard to race, color, sex or national origin.

SECTION 4

This section establishes the enforcement powers and functions of the EEOC and the Attorney General to aid in the prevention of unlawful employment practices proscribed by Title VII of the Civil Rights Act of 1964.

H.R. 1746 retains the general scheme of the present law which enables the EEOC to process a charge of employment discrimination through the investigation and conciliation stages. In addition, H.R. 1746 now authorizes the EEOC, in cases where the respondent is not a government, governmental agency of political subdivision to file a civil action against the respondent in an appropriate Federal District Court, if it has been unable to eliminate an alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. The Attorney General is authorized to file civil actions against respondents that are governments, governmental agencies or political subdivisions if the EEOC is unable to achieve a successful conciliation.

Accordingly, section 4 of H.R. 1746, amends section 706(a) through (g) of the present act to accomplish the stated national purposes of achieving equal employment opportunity as follows:

Section 706(a)—This subsection empowers the Commission to prevent persons from engaging in unlawful employment practices under sections 703 and 704 of Title VII of the Civil Rights Act of 1964. The unlawful employment practices encompassed by sections 703 and 704, which were enumerated in 1964 in the original Act, and as defined and expanded by the courts remain in effect.

Section 706(b)—This subsection sets out the procedures to be followed when a charge of an unlawful employment practice is filed with the Commission.

Under present law, a charge may be filed by a person aggrieved under oath or by a member of the Commission. As amended, this subsection now also permits a charge to be filed by or on behalf of a person aggrieved or by a member of the Commission. Among other things, this provision would enable aggrieved persons to have charges processed under circumstances where they are unwilling to come forward publicly for fear of economic or physical reprisals.

Charges (whether by or on behalf of an aggrieved person or a member of the Commission) must be in writing and under oath or affirmation and in such form as the Commission requires.

The Commission is to serve a notice of the charge on the respondent within ten days. It is not intended, however, that failure to give notice of the charge to the respondent within ten days would prejudice the rights of the aggrieved party. The Commission would be expected to investigate the charge as quickly as possible and to make its determination on whether there is reasonable cause to believe that the charge is true. If it finds that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and notify the complainant and the respondent of its decision.

If the Commission finds reasonable cause, it will attempt to conciliate the case. Nothing said or done during the Commission's informal endeavors may be

public or used as evidence in a subsequent proceeding without the written con
of the parties covered.

The Commission would be required to make its determination on reason
cause as promptly as possible and, "so far as practicable," within 120 days f
the filing of the charge or from the date upon which the Commission is author
to act on the charge under section 706(c) or (d). The Commission, where ap
priate, would be required in making its determination of reasonable caus
accord substantial weight to final findings and orders made by State or l
authorities under State and local laws.

This subsection and section 9(a)-(d) of the bill clarifies existing law to ca
out the intent of the present statute to provide full coverage for joint la
management committees controlling apprenticeship or other training or retr
ing, including on-the-job training programs as reflected in *Rio* v. *Enterp
Assn., Steamfitters Local No. 638*, 326 F. Supp. 193 (S.D.N.Y. 1971).

Section 706(c) and (d)—These subsections, dealing with deferral to ap
priate State and local equal employment opportunity agencies, are identica
sections 706(b) and (c) of the Civil Rights Act of 1964. No change in these p
visions was deemed necessary in view of the recent Supreme Court decisio
Love v. *Pullman Co.* ——— U.S. ———, 92 S. Ct. 616 (1972) which approved
present EEOC deferral procedures as fully in compliance with the intent of
Act. That case held that the EEOC may receive and defer a charge to a St
agency on behalf of a complainant and begin to process the charge in the EE
upon lapse of the 60-day deferral period, even though the language provi
that no charge can be filed under section 706(a) by the person aggrieved bef
the expiration of sixty days after proceedings have been commenced under
State or local law. Similarly, the recent circuit court decision in *Virgil* v. *AT
——— F. 2d ———, 4 FEP cases 345 (10th Cir. 1972), which provided that
order to protect the aggrieved person's right to file with the EEOC within
time periods specified in section 706(c) and (d), a charge filed with a State
local agency may also be filed with the EEOC during the 60-day deferral per
is within the intent of this Act.

Section 706(e)—This subsection sets forth the time limitation for fil
charges with the Commission.

Under the present law, charges must be filed within 90 days after an alle
unlawful employment practice has occurred. In cases where the Commiss
defers to a State or local agency under the provisions of section 706(c) or (
the charge must be filed within 30 days after the person aggrieved recei
notice that the State or local agency has terminated its proceedings, or wit
210 days after the alleged unlawful employment practice occurred, whichever
earlier.

This subsection as amended provides that charges be filed within 180 days
the alleged unlawful employment practice. Court decisions under the pres
law have shown an inclination to interpret this time limitation so as to g
the aggrieved person the maximum benefit of the law; it is not intended t
such court decisions should be in any way circumscribed by the extension
the time limitations in this subsection. Existing case law which was determi
that certain types of violations are continuing in nature, thereby measuring
running of the required time period from the last occurrence of the discrimi
tion and not from the first occurrence is continued, and other interpretations
the courts maximizing the coverage of the law are not affected. It is inten
by expanding the time period for filing charges in this subsection that aggriev
individuals, who frequently are untrained laymen and who are not always aw
of the discrimination which is practiced against them, should be given a grea
opportunity to prepare their charges and file their complaints and that existi
but undiscovered acts of discrimination should not escape the effect of the l
through a procedural oversight. Moreover, wide latitude should be given in
viduals in such cases to avoid any prejudice to their rights as a result of gove
ment inadvertence, delay or error.

The time period for filing a charge where deferral is required to a State
local antidiscrimination agency has been extended to 300 days after the alleg
unlawful employment practice occurred or to 30 days after the State or lo
agency has terminated proceedings under the State or local law, whichever
earlier. This subsection also restates the provision of Section 706(b) requiring
notice of the charges to the respondent within ten days after its having be
filed.

Section 706(f)—This subsection, which is new, sets forth the enforcement procedures which may be followed in those cases where the Commission has been unable to achieve voluntary compliance with the provisions of the Act.

Section 706(f)(1)—Under this subsection, if the respondent is not a government, governmental agency, or political subdivision and if the Commission is unable to secure a conciliation agreement that is acceptable to the Commission within 30 days from the filing of the charge or within 30 days after expiration of any period of reference under subsection (c) or (d) it may thereafter bring a civil action against the respondent in an appropriate district court. In cases involving a government, governmental agency, or political subdivision, the Commission will not bring the case before a Federal District Court. After the Commission has had an opportunity to complete its investigation, and to attempt conciliation, the Commission shall then refer the case to the Attorney General who may bring the case to court. The aggrieved party is permitted to intervene in any case brought by the Commission or the Attorney General under this subsection.

With respect to cases arising under this subsection, if the Commission: (a) has dismissed the charge, or (b) 180 days have elapsed from the filing of the charge without the Commission, or the Attorney General, as the case may be, having filed a complaint under section 706(f), or without the Commission having entered into a conciliation agreement to which the person aggrieved is a party (i.e. a signatory) the person aggrieved may bring an action in an appropriate district court within 90 days after receiving notification. The retention of the private right of action, as amended, is intended to make clear that an individual aggrieved by a violation of Title VII should not be forced to abandon the claim merely because of a decision by the Commission or the Attorney General as the case may be, that there are insufficient grounds for the Government to file a complaint. Moreover, it is designed to make sure that the person aggrieved does not have to endure lengthy delays if the Commission or Attorney General does not act with due diligence and speed. Accordingly, the provisions described above allow the person aggrieved to elect to pursue his or her own remedy under this title in the courts where there is agency inaction, dalliance or dismissal of the charge, or unsatisfactory resolution.

It is hoped that recourse to the private lawsuit will be the exception and not the rule, and that the vast majority of complaints will be handled through the offices of the EEOC or the Attorney General, as appropriate. However, as the individual's rights to redress are paramount under the provisions of Title VII it is necessary that all avenues be left open for quick and effective relief.

In any civil action brought by an aggrieved person, or in the case of a charge filed by a member of the Commission, by any person whom the charge alleges was aggrieved, the court may upon timely application of the complainant, appoint an attorney and authorize the commencement of the action without the payment of fees, costs, or security in such circumstances as it deems just. The Commission, or the Attorney General in a case involving a governmental entity, upon timely application and subject to the court's discretion, may intervene in such a private action if it is certified that the private action is of general public importance. In addition, the court is given discretion to stay proceedings for not more than 60 days pending the termination of State or local proceedings or efforts by the Commission to obtain voluntary compliance.

In establishing the enforcement provisions under this subsection and subsection 706(f) generally, it is not intended that any of the provisions contained herein shall affect the present use of class action lawsuits under Title VII in conjunction with Rule 23 of the Federal Rules of Civil Procedure. The courts have been particularly cognizant of the fact that claims under Title VII involve the vindication of a major public interest, and that any action under the Act involves considerations beyond those raised by the individual claimant. As a consequence, the leading cases in this area to date have recognized that many Title VII claims are necessarily class action complaints and that, accordingly, it is not necessary that each individual entitled to relief be named in the original charge or in the claim for relief. A provision limiting class actions was contained in the House bill and specifically rejected by the Conference Committee.

Section 706(f)(2)—This subsection authorizes the Commission or the Attorney General, in a case involving a government, a governmental agency or political subdivision, based upon a preliminary investigation of a charge filed, to bring an action for appropriate temporary or preliminary relief, pending the final disposition of the charge. Such actions are to be assigned for hearing at the earliest possible date and expedited in every way. The provisions of Rule 65 of

the Federal Rules of Civil Procedures shall apply to actions brought under subsection.

The importance of preliminary relief in actions involving violations of T VII is central to ensuring that persons aggrieved under this title are adequa protected and that the provisions of this Act are being followed. Where vi tions become apparent and prompt judicial action is necessary to insure th provisions, the Commission or the Attorney General, as the case may be, sho not hesitate to invoke the provisions of this subsection.

Section 706(f)(3)—This subsection, which is similar to the present sec 706(f) of the Act, grants the district courts jurisdiction over actions brough the EEOC, the Attorney General or aggrieved persons under this title and vides the venue requirements. Such jurisdiction includes the power to grant s temporary or preliminary relief as the court deems just and proper.

Section 706(f)(4) and (5)—Under these paragraphs, the chief judge is quired to designate a district judge to hear the case. If no judge is available, t the chief judge of the circuit assigns the judge. Cases are to be heard at earliest practicable date and expedited in every way. If the judge has not sch uled the case for trial within 120 days after issue has been joined he may point a master to hear the case under Rule 53 of the Federal Rules of Civil P cedure. The purpose of this provision is to relax the very strongest requireme of Rule 53 which preclude appointment of a master except in extremely usual cases.

Section 706(g)—This subsection is similar to the present section 706(g) of Act. It authorizes the court, upon a finding that the respondent has engaged or is engaging in an unlawful employment practice, to enjoin the respond from such unlawful conduct and order such affirmative relief as may be app priate including, but not limited to, reinstatement or hiring, with or without ba pay, as will effectuate the policies of the Act. Backpay is limited to that wh accrues from a date not more than two years prior to the filing of a charge w the Commission. Interim earnings or amounts earnable with reasonable diligen by the aggrieved person(s) would operate to reduce the backpay otherw allowable.

The provisions of this subsection are intended to give the courts wide discreti exercising their equitable powers to fashion the most complete relief possib In dealing with the present section 706(g) the courts have stressed that the sco of relief under that section of the Act is intended to make the victims of unla ful discrimination whole, and that the attainment of this objective rests not o upon the elimination of the particular unlawful employment practice co plained of, but also requires that persons aggrieved by the consequences a effects of the unlawful employment practice be, so far as possible, restored t position where they would have been were it not for the unlawful discriminati

SECTION 5

This section amends section 707, concerning the Attorney General's "pattern practice" authority to provide for a transfer of the "pattern or practice" jur diction to the Commission two years after the enactment of the bill. The b further provides the Commission with concurrent jurisdiction in this area fr the date of enactment until the transfer is complete. The transfer is subj to change in accordance with a Presidential reorganization plan if not veto by Congress. The section would provide that currently pending proceedings wou continue without abatement, that all court orders and decrees remain in effe and that upon the transfer the Commission would be substituted as a party f the United States of America or the Attorney General as appropriate.

Under the provisions of this section, the Commission's present powers investigate charges of discrimination remain. In addition, it now has jurisdi tion to initiate court action to correct any pattern or practice violations.

SECTION 6

This section amends section 709 of the Civil Rights Act of 1964, entitled "I vestigations, Inspections, Records, State Agencies."

Section 709(a)—This subsection, which gives the Commission the right examine and copy documents in connection with its investigation of a charg would remain unchanged.

Section 709(b)—This subsection would authorize the Commission to c operate with State and local fair employment practice agencies in order t

carry out the purposes of the title, and to enter into agreements with such agencies under which the Commission would refrain from processing certain types of charges or relieve persons from the record keeping requirements. This subsection would make two changes in the present statute. Under this subsection, the Commission could, within the limitations of funds appropriated for the purpose, also engaged in and contribute to the cost of research and other projects undertaken by these State and local agencies and pay these agencies in advance for services rendered to the Commission. The subsection also deletes the reference to private civil actions under section 706(e) of the present statute.

Section 709(c)—This subsection, like the present statute, would require employers, employment agencies, labor organizations, and joint labor-management apprenticeship committee subject to the title to make and keep certain records and to make reports to the Commission. Under the present statute, a party required to keep records could seek an exemption from these requirements on the ground of undue hardship either by applying to the Commission or bringing a civil action in the district court. This subsection would require the party seeking the exemption first to make an application to the Commission and only if the Commission denies the request could the party bring an action in the district court. This subsection would also authorize the Commission to apply for a court order compelling compliance with the record keeping and reporting obligations set forth in the subsection.

Section 709(d)—This subsection would eliminate the present exemption from record keeping requirements for those employers in States and political subdivisions with equal employment opportunity laws or for employers subject to Federal executive order or agency record keeping requirements. Under this subsection, the Commission would consult with interested State and other Federal agencies in order to coordinate the Federal record keeping requirement under section 709(c) with those adopted by such agencies. The subsection further provides that the Commission furnish to such agencies information pertaining to State and local fair employment agencies, on condition that the information would not be made public prior to the institution of State or local proceedings.

SECTION 7

This section amends section 710 of the Civil Rights Act of 1964 by deleting the present section 710 and substituting therefor and to the extent appropriate the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161). By making this substitution, the Commission's present demand power with respect to witnesses and evidence is repealed, and the power to subpoena witnesses and evidence, and to allow any of its designated agents, agencies or members to issue such subpoenas, as necessary for the conduct of any investigation, and to take testimony under oath is substituted.

SECTIONS 8 (a) AND (b)

These subsections would amend sections 703(a) and 703(c)(2) of the present statute to make it clear that discrimination against applicants for employment and applicants for membership in labor organizations is an unlawful employment practice. This subsection is merely declaratory of present laws as contained in the decisions in *Phillips* v. *Martin-Marietta Corp.*, 400 U.S. 542 (1971); *U.S.* v. *Sheet Metal Workers International Assn., Local 36* 416 F. 2d 123 (8th Cir. 1969); *Asbestos Workers, Local 53* v. *Vogler*, 407 F. 2d 1047 (5th Cir. 1969).

SECTIONS 8(c) (1) AND (2)

These subsections would amend section 704 (a) and (b) of the present statute to make clear that joint labor-management apprenticeship committees are covered by those provisions which relate to discriminatory advertising and retaliation against individuals participating in Commission proceedings.

SECTION 8(d)

This subsection would amend section 705(a) of the present statute to permit a member of the Commission to serve until his successor is appointed but not for more than 60 days when Congress is in session unless the successor has been nominated and the nomination submitted to the Senate, or after the

adjournment sine die of the session of the Senate in which such nomina was submitted.

The rest of the subsection provides that the Chairman of the Commission behalf of the Commission, would be responsible, except as provided in sect 705(b), for the administrative operations of the Commission and for appointment of such officers, agents, attorneys, hearing examiners, and ot employees of the Commission, in accordance with Federal law, as he dee necessary.

SECTION 8(e)

This subsection would provide a new section 705(b) of the Act which est lishes a General Counsel appointed by the President, with the advice and cons of the Senate, for a four (4) year term. The responsibilities of the Gene Counsel would include, in addition to those the Commission may prescribe as provided by law, the conduct of all litigation as provided in sections 706 a 707 of the Act. The concurrence of the General Counsel with the Chairman required, on the reapportionment and supervision of regional attorneys.

This subsection would also continue the General Counsel on the effect date of the Act in that position until a successor has been appointed and qualifi

The Commission's attorneys may at the Commission's direction appear for a represent the Commission in any case in court, except that the Attorney Gene shall conduct all litigation to which the Commission is a party to the Supre Court pursuant to this title.

SECTION 8(f)

This subsection would eliminate the provision in present section 705(g) auth izing the Commission to request the Attorney General to intervene in priv civil actions. Instead, this subsection permits the Commission itself to interve in such civil actions as provided in section 706. Where the respondent is a gove ment, governmental agency or political subdivision, the Attorney General shou be authorized to seek intervention.

SECTION 8(g)

This section amends section 714 of Title VII of the Civil Rights Act of 19 by making the provisions of sections 111 and 1114 of Title 18, United States Co applicable to officers, agents and employees of the Commission in performan of their official duties. This section also specifically prohibits the imposition the death penalty on any person who might be convicted of killing an offic agent or employee of the Commission while on his official duties.

SECTION 9 (a), (b), (c), AND (d)

These subsections would raise the executive level of the Chairman of t Commission (from level 4 to level 3) and the members of the Commission (fro Level 5 to Level 4) and include the General Counsel (Level 5) in the executi pay scale, so as to place them in a position of parity with officials in comparab positions in agencies having substantially equivalent powers such as the Nation Labor Relations Board, the Federal Trade Commission and the Federal Pow Commission.

SECTION 10

Section 715—This section, which is new, establishes an Equal Employmen Opportunity Coordinating Council composed of the Secretary of Labor, th Chairman of the Equal Employment Opportunity Commission, the Attorney Ge eral, the Chairman of the United States Civil Service Commission and the Chai man of the United States Civil Rights Commission or their respective designee The Council will have the responsibility to coordinate the activities of all th various branches of government with responsibility for equal employment oppo tunity. The Council will submit an annual report to the President and Congres including a summary of its activities and recommendations as to legislativ or administrative changes which it considers desirable.

SECTION 11

Section 717(a)—This subsection provides that all personnel actions of the U.S Government affecting employees or applicants for employment shall be free fro discrimination based on race, color, religion, sex or national origin. Include

within this coverage are executive agencies, the United States Postal Service, the Postal Rate Commission, certain departments of the District of Columbia Government, the General Accounting Office, Government Printing Office and the Library of Congress.

Section 717(b)—Under this subsection, the Civil Service Commission is given the authority to enforce the provisions of subsection (a), except with respect to Library of Congress employees. The Civil Service Commission would be authorized to grant appropriate remedies which may include, but are not limited to, backpay for aggrieved applicants or employees. Any remedy needed to fully recompense the employee for his loss, both financial and professional, is considered appropriate under this subsection. The Civil Service Commission is also granted authority to issue rules and regulations necessary to carry out its responsibilities under this section. The Civil Service Commission shall also annually review national and regional equal employment opportunity plans and be responsible for review and evaluation of all agency equal employment opportunity programs. Agency and executive department heads and officers of the District of Columbia shall comply with such rules and regulations, submit an annual equal employment opportunity plan and notify any employee or applicant or any final action taken on any complaint of discrimination filed.

Section 717(c) and (d)—The provisions of sections 706(f) through (k), concerning private civil actions by aggrieved persons, are made applicable to aggrieved Federal employees or applicants for employment. Such persons would be permitted to file a civil action within 30 days of notice of final action by an agency or by the Civil Service Commission or an appeal from the agency's decision, or after 180 days from the filing of an initial charge with the agency, or the Civil Service Commission.

Section 717(e)—This subsection provides that nothing in this Act relieves any Government agency or official of his or its existing equal employment opportunity obligations under the Constitution, other statutes, or under any Executive Order relating to equal employment opportunity in the Federal Government.

SECTION 12

This section allows the Chairman of the Commission to establish ten additional positions at the GS–16, GS–17 and GS–18 levels, as needed to carry out the purposes of this Act.

SECTION 13

A new Section 718 is added which provides that no government contract, or portion thereof, can be denied, withheld, terminated, or superseded by a government agency under Executive Order 11246 or any other order or law without according the respective employer a full hearing and adjudication pursuant to 5 U.S.C. § 554 et seq. where such employer has an affirmative action program for the same facility which had been accepted by the Government within the previous twelve months. Such plan shall be deemed to be accepted by the Government if the appropriate compliance agency has accepted such plan and the Office of Federal Contract Compliance has not disapproved of such plan within 45 days. However, an employer who substantially deviates from any such previously accepted plan is excluded from the protection afforded by this section.

SECTION 14

This section provides that the amended provisions of Section 706 would apply to charges filed with the Commission prior to the effective date of this Act.

74-699 O - 72 - 118

The PRESIDING OFFICER. The question is on agreeing to the confere report. All those in favor say "aye."

Mr. BYRD of West Virginia. Mr. President, I suggest the absence a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous co sent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask for the yeas a nays on the pending conference report.

The yeas and nays were ordered.

ORDER FOR VOTE ON EEOC CONFERENCE REPORT AT 2 P.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous co sent that the vote on the pending conference report take place tod at 2 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to vote on the conference report to H.R. 1746.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Texas (Mr. Bentsen), the Senator from Georgia (Mr. Gambrell), the Senator from Alaska (Mr. Gravel), the Senator from Oklahoma (Mr. Harris), the Senator from Indiana (Mr. Hartke), the Senator from South Carolina, (Mr. Hollings), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from North Carolina (Mr. Jordan), the Senator from Arkansas (Mr. McClellan), the Senator from South Dakota (Mr. McGovern), the Senator from New Hampshire (Mr. McIntyre), the Senator from Maine (Mr. Muskie), the Senator from Rhode Island (Mr. Pell), and the Senator from California (Mr. Tunney) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. Ribicoff) is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Indiana (Mr. Bayh), the Senator from Alaska (Mr. Gravel), the Senator from Indiana (Mr. Hartke), the Senator from Minnesota (Mr. Humphrey), the Senator from Rhode Island (Mr. Pell), and the Senator from Connecticut (Mr. Ribicoff) would each vote "yea."

On this vote the Senator from North Carolina (Mr. Jordan) is paired with the Senator from Washington (Mr. Jackson).

If present and voting, the Senator from North Carolina would vote "nay" and the Senator from Washington would vote "yea."

Mr. GRIFFEN. I announce that the Senator from Kansas (Mr. Dole), the Senator from Oregon (Mr. Hatfield), the Senator from New York (Mr. Javits), the Senator from Illinois (Mr. Percy), the Senator from Ohio (Mr. Taft), the Senator from Texas (Mr. Tower), and the Senator from Connecticut (Mr. Weicker) are necessarily absent.

The Senator from Oklahoma (Mr. Bellmon) is absent because of death in his family.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The Senator from New Jersey (Mr. Case) and the Senator from Maryland (Mr. Mathias) are detained on official business.

If present and voting, the Senator from Oregon (Mr. Hatfi and the Senator from Maryland (Mr. Mathias) would each "yea."

On this vote, the Senator from Illinois (Mr. Percy), is pa with the Senator from Texas (Mr. Tower). If present and vot the Senator from Illinois would vote "yea," and the Senator f Texas would vote "nay."

The result was announced—yeas 62, nays 10, as follows:

[No. 88 Leg.]

YEAS—62

Aiken	Dominick	Montoya
Allott	Eagleton	Moss
Anderson	Ellender	Nelson
Baker	Fong	Packwood
Beall	Fulbright	Pastore
Bennett	Griffin	Pearson
Bible	Gurney	Proxmire
Boggs	Hansen	Randolph
Brock	Hart	Roth
Brooke	Hruska	Saxbe
Buckley	Hughes	Schweiker
Burdick	Inouye	Scott
Byrd, Va.	Jordan, Idaho	Smith
Byrd, W. Va.	Kennedy	Spong
Cannon	Long	Stafford
Chiles	Magnuson	Stevens
Church	Mansfield	Stevenson
Cook	McGee	Symington
Cooper	Metcalf	Williams
Cranston	Miller	Young
Curtis	Mondale	

NAYS—10

Allen	Fannin	Talmadge
Cotton	Goldwater	Thurmond
Eastland	Sparkman	
Ervin	Stennis	

NOT VOTING—28

Bayh	Hollings	Muskie
Bellmon	Humphrey	Pell
Bentsen	Jackson	Percy
Case	Javits	Ribicoff
Dole	Jordan, N.C.	Taft
Gambrell	Mathias	Tower
Gravel	McClellan	Tunney
Harris	McGovern	Weicker
Hartke	McIntyre	
Hatfield	Mundt	

So the conference report to H.R. 1746 was agreed to.

[From the Congressional Record—House, Mar. 8, 1972]

CONFERENCE REPORT ON H.R. 1746, EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

Mr. PERKINS. Mr. Speaker, I call up the conference report on the bill (H.R. 1746) to further promote equal employment opportunities for American workers, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of March 2, 1972, page 1822.)

Mr. PERKINS (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement of the managers be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The SPEAKER. The gentleman from Kentucky is recognized.

Mr. PERKINS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I need not tell the Members of this body of the importance of the conference report on H.R. 1746, the Equal Opportunity Act of 1972. This measure was debated vigorously and at substantial length in both Houses of the Congress.

Each body of the Congress expressed a preference for judicial enforcement as an alternative to administrative "cease-and desist authority" as a means of enforcing Title VII of the Civil Rights Act. The conferees, therefore, did not have to deal with that issue which had so divided Members of both Houses.

The conference itself was not lengthy, in part because the differences were not great. Each difference was carefully considered, however.

The conference report which I represent to the House today is one of which we can all be proud. In evidence of that belief I would point to the fact that all the conferees signed their names to the conference report.

Among the conferees there were some very deeply felt differences. The resolution of those differences, however, as so often happens, has produced a legislative product which is substantially better than either of the bills which the conferees considered.

The conference resulted in legislation that will provide fair and effective enforcement of the equal employment provisions of the Civil Rights Act. The conference report provides a mechanism and a procedure that will, I am certain, prove to be both fair and effective, one which will protect the rights of both the employer and employee.

The conferees spent considerable time dealing with the detailed p
visions covering the procedure for filing and processing charges
discrimination brought by individuals who feel they have been
fairly treated because of their race or their sex. An effort was m
to insure a speedy and an equitable resolution of such charges wh
is in the interest of both the employee and the respondent employer
labor union.

The conferees contemplate that the Commission will continue
make every effort to conciliate as is required by existing law. Only
conciliation proves to be impossible do we expect the Commission
bring action in Federal district court to seek enforcement.

There will be some expansion of coverage of Title VII. Beginnin
year after enactment all employers employing 15 or more full-ti
employees and all labor organizations with 15 or more members
be covered. The present law calls for coverage of employers and la
unions of 25 or more employees or members.

Coverage has been expanded also to include the employees of St
and local governments, governmental agencies, political subdivisi
of States and the District of Columbia departments and agencies.
expanding coverage to State and local government employees the c
ference exempted elected officials and persons chosen by such offici
to work on their personal staffs, as well as appointees to policymaki
positions at the highest level of the department or agency of the St
or local government. It was our intention to exclude cabinet memb
of Governors and persons with comparable responsibility at the lo
level. Where a State or local government agency is involved, and c
ciliation has proven impossible, it is the Attorney General rather th
the Commission who is authorized to bring action in the case.

Another provision which I am sure may be of interest to the Hou
is the transfer of the Attorney General's "pattern or practice" jur
diction which is transferred to the Commission 2 years after the ena
ment of this law. During the interim period there will be concurre
jurisdiction. This transfer will be subject to change, however, in
cordance with any Presidential reorganization plan that would co
template a different result if that reorganization plan is not veto
by the Congress under the usual procedure.

(Mr. Perkins asked and was given permission to revise and exte
his remarks.)

(The section by section analysis of H.R. 1746 submitted by M
Perkins is identical to the one that appears on p. 1844.)

Mr. QUIE. Mr. Speaker, I yield 5 minutes to the gentleman fro
Illinois (Mr. Erlenborn).

(Mr. Erlenborn asked and was given permission to revise a
extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, I take the floor today to support t
conference report on H.R. 1746.

As I mentioned earlier today, I am not entirely happy with t
results of the conference. Out of some 21 major differences betwe
the House and the Senate, the House conferees or a majority of the
thereof, not all, gave in to the Senate 18 times while the House mai
tained its position three times. It is not as good a record, I must say,
all honesty, as I would like to have come back to the House with.

I guess I should also say that we must be quite thankful we w
our point on the floor of the House and the Senate on the major iss
or that, of course, would have also been lost in conference; but we ha

won that point. I refer to the question of whether the EEOC should have cease-and-desist authority or authority to go into court to enforce a complaint that Title VII of the Civil Rights Act has been violated. Since that was won in both the House and Senate on the floor and the conference report therefore includes court enforcement provision, which was the key provision, I do support the conference report.

There are a few things I would like to discuss concerning the conference report, but first I will be happy to yield to my colleague from Indiana.

Mr. DENNIS. I thank the gentleman for yielding.

I would like to simply say that one of the things which I am afraid you did yield on which concerns me and gives me real reservations about this conference report is the matter of applying this law down to the small employer who only has 15 people or less working for him.

Now, a law of this kind, whatever its beneficial objective, is a great trouble and harassment, as the gentleman knows, to people in business. Large corporations can probably live with it, but it is a great imposition on the small businessmen on Main Street that you and I represent to have to be hailed into court and pay lawyers like myself, as well as accountants, and so forth.

It is a great regret to me that the House receded down to that point where we are going to bother every little fellow on the street with five or six employees.

Mr. ERLENBORN. I thank the gentleman for his contribution.

All I can say is that it could have been worse. The original bill reported by our committee—which was rejected on the floor when the substitute was adopted—would have reduced the coverage down to eight.

The bill as passed by the Senate reduces coverage to 15 employees. This is contrasted to 25 employees as is presently in the law.

In the conference we did recede to the Senate and adopted the figure of 15. I think it might have been reasonable at that point to compromise at 20 employees or even try to hold it to 25, but the majority of the conferees of the House did recede to the Senate on the figure of 15.

Mr. ERLENBORN. Yes; I yield to the gentleman from Wisconsin.

(Mr. Steiger of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Speaker, I appreciate the gentleman yielding.

I simply want to acknowledge the leadership that has been exhibited by the gentleman in the well, the gentleman from Illinois (Mr. Erlenborn). I signed the conference report. I must admit that I am not happy about all of the concessions that were made. However, I think on balance it does provide a needed strengthening of the EEOC. For that reason I urge the support of the House of the conference report.

On balance, however, I must say in all honesty, if it had not been for the kind of work that was done both here in the House and in the other body, my fear would be that we would not have been able to come out with as good a product as this one represents.

I do want to pay tribute to the gentleman from Illinois for what he has done for so long in working with this bill and in helping strengthen the work of the EEOC.

Mr. ERLENBORN. I thank the gentleman for his kind words and a
acknowledge the help which he has given to me and other mem
of the committee all along on this bill.

Mr. Speaker, one of the other areas where additional coverage wo
be included as a result of the conference report is the extension of
authority of the Federal EEOC to State and local governmental
ployees. There was an amendment adopted in the conference commit
an amendment to the bill as it came out of the other body, an
think it was a good amendment and I am happy that the confere
did adopt it.

In extending coverage to State and local employees the House
as reported, and the bill in the other body just made a blanket extens
to small State and local employees without any exception. It
pointed out on the floor of the other body that this would even co
elected officials at the State and local level. In other words, it wo
have been conceivable when the mayor won his race as mayor of
city that the losing candidate——

The SPEAKER. The time of the gentleman from Illinois has expir

Mr. QUIE. Mr. Speaker, I yield the gentleman 5 additional minu

Mr. ERLENBORN. As I was saying, the losing candidate could c
ceivably go to the Commission and charge that he lost the race beca
there was discrimination against him because of race, sex, or natio
origin and if the Commission had cease-and-desist powers, they co
vitiate the election. I think that would probably not be the case bu
would have been possible and they could have seated the defea
candidate.

In the other body, an exemption was made for elected officials a
immediate legal advisers. In the conference, an additional qualifi
tion was added, exempting those people appointed by officials at
State and local level in policymaking positions.

I think this represents another good provision that the confere
added in the report.

In the extension of this authority to State and local employees
was also made clear that the Attorney General would have the auth
ity to bring the action in court rather than the attorneys for the Co
mission. This was made explicit in the bill as it was passed in the ot
body. Besides this, there is a transfer of jurisdiction for pattern
practice matters from the Attorney General to the Commission i
phase program over the next 2 years.

I think we should make it clear that at least this conferee belie
it was the intention of the conference that in the case where a patte
or practice action is brought against State or local officials that s
should be brought by the Attorney General rather than by the Co
mission. There seems to be a conflict here, a conflict of jurisdicti
going to the Commission by the suits against local units of gover
ment, that the authority to bring them rests in the Attorney Gener
I believe the latter should take precedence in the pattern or pract
actions against a unit of local or State government, it should
brought by the Attorney General. I believe that was the intention
the conference.

Educational institutions will now be covered as a result of recedi
to the Senate bill. Religious institutions will be covered, but with
broad exemption for anyone employed by the religious institut

ather than only those people who might be utilized in religious work
r se. So that I think it was clearly the thought of the conference
at if a religious institution is engaged in a profitmaking venture
ey still are not covered by the provisions of this act.
I did agree with one of the places where we receded to the Senate
extending coverage to joint labor-management committees. These
e committees that often operate the programs of apprenticeships,
rticularly in the building trades, and up until the present time they
ve not been covered in the definition. I think they should be. If there
any place where discrimination is practiced, I think clearly it has
en practiced in the apprenticeship programs.
So, extending the authority to the EEOC into this area is I think
good thing.
I will not take the time to go through all of the rest of the differ-
ces between the House and the Senate.
Let me reiterate that some three provisions of the House prevailed
er the Senate where some 18 Senate provisions prevailed over the
use. It is hardly even-handed, and it hardly is the sort of record
give confidence on the part of the Members of the House generally
the conferees appointed by the Committee on Education and Labor.
I hope that that committee will have a better record some time in
e future. I think the lack of confidence that is generated by confer-
ces such as this lead to actions such as were taken earlier today on
e floor of the House in instructing conferees from the Committee
Education and Labor concerning the higher education bill.
I do not like the practice; but if I want to accomplish legislatively
nat I think this House wants, I may find myself in the position of
ving to file a motion to instruct conferees from the Committee on
lucation and Labor based on the kind of record that they have
tablished in this conference, and in the past.
Mr. CORMAN. Mr. Speaker, will the gentleman yield?
Mr. ERLENBORN. I yield to the gentleman from California.
Mr. CORMAN. Mr. Speaker, I would like to inquire of the gentleman
om Illinois whether he thinks that the Attorney General would be
ore vigorous or less vigorous than the Commission in the bringing
suits.
Mr. ERLENBORN. I do not know how you would define "vigorous."
an tell you this: the Attorney General in the pattern or practice
its under Title VII of the Civil Rights Act of 1964, since its passage,
s not lost one suit. The number of cases is not exceptionally great,
t the number of people affected has been, because pattern or practice
n cover many people in one case. The Attorney General has had an
cellent record in this area, under both administrations. This is not
any way a partisan comment.
Mr. CORMAN. If the gentleman will yield further, the gentleman
sed a point as to where we are putting the jurisdiction, and I just
ndered whether we got better enforcement from the Attorney
neral.
Mr. ERLENBORN. Let me allay the gentleman's fears as to whether
t was the reason for it. The rationale behind giving the Attorney
neral the authority to bring suit in the cases affecting State and
al governments is that there could be a constitutional conflict as to
ether a Commission would have authority——

The SPEAKER. The time of the gentleman from Illinois has exp

Mr. QUIE. Mr. Speaker, I yield 1 additional minute to the ge man from Illinois (Mr. Erlenborn).

Mr. ERLENBORN. It is because there could be a constitutional co as to whether an administrative agency of the Federal Govern could exercise authority against State and local elected officials.

It did seem clear that the Attorney General could bring suit i Federal court in those cases. That is why jurisdiction was extende the Attorney General to bring suit where State and local uni government are involved.

The point I am trying to make is the apparent conflict between and the transfer of the pattern or practice jurisdiction that the A ney General now exercises. It is my feeling that the conferees inte that the Attorney General have the pattern or practice jurisdic as it affects the State and local units of government.

Mr. CORMAN. I am still not quite certain as to whether the ge man felt there ought to be a transfer because of the vigorous enfo ment of the Attorney General or whether the gentleman thought Commission was too vigorous in the first place.

Mr. ERLENBORN. I think the Attorney General's record has b good.

The judgment was made to take the pattern or practice jurisdic from him, but I think the decision has also been made that where State and local units are concerned, the Attorney General should b suit.

Mr. PERKINS. Mr. Speaker, I yield such time as he may consum the gentleman from Pennsylvania (Mr. Dent).

(Mr. Dent asked and was given permission to revise and ext his remarks.)

Mr. DENT. Mr. Speaker and Members, I am here today, first thank the members of the conference committee on both sides taking a very broadminded view of the problem that we faced.

I think this is one of the finest conferences I have served on many years. We tried to thrash out and solve the problems on basis of give and take and understanding. There were quite a differences between the provisions in the House passed bill and Senate passed bill.

However, the conferees, in what I think was a very unselfish statesmanlike approach, developed for the House and the Senat piece of legislation that all the conferees of both the House and S ate were able to sign willingly.

There were some major differences in some of the provisions de ing with enforcement. We did not see quite eye to eye on them, we ended up with a much better provision than the provision c tained in the old act.

We hope that the thousands of cases that are piling up will now taken up and that the backlog of cases and new cases that come bef the Commission can be handled expeditiously.

The bill, H.R. 1746, as reported by the conference committee re resents 5 years of legislative activity during which time several tempts were made to adopt some form of enforcement procedu which the EEOC could effectively use to enforce Title VII of the Ci Rights Act of 1964.

This conference report represents the result of a very active bipartian effort to achieve meaningful employment opportunities for all tizens in this Nation. As such, I honestly believe it reflects the efforts f both the House and Senate toward this end.

Mr. Speaker, I want to pause just a moment to give my regards nd respect to the gentleman from California (Mr. Hawkins) who as been working night and day for the passage of this legislation or the better part of 5 years, taking upon himself the chores that I, as hairman, could not take on because of the press of other committee usiness.

If anybody is to be considered the prime mover in getting this legistion to this point today so that we can vote for it and be assured hat we are doing something toward enforcing equal employment opportunities in our country, it is Mr. Hawkins.

Mr. PERKINS. Mr. Speaker, will the distinguished gentleman from ennsylvania yield?

Mr. DENT. I am happy to yield to the chairman.

Mr. PERKINS. First, let me state that the untiring work and the determined efforts of the distinguished gentleman from Pennsylvania ought about, more than anything else, the important legislation at we have on the floor today. He succeeded because of his great 'ort and those of the gentleman from California (Mr. Hawkins). ney have lived with this legislation over a period of years, and I rtainly do not want to detract one particle from the good work of the inority in connection with this legislation. But above everyone else, e distinguished gentleman from Pennsylvania (Mr. Dent) stayed top of this legislation. He stayed with it and never gave in even hen that appeared to be the wisest and practical thing to do.

This legislation is a great tribute to the distinguished chairman of e subcommittee (Mr. Dent). He has devoted great effort and long rvice trying to get the legislation enacted. I certainly want to pay y compliments to the distinguished gentleman from Pennsylvania d to his entire subcommittee for a job well done.

Mr. DENT. Thank you very kindly, Mr. Chairman, and I am sure at all members of the committee recognize your ever-present help any time we needed it during consideration of the measure.

I also want to pay my respects to the ranking minority member, who obably is the best "devil's advocate" in the whole Congress of the nited States, because if there are any faults in any legislation of ours, hn Erlenborn will find them. I sometimes find fault with my colgue from Illinois because I sometimes think he finds fault when ere is no fault to be found. But in the final analysis he does do his mework. In every instance where we have had a knotty problem to n out, he has been of great help.

The bill provides for the much-needed expansion of coverage of tle VII to include employees of educational institutions. State and al governments, and employers, and labor organizations with 15 or re employees or members. The special position of State and local vernmental employers has been recognized, however, by a specific emption for certain State and local government employees, as well as requirement that State and local agencies may only be sued by the torney General. Changes have also been introduced in the prohibi-

tion against religious discrimination which represent improver
over the present law.

Certain needed changes in the provisions for the filing of ch
with the Commission have also been introduced. These would
a charge to be filed on behalf of an aggrieved individual and pr
for a longer period of time during which the charge may be filed
positions of both the House and Senate bills regarding the ability o
individual to sue when the Commission's action is unsatisfactory
the ability of the courts to grant preliminary relief, where appropr
have been retained.

The key to the whole legislation is the enforcement powers gra
to the Commission, the ability to go into the Federal district cou
enforce compliance with the act. This enforcement proposal, w
was essentially the same in both House and Senate versions o
bill, is that which this Congress has agreed to as best for the EE
While originally I, and many of my colleagues on this floor, fav
the administrative cease-and-desist enforcement approach over th
court enforcement, I am now satisfied that, along with the other
visions contained in the legislation, the EEOC would be given
cient tools to enforce the provisions of Title VII.

The conference bill contains additional provisions which I cons
vital to the effective enforcement of Title VII. It would, 2 years a
enactment, transfer the Justice Department's "pattern or prac
jurisdiction to the EEOC. This provision would eliminate the d
lapping enforcement powers which would otherwise be inevitab
both the EEOC and Justice Department could bring suits to enf
violations of Title VII. The jurisdiction to sue State or local gov
ments would, however, remain solely with the Justice Departmen
that no overlap would occur in this area.

The conference report also retains certain important provis
with respect to recordkeeping and Federal-State relations regard
equal employment opportunities enforcement. The compromise
provides certain added protections for employees of the agencies
sponsible for enforcing Title VII.

This legislation would impose requirements of due process on
Federal contract compliance program for the first time.

While I am not completely happy with the way the bill has tur
out, the majority of the Congress has spoken. The conferees h
spoken. So I compliment them for at least getting to that point wh
we have made some advancement in enforcement.

We have come out with a piece of work that I think will stan
long time. We may now very well be on the road to a more peace
existence in the field of employment in this country as a result
this bill.

Most people just want to work. That is all. They want an opp
tunity to work. We are trying to see that all of us, no matter of w
race, sex, or religious, or ethnic background, will have equal opp
tunity in employment.

This bill has been a long time coming. I hope the House will acc
this legislation and the work of the conferees.

Again, I thank both the minority and the majority members of
conference for their great support of the legislation.

Mr. Speaker, I include the following:

PROCEDURE WHERE NO STATE EQUAL EMPLOYMENT OPPORTUNITY LAW EXISTS

(1) A charge must be filed within 180 days after the occurrence of an alleged unlawful employment practice.

(2) After a charge is filed, the Commission must serve a notice of the charge on the respondent within ten days.

(3) The Commission must then investigate the charge, after which it must make a determination whether there is reasonable cause to believe that the charge is true. The Commission shall make its determination of reasonable cause as promptly as possible and, so far as practicable, within 120 days.

(4) If it finds no reasonable cause, the Commission must dismiss the charge; if it finds reasonable cause, it will attempt to conciliate the case.

(5) If the Commission is unable to secure a conciliation agreement, that is acceptable to the Commission, it may bring a civil action against any respondent in an appropriate federal district court. In the case of a respondent which is a government, governmental agency or political subdivision, the Commission shall take no further action and notify the Attorney General who may bring a civil action.

(6) If the court finds that a respondent is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful employment practice and grant such affirmative relief as it may deem appropriate including, but not limited to, reinstatement, with or without backpay. Backpay liability is limited, however, to no more than that accrued during the two years prior to the filing of a charge with the Commission.

(7) In the event that the Commission dismisses a charge or if within 180 days from the filing of the charge the Commission or the Attorney General has not filed a civil action or entered into a conciliation agreement to which the aggrieved person is a party, the Commission or the Attorney General will notify the aggrieved party. Within ninety days after the receipt of such notice the person aggrieved may bring a civil action against the respondent. Should such private action be brought, the Commission or the Attorney General (where a government or political subdivision was involved) may seek to intervene in the action.

PROCEDURES WHERE STATE EQUAL EMPLOYMENT OPPORTUNITY LAW EXISTS

(1) A charge must be filed within 180 days after the occurrence of an alleged unlawful employment practice.

If a charge is initially filed with a state or local agency, such charge must be filed with the Commission within 300 days after the alleged unlawful practice has occurred or within 30 days after receipt of notice that the state or local agency has terminated its proceedings.

(2) Where a state or local equal employment statute exists, the EEOC must wait 60 days after state or local proceedings have been commenced, unless those proceedings have been terminated sooner, before it can act on a charge. The deferral period is extended to 120 days during the first year after enactment of a state or local law.

(3) Once the deferred is concluded, the Commission must serve a notice of the charge on the respondent within ten days (presumably, this is duplicative of the state or local proceedings).

(4) The Commission must then investigate the charge, afterwhich it must make a determination whether there is reasonable cause to believe that the charge is true. The Commission shall make its determination of reasonable cause as promptly as possible and, so far as practicable within 120 days.

(5) If it finds no reasonable cause, the Commission must dismiss the charge; if it finds reasonable cause, it will attempt to conciliate the case.

(6) If the Commission is unable to secure a conciliation agreement, that is acceptable to the Commission, it may bring a civil action against any respondent in an appropriate Federal district court. In the case of a respondent which is a government, governmental agency or political subdivision, the Commission shall take no further action and notify the Attorney General who may bring a civil action.

(7) If the court finds that a respondent is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful employment practice and grant such affirmative

relief as it may deem appropriate including, but not limited to, reinstate
with or without backpay. Backpay liability is limited, however, to no
than that accrued during the two years prior to the filing of a charge wit
Commission.

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son aggrieved may bring a civil action against the respondent. Should su
private action be brought, the Commission or the Attorney General (where a
ernment or political subdivision was involved) may seek to intervene in
action.

Mr. QUIE. Mr. Speaker, I yield myself such time as I may consu

Mr. Speaker, as we can see by reading the signatures on this rep
the majority and the minority are together in supporting this
ference report. The greatest amount of credit for putting the bill
a shape which I can support has to go to the gentleman from Illi
(Mr. Erlenborn), not only for his work in this House, but also for
work with the Members of the other body in straightening out
matter. I say that as one who once introduced a bill giving cease-a
desist enforcement powers to the EEOC, but I believe the action ta
in this legislation is right, and, therefore, I am supporting it.
gentleman from Illinois has been most convincing.

There are some provisions of the Senate which, I think, are adv
tageous which the House accepted and which I strongly suppor
would say two that come to mind are the ones affecting religion. On
the definition of religion and the other is the provision exempt
employees of religious organizations. I think that was a good m
on our part.

There are some parts I do not like. If we had the chance to br
the bill back with a motion to recommit, I think I would have st
here and asked Members to recommit the bill back to the confere
with instructions. I hope this body will take a look at the rules we
erate under, so that both Houses will have a chance on the con
ence report to recommit back to the conference if Members do
like some part of the bill.

The part I feel especially is bad is the feature on the statute
limitations in this bill, which is not 2 years prior to enactment of
bill, but rather 2 years prior to the charge being brought by anyo
Some of those may have been pending for 2 or 3 years already, so
are talking now of probably 5 years in which backpay can be request

I just do not think that was a wise decision. I think the House wo
have stood by the position of those of us who felt that this was unw
and that the 2 year statute of limitations in this bill should have bee
years prior to the enactment of the act. I think that would have b
advisable.

But we have to look at this report in total. The question is n
whether we want to vote down the conference report because there
some parts we disagree with. I do not think we should do that.

I think there is improvement for the EEOC in this bill, and we h
to give credit to those who have been working on this. One of th
who should be given great credit is the gentleman from Califor
(Mr. Hawkins) who really has taken the lead to give more strength

EOC to eliminate discrimination. I think despite the fact that this is
ot everything he wanted, this is a substantial stride forward, and one
which he can also take pride as a result of the action of the
ommittee.

I urge support for the conference report.

With that, Mr. Speaker, I yield 5 minutes to the gentleman from
owa (Mr. Gross).

(Mr. Gross asked and was given permission to revise and extend his
emarks.)

Mr. Gross. Mr. Speaker, I thank the gentleman from Minnesota for
ielding to me.

Mr. Speaker, on page 21 of the report, I note this language:

> The Senate amendment provided the Commission with authorization for an additional 10 positions at the GS 16, GS–17, and GS–18 level. The House bill had no such provision. The House receded.

Of course, "receded" means the House surrender to the Senate.

I wonder if there was any recognition on the part of the House
ommittee on Education and Labor that there is a committee of the
ongress which is supposed to deal with supergrades, which is sup-
osed to deal with pay increases and that sort of thing. I wonder if
he gentleman from Kentucky could give me some reason why the
louse rolled over and played dead on this issue.

Mr. Perkins. Let me say to my distinguished colleague——

Mr. Gross. I cannot hear the gentleman. He is usually a little more
ocal, at least a few decibels higher.

Mr. Perkins. Let me say to my distinguished colleague from Iowa
hat after the Senate put this provision in the bill——

Mr. Gross. I am aware of that. I just read the fact that they did.

Mr. Perkins. Let me make the explanation. I wrote to the chairman
f the Post Office and Civil Service Committee of the House, Congress-
an Dulski, and invited him to look the situation over, as to whether
e felt the Commission needed these additional people.

Be that as it may, the conferees felt, in view of the broadening of
he coverage in the bill, that the number selected by the Senate was a
easonable number. It was the will of the conference that we give them
ome additional personnel that we felt they needed. I do not consider
any surrender by any means.

Mr. Gross. If the Post Office and Civil Service Committee, which is
he proper committee, should come along and take some of the em-
oyees away, or bring out legislation to take some of the employees
way from this equal employment opportunity setup, I can see the
entleman raising a little unshirted hell around here over the fact that
he jurisdiction of his committee was being invaded. And that is pre-
sely what you did here.

Let me call your attention to something else as we go along.

Mr. Perkins. I would much prefer——

Mr. Gross. Just a minute. I will yield to the gentleman later.

The House just sent the Higher Education Act to conference. When
hat bill originally came to the House it contained numerous provi-
ons authorizing employment of personnel without regard to the civil
rvice and classification laws, and it provided for numerous addi-
onal positions in grades 16 through 18, which of course are the super-
rades. The gentleman from North Carolina (Mr. Henderson) and the

gentleman from Iowa, presently addressing the House, made p
of order against that bill and knocked those provisions out. Now
are going to conference with the other body, and I have no doubt
when you come back from that conference there will be many
supergrades. You will have fattened that bill along with this one,
will have done so without any regard for the jurisdiction of the pr
committee of the Congress.

Mr. DENT. Mr. Speaker, will the gentleman yield?

Mr. GROSS. Yes. I yield, if the gentleman has any reasonable
planation for invading the jurisdiction of the committee.

Mr. DENT. The gentleman will have to be the judge of whether
reasonable or not, but it is not a precedent-setting action here.

Mr. GROSS. I did not say anything about a precedent. I said it
overstepping the committee.

The SPEAKER. The time of the gentleman from Iowa has exp

Mr. GROSS. Mr. Speaker, will the gentleman yield me 3 additi
minutes?

Mr. QUIE. Mr. Speaker, I yield 3 additional minutes to the ge
man from Iowa.

Mr. DENT. May I be permitted to answer?

Mr. GROSS. Yes, certainly.

Mr. DENT. This House without question or any discussion, w
it created the Commission on Aging, created the grade jobs that
required to perform the duties we prescribed under the Commissi
on Aging. This is another Commission. If the jobs are not cre
in the legislation we bring forth we would not have anybod
administer the act and the provisions we put into the bill.

This has gone on ever since I have been a Member of Cong
where we create new duties and create jobs to go with them. We
not overstep our jurisdiction. The Senate put it in, very frankl

Mr. GROSS. You accepted it, did you not? Your responsibilit
equal to theirs, in the conference.

Mr. HENDERSON. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from North Carolina.

(Mr. Dulski, on request of Mr. Henderson, was granted per
sion to extend his remarks at this point in the Record and to inc
extraneous matter.)

Mr. DULSKI. Mr. Speaker, I am very disappointed to learn
the conferees have retained the Senate provision authorizing a
tional supergrade positions.

Section 12 of the conference substitute authorizes the Chair
of the Equal Employment Opportunity Commission to place
additional 10 positions in grades 16, 17, and 18 of the Gen
Schedule.

Mr. Speaker, I realize that the exchange of correspondence on
inclusion of the 10 additional supergrades which I had with
gentleman from Kentucky, Chairman Perkins, came too late, s
the conferees already had reached agreement. I appreciate the s
gestion made by the gentleman from Kentucky in his letter of Marc
1972, that our committee hold the necessary hearings and cons
the justification for the 10 positions authorized. I will include co
of these letters as a part of my statement.

Mr. Speaker, this is yet another example of legislation that is reaching the House floor with provisions that violate the statutory standards and controls relating to Federal employment.

The Committee on Post Office and Civil Service has primary jurisdiction over all matters relating to the civil service, including matters relating to the compensation, classification, and retirement of Federal employees. The standards, controls, and limitations relating to these matters are spelled out very specifically in title 5 of the United States Code.

Our committee feels that any exceptions to such statutory standards and controls should be granted only in the most unusual circumstances and only when fully justified before our committee.

In the present case we have had no request and no opportunity to consider whether there is any justification for authorizing 10 additional supergrades for the Equal Employment Opportunity Commission.

I realize, of course, that little can be done at this point to eliminate the supergrade authority from the conference report. However, I would strongly advise the Equal Employment Opportunity Commission to forego the use of such authority until the Post Office and Civil Service Committee has had the opportunity to consider the overall needs of the Government for additional supergrade positions.

In that regard I wish to point out that on March 28, the Subcommittee on Manpower and Civil Service of the Post Office and Civil Service Committee will begin hearings on the administration's proposal to establish a Federal Executive Service.

During the course of those hearings, I am going to ask the members of the subcommittee to give serious consideration to repealing all recently enacted provisions of law, such as the one we are now considering, which authorize additional supergrade positions, unless such supergrade authority was considered and approved by our subcommittee.

In lieu of the separate supergrade authorities which I will seek to have repealed, I will propose an increase in the aggregate number of supergrade positions under section 5108(a) of title 5, United States Code, to take care of any additional supergrades that are proven to be needed pending completion of the study for the new Federal Executive Service.

The letters follow:

U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., February 29, 1972.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, House of Representatives.
Washington, D.C.

DEAR MR. CHAIRMAN: In reviewing the provisions of the Senate amendment to H.R. 1746, the Equal Employment Opportunities Enforcement Act of 1972, I note that section 13 authorizes the Chairman of the Equal Employment Opportunity Commission to place an additional 10 positions in GS–16, GS–17, and GS–18.

As I have indicated to you several times recently, this is the type of authorization which I am firmly convinced should be considered by our Committee before being approved by the House. We have had no request and no opportunity to consider whether or not there is any justification for authorizing 10 additional supergrades for the Equal Employment Opportunity Commission.

Mr. Henderson, Chairman of our Subcommittee on Manpower and Civil Service, has scheduled hearings to begin in March on the overall question of replacing

the so-called supergrade positions with a new Federal Executive Service. At time, a review will be made as to whether or not any additional supergrades needed pending completion of the study for the new Federal Executive Ser

Since we have received no request on behalf of the Equal Employment portunity Commission, and in view of the pending study, I strongly recomm that you and the conference of the House urge that the Conference Report include authority for additional supergrades for the Equal Employ Opportunity Commission.

With kindest regards,

Sincerely yours,

THADDEUS J. DULSKI,
Chairma

HOUSE OF REPRESENTATIVES,
March 1, 197

HON. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service, U.S. House of Repres tives, Washington, D.C.

DEAR MR. CHAIRMAN: I am sorry you and I did not have an opportunit discuss earlier the provisions of the Senate amendment to H.R. 1746, the E Employment Opportunities Enforcement Act of 1972

The Conferees on that matter completed their deliberations last night. Conference Report is, I understand, in page proof already and Chairman liams of the Senate Committee on Labor and Public Welfare is most anx to file the Conference Report today and have the Senate take up the meas tomorrow. I can understand your concern about the authorization of additi supergrades for the Equal Employment Opportunity Commission. The possi ity of your concern was, in fact, discussed by the Conferees on our side. S the provision was in the Senate bill, however, and since the Parliamentari office assured us that the provision being in the Senate bill made it a confere able item, we felt in the situation that existed yesterday evening when matter was considered that it was imperative that we take the Senate langu

As I indicated before, if I had received your communication of concern ear than this morning we might have come to a different conclusion but under circumstances it appears to be too late now to resolve the matter as you des I would suggest, however, that Mr. Henderson, Chairman of your Subcommit on Manpower and Civil Service, continue with his hearings on the replacem of the super-grade positions with the new Federal Executive Service, includ his review of the need for additional supergrades pending completion of study for the new Federal Executive Service. Specifically, I would recomm that he review the situation of the Equal Employment Opportunity Commiss and I assure you that I will do everything I can to cooperate with him and w you in that connection.

Obviously, if your Committee after reviewing the matter feels that the C ference has authorized an excessive number of supergrades or has authori an insufficient number I would expect to give the same serious consideration the recommendations of your Committee that I always give the recommen tions of any other Chairman of any other Committee.

With best wishes,

Sincerely,

CARL D. PERKINS,
Chairman

Mr. HENDERSON. I thank the gentleman for yielding, and I want say that I, too, agree with him that the jurisdiction of the Civil Se ice Committee of the House has not been abided by here. The legis tive committees, of course, have the authority to grant the positio that may be needed, but here what they have done is set the salari for those persons they determined to be required and have exempt them from the Civil Service Act without any testimony saying w they should be exempted. As the gentleman from New York will co vey to the Members of the House in his extension of remarks, he pu us on notice that our committee intends to do something about this.

Mr. Gross. They might at least have gone to the Civil Service Commission pool for supergrades rather than to establish them by this process.

Mr. Henderson. I thank the gentleman for yielding.

Mr. Gross. Mr. Speaker, I also note on page 9 of the report this language:

Sec. 714. The provisions of sections 111 and 1114, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

Not even the language that is to be found in all statutes of this kind—not even the inclusion of "upon conviction." No one bothered to write into this provision that an individual must first be tried and convicted before being sentenced to prison for life.

Mr. Speaker, I yield back the balance of my time.

Mr. Dent. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, in answer to the criticism about the job situation and supergrades, we did not say or do anything that has not been done before time and time again. What we said—or, rather, what the Senate insisted on—is that the Chairman of the Economic Opportunity Commission, subject to standards and procedures prescribed by this chapter, may place—may place—an additional 10 positions in the Economic Opportunity Commission in GS–16, GS–17, and GS–18 for the purposes of carrying out title 7 of the Civil Rights Act of 1964. It says he may if it is needed.

We heard absolutely nothing from any committee of the House until the day after the conference was over, when we received a note from Mr. Dulski, the chairman of the Committee on Post Office and Civil Service, and an answer was given to him by the chairman of our full committee, and all of the oversight on this particular matter was taken into account.

These jobs are still within the jurisdiction of the Post Office and Civil Service Committee. We did not do anything but provide the jobs when needed to fulfill the duties of the Commission.

Mr. Gross. Will the gentleman yield?

Mr. Dent. I am happy to.

Mr. Gross. And you probably did not have one word of evidence as to whether the 10 additional supergrades were needed. Did you? You took the word of the people across the way, and they probably held no hearings and had no justification as to whether a single supergrade was necessary.

Mr. Dent. In answer to the gentleman, I might say that if you go into a conference, and you do not have any regard for the other body's position, then you should never go into conference. You have to accept the view that they made the study. We did not make the study, I assure you.

Mr. Quie. Mr. Speaker, I yield the gentleman from Illinois 3 minutes.

Mr. Erlenborn. If the gentleman from Pennsylvania would respond to a question, I would appreciate it.

Did I understand the gentleman correctly a minute ago to say did not hear from Chairman Dulski until after the conference completed?

Mr. DENT. That is exactly what the chairman told me. I ne heard from them at all.

Mr. ERLENBORN. I thank the gentleman for that answer. It d surprise me, and maybe we should ask the chairman of the commit (Mr. Perkins), because I raised this question in the conference.

Mr. DENT. That is right.

Mr. ERLENBORN. And I was told that, "yes, they did have a let from Chairman Dulski," but that, "you know, he always writes l ters like that to show that he is trying to protect the jurisdicti of the committee, but we do not take it very seriously."

I also recall it was agreed that, if Chairman Dulski were rea serious about this, he would back down and remove these provisio from the conference report.

Mr. DENT. I know that the gentleman from Illinois does not wa to give the wrong impression; but, in order to stop it right at t point and get at what we believe to be the truth, with reference this matter and with reference to the interchange between the cha man of the Committee on Post Office and Civil Service and t chairman of the Committee on Education and Labor, you know it h been said that a lie will get halfway around the world before t truth is known. The letter was not in the hands——

Mr. ERLENBORN. Mr. Speaker, I ask for regular order.

I would like to ask the gentleman from Kentucky (Mr. Perkins Is it not true that you advised us in the conference that you h received the letter from Chairman Dulski?

I would be happy to yield to the gentleman, the chairman of t committee, to respond to that question.

Mr. PERKINS. The chief clerk of the committee informs me th we had a letter from Mr. Dulski on another subject matter alo the same lines, but on other legislation, not on this legislation, befo we went to conference, but that the letter on this particular subject a on the conference report did not arrive until the day after we co pleted the conference.

My recollection is refreshed by the clerk of the committee wh answers the mail.

Mr. ERLENBORN. I thank the gentleman for that answer. It wa my understanding from what the gentleman said in the conferen that he knew Chairman Dulski felt that this invaded the jurisdictio of his committee. I understood the gentleman in the conference to sa he received a letter from the chairman and, if the chairman wa serious about it, it would be understood that this matter would b taken out of the bill. I just want the record to be straight.

Mr. QUIE. Mr. Speaker, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Minnesota.

Mr. QUIE. As I recall the situation, the Senate conferees agree that if a point of order could be raised against this section, or a separate vote could be held on the section, then they would recede. Since that was not the parliamentary situation they went ahead.

So, there was full realization in the conference that this was a erious matter and we were concerned about the Post Office and Civil Service Committee's jurisdiction.

Mr. DENT. Mr. Speaker, I yield myself 1 minute.

(Mr. Dent asked and was given permission to revise and extend his emarks.)

Mr. DENT. The letter in question was the letter to the chairman ealing with the provisions of the Fair Labor Standards Act, and overs civil employees under civil service. That was the letter that as talked about, but the chairman said he had a letter and it had othing to do with this legislation.

I am informed by the Clerk that we did not receive any remonrance against this particular feature and had not received one single emonstrance having to do with three other instances contained in ills which were passed by this House.

Mr. PERKINS. Mr. Speaker, I yield 1 minute to the gentleman rom California (Mr. Corman).

(Mr. Corman asked and was given permission to revise and exend his remarks.)

Mr. CORMAN. Mr. Speaker, I want to conclude the thoughts which I tarted earlier in my exchange with the gentleman from Illinois (Mr. Erlenborn). Specifically I wondered whether the conferees favored iving enforcement to the Attorney General rather than to the Comission, because they thought he would be more vigorous or less vigorus in protecting the rights of blacks against job discrimination. I ust say that having watched the former Attorney General, Mr. Mitchell, for 3½ years, if I were a black man I would not be as comortable with him representing me as I would be with the Commission epresenting me. The gentleman from Illinois (Mr. Erlenborn) ointed out that the former Attorney General has never lost a case this field. I am reminded that when I went to law school we were old that if you never lose a lawsuit it may be because you are not tryng enough of them.

Mr. RARICK. Mr. Speaker, I had voted against this legislation when was first considered and, if anything, it is worse now.

Supposedly it seeks to eliminate all discrimination in hiring and emloyment practices but in reality and by actual experience the thrust f the legislation is to give special advantage to certain applicants and nqualified jobseekers. The real discrimination under this bill is gainst the employers, the investors, and the management people who now what jobs they have and the qualifications they seek but can be orced to accept the least qualified because the more qualified may e of the majority.

The equal opportunity employment legislation would make disimination illegal and a crime. Yet, let us be honest about it, discrimiation is an act of freedom and I dare suggest that discrimination can ever be removed from this country as long as freedom remains in our nd. I can never vote for a bill that gives special consideration to one roup at the cost of denying freedom to another. Compensatory rights re nothing but special interest privileges, and to make this the law of ur land is a mockery of morality even though it is camouflaged under e name of social justice.

To those who sincerely feel that this legislation is necessary to h the unskilled and untrained, I can only say that in Sunday's Wa ington paper that "Help Wanted" section was 29 pages in length a many of the positions offered were for unskilled people.

An example of the extreme provisions of this conference report that section on page 9 captioned "Forcibly Resisting the Commissi or Its Representatives." Section 714 reads in part:

Notwithstanding the provisions of sections 111 and 1114 of title United States Code, whoever in violation of the provisions of secti 1114 of such title kills a person while engaged in or on account of t performance of his official functions under this act shall be punish by imprisonment for any term of years or for life.

Nothing is said about arrest, trial, or conviction. The word "ki is not even qualified with the usual criminal expression "maliciousl or "willfully." This section of the law may be a good demonstration the justice intended by the equal opportunity employment legislatio

The seriousness of such a poorly drawn bit of legislation is th the unqualified word "kill" without any indication of intent cou even extend to an EEOC employee killed in an automobile accide If any EEOC people are killed, is the involved party to be imprison without even the equal opportunity for a hearing or trial?

I intend to cast my people's vote against this police state ty legislation.

Mr. PERKINS. Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the conference repo

The previous question was ordered.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ye appeared to have it.

Mr. SCHMITZ. Mr. Speaker, I object to the vote on the ground that quorum is not present and make the point of order that a quorum not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members, and the Cle will call the roll.

The question was taken; and there were—yeas 303, nays 110, n voting 18, as follows:

[Roll No. 67]

YEAS—303

Abourezk	Belcher	Brown, Mich.
Abzug	Bell	Brown, Ohio
Adams	Bergland	Buchanan
Addabbo	Biaggi	Burke, Mass.
Alexander	Biester	Burlison, Mo.
Anderson, Calif.	Bingham	Burton
Anderson, Ill.	Blanton	Byrne, Pa.
Andrews	Blatnik	Byrnes, Wis.
Annunzio	Boggs	Caffrey
Arends	Boland	Carey, N.Y.
Ashley	Bolling	Carney
Aspin	Brademas	Carter
Aspinall	Brasco	Cederberg
Badillo	Brooks	Celler
Barrett	Broomfield	Chamberlain
Begich	Brotzman	Chisholm

lark
lausen, Don H.
lay
leveland
ollins, Ill.
onable
onte
onyers
orman
otter
oughlin
ulver
aniels, N.J.
anielson
avis, S.C.
e la Garza
elaney
ellenback
ellums
enholm
ent
iggs
ingell
onohue
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rinan
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u Pont
wyer
ckhardt
dmondson
dwards, Calif.
ilberg
rlenborn
sch
shleman
vans, Colo.
vins, Tenn.
ascell
indley
ish
lood
oley
ord, Gerald R.
ord, William D.
orsythe
raser
relinghuysen
renzel
ulton
uqua
alifianakis
allagher
armatz
aimo
bbons
oldwater
onzalez
oodling
rasso
ray
reen, Oreg.
reen, Pa.
riffiths
rover
ubser
ude

Halpern
Hamilton
Hanley
Hanna
Hansen, Idaho
Hansen, Wash.
Harrington
Harsha
Harvey
Hastings
Hathaway
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Hicks, Mass.
Hicks, Wash.
Hillis
Hogan
Holifield
Horton
Hosmer
Howard
Hungate
Hunt
Jacobs
Johnson, Calif.
Johnson, Pa.
Jones, Ala.
Karth
Kastenmeier
Kazen
Keating
Kee
Keith
Kemp
Kluczynski
Koch
Kyl
Kyros
Latta
Leggett
Lent
Link
Lloyd
Long, Md.
Lujan
McClory
McCloskey
McClure
McCormack
McCulloch
McDade
McDonald, Mich.
McEwen
McFall
McKay
McKevitt
McKinney
Madden
Mailliard
Mallary
Martin
Mathias, Calif.
Matsunaga

Mazzoli
Meeds
Melcher
Metcalfe
Miller, Ohio
Mills, Ark.
Minish
Mink
Minshall
Mitchell
Mollohan
Monagan
Moorhead
Morgan
Morse
Mosher
Moss
Myers
Natcher
Nedzi
Nelsen
Nix
Obey
O'Hara
O'Konski
O'Neill
Patten
Pelly
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Pirnie
Poage
Podell
Preyer, N.C.
Price, Ill.
Pucinski
Purcell
Quie
Railsback
Rangel
Rees
Reid
Reuss
Rhodes
Robison, N.Y.
Rodino
Roe
Roncalio
Rooney, N.Y.
Rooney, Pa.
Rosenthal
Rostenkowski
Roush
Roy
Roybal
Ruppe
Ryan
St Germain
Sandman
Sarbanes
Saylor
Scheuer
Schneebeli

Schwengel
Sebelius
Seiberling
Shriver
Sisk
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Springer
Staggers
Stanton, James V.
Steed
Steele
Steiger, Wis.
Stokes
Stratton
Sullivan
Symington
Talcott
Teague, Calif.
Terry
Thompson, N.J.
Thomson, Wis.
Thone
Tiernan
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Veysey
Vigorito
Waldie
Ware
Whalen
Whalley
Widnall
Wiggins
Williams
Wilson, Charles H.
Winn
Wolff
Wright
Wyatt
Wydler
Wylie
Wyman
Yates
Yatron
Young, Tex.
Zablocki
Zion
Zwach

NAYS—110

Abbitt
Abernethy
Archer
Ashbrook
Baker
Bennett
Betts
Bevill
Blackburn
Bow
Bray
Brinkley
Broyhill, N.C.
Broyhill, Va.
Burke, Fla.
Burleson, Tex.
Byron
Cabell
Camp
Casey, Tex.
Chappell
Clancy
Clawson, Del.
Collins, Tex.
Colmer
Crane
Curlin
Daniel, Va.
Davis, Ga.
Davis, Wis.
Dennis
Derwinski
Devine
Dickinson
Dorn
Dowdy
Downing
Duncan
Edwards, Ala.
Fisher
Flowers
Flynt
Fountain
Frey
Gettys
Griffin
Gross
Hagan
Haley
Hall
Hammer-schmidt
Hébert
Henderson
Hutchinson
Ichord
Jarman
Jonas
Jones, N.C.
Jones, Tenn.
King
Kuykendall
Landgrebe
Landrum
Lennon
Long, La.
McCollister
McMillan
Mahon
Mann
Mathis, Ga.
Mayne
Michel
Mills, Md.
Mizell
Montgomery
Nichols
Passman
Patman
Poff
Price, Tex.
Quillen
Randall
Rarick
Roberts
Robinson, Va.
Rogers
Rousselot
Runnels
Ruth
Satterfield
Scherle
Schmitz
Scott
Shoup
Sikes,
Smith, Calif.
Snyder
Spence
Steiger, Ariz.
Stephens
Stuckey
Taylor
Teague, Tex.
Thompson, Ga.
Waggonner
Wampler
Whitehurst
Whitten
Wilson, Bob
Young, Fla.

NOT VOTING—18

nderson, Tenn.	Macdonald, Mass.	Pryor, Ark.
aring	Mikva	Riegle
ollier	Miller, Calif.	Shipley
dwards, La.	Murphy, Ill.	Stanton, J. William
aydos	Murphy, N.Y.	Stubblefield
ull	Powell	White

So the conference report was agreed to.
The Clerk announced the following pairs:

Mr. Mikva with Mr. Collier.
Mr. Anderson of Tennessee with Mr. Powell.
Mr. Shipley with Mr. Riegle.
Mr. Stubblefield with Mr. J. William Stanton.
Mr. White with Mr. Baring.
Mr. Macdonald of Massachusetts with Mr. Hull.
Mr. Murphy of New York with Mr. Miller of California.
Mr. Murphy of Illinois with Mr. Gaydos.

Messrs. Bray and Teague of Texas changed their votes from "yea" "nay."
The result of the vote was announced as above recorded.
A motion to reconsider was laid on the table.

UTHORIZING CLERK OF THE HOUSE TO MAKE CORRECTION IN THE ENROLLMENT OF H.R. 1746, EQUAL EMPLOYMENT OPPORTUNITIES ACT

Mr. PERKINS. Mr. Speaker, I offer a concurrent resolution (H. Con. es. 554) and ask unanimous consent for its immediate consideration.
The Clerk read the concurrent resolution as follows:

H. CON. RES. 554

Resolved by the House of Representatives (the Senate concurring), That the erk of the House of Representatives, in the enrollment of the bill (H.R. 1746) further promote equal employment opportunities for American workers, is thorized and directed to make the following change: In paragraph (a) of ction 4, strike out "Sec. 705." and insert in lieu thereof "Sec. 706."

Mr. GROSS. Mr. Speaker, reserving the right to object, just what is roposed to be accomplished by this resolution?
Mr. PERKINS. If the gentleman will yield, there was a technical ror in numbering a section of the act. It was made by the staff, and as not detected in the report until after the report had been printed.
Mr. GROSS. It is then purely a technical amendment to the bill?
Mr. PERKINS. That is correct.
Mr. GROSS. It does not change the substantive language of the bill?
Mr. PERKINS. That is correct. It is just a renumbering.
Mr. GROSS. Simply a renumbering of the sections?
Mr. PERKINS. That is correct.
Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.
The SPEAKER. Is there objection to the request of the gentleman om Kentucky?
There was no objection.
The concurrent resolution was agreed to.
A motion to reconsider was laid on the table.

APPENDIX I



Public Law 92-261
92nd Congress, H. R. 1746
March 24, 1972

An Act

86 STAT. 103

further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the nited States of America in Congress assembled, That this Act may cited as the "Equal Employment Opportunity Act of 1972".

Equal Employment Opportunity Act of 1972.

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 S.C. 2000e) is amended as follows:

Definitions. 80 Stat. 662.

(1) In subsection (a) insert "governments, governmental agencies, litical subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

'(b) The term 'employer' means a person engaged in an industry ecting commerce who has fifteen or more employees for each work- day in each of twenty or more calendar weeks in the current or ceding calendar year, and any agent of such a person, but such m does not include (1) the United States, a corporation wholly ned by the Government of the United States, an Indian tribe, or y department or agency of the District of Columbia subject by tute to procedures of the competitive service (as defined in section 2 of title 5 of the United States Code), or (2) a bona fide private mbership club (other than a labor organization) which is exempt m taxation under section 501(c) of the Internal Revenue Code of 4, except that during the first year after the date of enactment of Equal Employment Opportunity Act of 1972, persons having ver than twenty-five employees (and their agents) shall not be sidered employers."

80 Stat. 408.

68A Stat. 163. 26 USC 501.

(3) In subsection (c) beginning with the semicolon strike out ough the word "assistance".

(4) In subsection (e) strike out between "(A)" and "and such labor anization", and insert in lieu thereof "twenty-five or more during first year after the date of enactment of the Equal Employment portunity Act of 1972, or (B) fifteen or more thereafter,".

(5) In subsection (f), insert before the period a comma and the fol- ing: "except that the term 'employee' shall not include any person cted to public office in any State or political subdivision of any State the qualified voters thereof, or any person chosen by such officer to on such officer's personal staff, or an appointee on the policy making el or an immediate adviser with respect to the exercise of the con- utional or legal powers of the office. The exemption set forth in preceding sentence shall not include employees subject to the civil vice laws of a State government, governmental agency or political division."

(6) At the end of subsection (h) insert before the period a comma l the following: "and further includes any governmental industry, siness, or activity".

(7) After subsection (i) insert the following new subsection (j): "Religion."

'(j) The term 'religion' includes all aspects of religious observance l practice, as well as belief, unless an employer demonstrates that he unable to reasonably accommodate to an employee's or prospective ployee's religious observance or practice without undue hardship on conduct of the employer's business."

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; U.S.C. 2000e–1) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respe
the employment of aliens outside any State, or to a religious co
ration, association, educational institution, or society with respe
the employment of individuals of a particular religion to perform w
connected with the carrying on by such corporation, association,
cational institution, or society of its activities."

Enforcement.

SEC. 4. (a) Subsections (a) through (g) of section 706 of the C
Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5(a) (g))
amended to read as follows:

"SEC. 706. (a) The Commission is empowered, as hereinafter
vided, to prevent any person from engaging in any unlawful emp

42 USC 2000e-2, 2000e-3.

ment practice as set forth in section 703 or 704 of this title.

Charges.

"(b) Whenever a charge is filed by or on behalf of a person claim
to be aggrieved, or by a member of the Commission, alleging that
employer, employment agency, labor organization, or joint la
management committee controlling apprenticeship or other train
or retraining, including on-the-job training programs, has engage
an unlawful employment practice, the Commission shall serve a no
of the charge (including the date, place and circumstances of
alleged unlawful employment practice) on such employer, empl
ment agency, labor organization, or joint labor-management c
mittee (hereinafter referred to as the 'respondent') within ten da
and shall make an investigation thereof. Charges shall be in writ
under oath or affirmation and shall contain such information and
in such form as the Commission requires. Charges shall not be m
public by the Commission. If the Commission determines after s
investigation that there is not reasonable cause to believe that
charge is true, it shall dismiss the charge and promptly notify
person claiming to be aggrieved and the respondent of its acti
In determining whether reasonable cause exists, the Commission sh
accord substantial weight to final findings and orders made by St
or local authorities in proceedings commenced under State or lo
law pursuant to the requirements of subsections (c) and (d). If t
Commission determines after such investigation that there is reas
able cause to believe that the charge is true, the Commission sh
endeavor to eliminate any such alleged unlawful employment pract
by informal methods of conference, conciliation, and persuasi
Nothing said or done during and as a part of such informal endeavo
may be made public by the Commission, its officers or employees,
used as evidence in a subsequent proceeding without the written c
sent of the persons concerned. Any person who makes public inform

Penalty.

tion in violation of this subsection shall be fined not more than $1,0
or imprisoned for not more than one year, or both. The Commissi
shall make its determination on reasonable cause as promptly as p
sible and, so far as practicable, not later than one hundred and twen
days from the filing of the charge or, where applicable under subs
tion (c) or (d), from the date upon which the Commission is authe
ized to take action with respect to the charge.

State enforcement proceedings, deferral period.

"(c) In the case of an alleged unlawful employment practi
occurring in a State, or political subdivision of a State, which has
State or local law prohibiting the unlawful employment practi
alleged and establishing or authorizing a State or local authority
grant or seek relief from such practice or to institute criminal pr
ceedings with respect thereto upon receiving notice thereof, no char
may be filed under subsection (a) by the person aggrieved before t
expiration of sixty days after proceedings have been commenced und
the State or local law, unless such proceedings have been earlier term

ted, provided that such sixty-day period shall be extended to one
ndred and twenty days during the first year after the effective date
such State or local law. If any requirement for the commencement
such proceedings is imposed by a State or local authority other
an a requirement of the filing of a written and signed statement of
e facts upon which the proceeding is based, the proceeding shall be
emed to have been commenced for the purposes of this subsection at
e time such statement is sent by registered mail to the appropriate
ate or local authority.

"(d) In the case of any charge filed by a member of the Commission
leging an unlawful employment practice occurring in a State or
olitical subdivision of a State which has a State or local law pro-
biting the practice alleged and establishing or authorizing a State
local authority to grant or seek relief from such practice or to insti-
te criminal proceedings with respect thereto upon receiving notice
ereof, the Commission shall, before taking any action with respect
such charge, notify the appropriate State or local officials and, upon
quest, afford them a reasonable time, but not less than sixty days
rovided that such sixty-day period shall be extended to one hundred
d twenty days during the first year after the effective day of such
ate or local law), unless a shorter period is requested, to act under
ch State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred Filing.
d eighty days after the alleged unlawful employment practice
curred and notice of the charge (including the date, place and cir-
mstances of the alleged unlawful employment practice) shall be
ved upon the person against whom such charge is made within ten
ys thereafter, except that in a case of an unlawful employment prac-
e with respect to which the person aggrieved has initially instituted
oceedings with a State or local agency with authority to grant or
k relief from such practice or to institute criminal proceedings
th respect thereto upon receiving notice thereof, such charge shall
filed by or on behalf of the person aggrieved within three hundred
ys after the alleged unlawful employment practice occurred, or
thin thirty days after receiving notice that the State or local agency
s terminated the proceedings under the State or local law, which-
er is earlier, and a copy of such charge shall be filed by the Com-
ssion with the State or local agency.

"(f) (1) If within thirty days after a charge is filed with the Com- Civil action.
ssion or within thirty days after expiration of any period of
eference under subsection (c) or (d), the Commission has been unable
secure from the respondent a conciliation agreement acceptable to
Commission, the Commission may bring a civil action against any
pondent not a government, governmental agency, or political sub-
ision named in the charge. In the case of a respondent which is a
ernment, governmental agency, or political subdivision, if the
mmission has been unable to secure from the respondent a concilia-
n agreement acceptable to the Commission, the Commission shall
e no further action and shall refer the case to the Attorney Gen-
l who may bring a civil action against such respondent in the
propriate United States district court. The person or persons
rieved shall have the right to intervene in a civil action brought
the Commission or the Attorney General in a case involving a
ernment, governmental agency, or political subdivision. If a charge
l with the Commission pursuant to subsection (b) is dismissed by
Commission, or if within one hundred and eighty days from the
ng of such charge or the expiration of any period of reference under
section (c) or (d), whichever is later, the Commission has not filed
vil action under this section or the Attorney General has not filed

a civil action in a case involving a government, governmental age
or political subdivision, or the Commission has not entered into a
ciliation agreement to which the person aggrieved is a party,
Commission, or the Attorney General in a case involving a gov
ment, governmental agency, or political subdivision, shall so no
the person aggrieved and within ninety days after the giving of s
notice a civil action may be brought against the respondent name
the charge (A) by the person claiming to be aggrieved or (B) if s
charge was filed by a member of the Commission, by any person wh
the charge alleges was aggrieved by the alleged unlawful employm
practice. Upon application by the complainant and in such circu
stances as the court may deem just, the court may appoint an attor
for such complainant and may authorize the commencement of
action without the payment of fees, costs, or security. Upon tim
application, the court may, in its discretion, permit the Commissi
or the Attorney General in a case involving a government, gove
mental agency, or political subdivision, to intervene in such c
action upon certification that the case is of general public importa
Upon request, the court may, in its discretion, stay further proceedi
for not more than sixty days pending the termination of State or lo
proceedings described in subsections (c) or (d) of this section
further efforts of the Commission to obtain voluntary compliance

"(2) Whenever a charge is filed with the Commission and the Co
mission concludes on the basis of a preliminary investigation t
prompt judicial action is necessary to carry out the purposes of t
Act, the Commission, or the Attorney General in a case involvin
government, governmental agency, or political subdivision, may bri
an action for appropriate temporary or preliminary relief pendi
final disposition of such charge. Any temporary restraining order
other order granting preliminary or temporary relief shall be issued
28 USC app. accordance with rule 65 of the Federal Rules of Civil Procedure.
shall be the duty of a court having jurisdiction over proceedings und
this section to assign cases for hearing at the earliest practicable da
and to cause such cases to be in every way expedited.

Jurisdiction. "(3) Each United States district court and each United States cou
of a place subject to the jurisdiction of the United States shall ha
jurisdiction of actions brought under this title. Such an action may
brought in any judicial district in the State in which the unlawf
employment practice is alleged to have been committed, in the judici
district in which the employment records relevant to such practice a
maintained and administered, or in the judicial district in which t
aggrieved person would have worked but for the alleged unlawf
employment practice, but if the respondent is not found within a
such district, such an action may be brought within the judicial di
trict in which the respondent has his principal office. For purposes
62 Stat. 937; 74 Stat. 912; 76A Stat. 699. sections 1404 and 1406 of title 28 of the United States Code, the jud
cial district in which the respondent has his principal office shall in a
cases be considered a district in which the action might have be
brought.

Judge, designation. "(4) It shall be the duty of the chief judge of the district (or in h
absence, the acting chief judge) in which the case is pending imm
diately to designate a judge in such district to hear and determi
the case. In the event that no judge in the district is available to he
and determine the case, the chief judge of the district, or the actin
chief judge, as the case may be, shall certify this fact to the chief judg
of the circuit (or in his absence, the acting chief judge) who shall the
designate a district or circuit judge of the circuit to hear and determi
the case.

"(5) It shall be the duty of the judge designated pursuant to this bsection to assign the case for hearing at the earliest practicable date d to cause the case to be in every way expedited. If such judge has t scheduled the case for trial within one hundred and twenty days ter issue has been joined, that judge may appoint a master pursuant rule 53 of the Federal Rules of Civil Procedure.

"(g) If the court finds that the respondent has intentionally gaged in or is intentionally engaging in an unlawful employment actice charged in the complaint, the court may enjoin the respondent om engaging in such unlawful employment practice, and order such irmative action as may be appropriate, which may include, but is not iited to, reinstatement or hiring of employees, with or without back y (payable by the employer, employment agency, or labor organiza- n, as the case may be, responsible for the unlawful employment actice), or any other equitable relief as the court deems appropriate. ck pay liability shall not accrue from a date more than two years ior to the filing of a charge with the Commission. Interim earnings amounts earnable with reasonable diligence by the person or persons criminated against shall operate to reduce the back pay otherwise owable. No order of the court shall require the admission or rein- tement of an individual as a member of a union, or the hiring, nstatement, or promotion of an individual as an employee, or the yment to him of any back pay, if such individual was refused mission, suspended, or expelled, or was refused employment or vancement or was suspended or discharged for any reason other n discrimination on account of race, color, religion, sex, or national gin or in violation of section 704(a)."

(b)(1) Subsection (i) of section 706 of such Act is amended by iking out "subsection (e)" and inserting in lieu thereof "this tion".

(2) Subsection (j) of such section is amended by striking out bsection (e)" and inserting in lieu thereof "this section".

Sec. 5. Section 707 of the Civil Rights Act of 1964 is amended by ding at the end thereof the following new subsection:

"(c) Effective two years after the date of enactment of the Equal ployment Opportunity Act of 1972, the functions of the Attorney neral under this section shall be transferred to the Commission, ether with such personnel, property, records, and unexpended bal- es of appropriations, allocations, and other funds employed, used, d, available, or to be made available in connection with such func- ns unless the President submits, and neither House of Congress oes, a reorganization plan pursuant to chapter 9 of title 5, United tes Code, inconsistent with the provisions of this subsection. The mmission shall carry out such functions in accordance with sub- tions (d) and (e) of this section.

(d) Upon the transfer of functions provided for in subsection (c) his section, in all suits commenced pursuant to this section prior to date of such transfer, proceedings shall continue without abate- nt, all court orders and decrees shall remain in effect, and the nmission shall be substituted as a party for the United States of erica, the Attorney General, or the Acting Attorney General, as propriate.

(e) Subsequent to the date of enactment of the Equal Employment portunity Act of 1972, the Commission shall have authority to estigate and act on a charge of a pattern or practice of discrimina- n, whether filed by or on behalf of a person claiming to be aggrieved by a member of the Commission. All such actions shall be conducted accordance with the procedures set forth in section 706 of this Act."

Sec. 6. Subsections (b), (c), and (d) of section 709 of the Civil

28 USC app. Relief.

Back pay liability.

78 Stat. 257.
42 USC 2000e-3.
78 Stat. 259.
42 USC 2000e-5.

42 USC 2000e-6.

Transfer of functions.

80 Stat. 394; 85 Stat. 574.
5 USC 901.

Authority.

Ante, p. 104.

Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) amended to read as follows:

State and local agencies, cooperation.

"(b) The Commission may cooperate with State and local agen charged with the administration of State fair employment pract laws and, with the consent of such agencies, may, for the purpos carrying out its functions and duties under this title and within limitation of funds appropriated specifically for such purpose, eng in and contribute to the cost of research and other projects of mut interest undertaken by such agencies, and utilize the services of s agencies and their employees, and, notwithstanding any other pr sion of law, pay by advance or reimbursement such agencies and t employees for services rendered to assist the Commission in carry out this title. In furtherance of such cooperative efforts, the Comm sion may enter into written agreements with such State or l agencies and such agreements may include provisions under which Commission shall refrain from processing a charge in any cases or c of cases specified in such agreements or under which the Commiss shall relieve any person or class of persons in such State or local from requirements imposed under this section. The Commission sh rescind any such agreement whenever it determines that the agr ment no longer serves the interest of effective enforcement of t title.

Recordkeeping; reports.

"(c) Every employer, employment agency, and labor organi tion subject to this title shall (1) make and keep such records relev to the determinations of whether unlawful employment practices h been or are being committed, (2) preserve such records for s periods, and (3) make such reports therefrom as the Commission sh prescribe by regulation or order, after public hearing, as reasonal necessary, or appropriate for the enforcement of this title or the re lations or orders thereunder. The Commission shall, by regulati require each employer, labor organization, and joint labor-managem committee subject to this title which controls an apprenticeship other training program to maintain such records as are reasonal necessary to carry out the purposes of this title, including, but limited to, a list of applicants who wish to participate in such p gram, including the chronological order in which applications w received, and to furnish to the Commission upon request, a detail description of the manner in which persons are selected to particip in the apprenticeship or other training program. Any employ employment agency, labor organization, or joint labor-managem committee which believes that the application to it of any regulation order issued under this section would result in undue hardship m apply to the Commission for an exemption from the application such regulation or order, and, if such application for an exemption denied, bring a civil action in the United States district court for t district where such records are kept. If the Commission or the cou as the case may be, finds that the application of the regulation or ord to the employer, employment agency, or labor organization in qu tion would impose an undue hardship, the Commission or the court, the case may be, may grant appropriate relief. If any person requir to comply with the provisions of this subsection fails or refus to do so, the United States district court for the district in whi such person is found, resides, or transacts business, shall, upon applic tion of the Commission, or the Attorney General in a case involvi a government, governmental agency or political subdivision, ha jurisdiction to issue to such person an order requiring him to compl

State and Federal agencies, coordination.

"(d) In prescribing requirements pursuant to subsection (c) of th section, the Commission shall consult with other interested State a Federal agencies and shall endeavor to coordinate its requiremen

with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

Information, availability.

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e-9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply."

61 Stat. 150; 84 Stat. 930.

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c)(1) Section 704(a) of such Act is amended by inserting a comma and the following: "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency".

42 USC 2000e-3.

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) Section 705(a) of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e-4(a)) is amended to read as follows:

Equal Employment Opportunity Commission.

"SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States

Term.

5 USC 101 et seq.

Code, governing appointments in the competitive service, such officers agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

5 USC 5101, 5331. 5 USC 5332 note. 80 Stat. 415, 425, 473, 528. 78 Stat. 258. 42 USC 2000e-4.

(e) (1) Section 705 of such Act is amended by inserting after subsection (a) the following new subsection (b):

General Counsel, appointment.

"(b) (1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

Ante, p. 104. Ante, p. 107.

"(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title."

Repeal.

(2) Subsections (e) and (h) of such section 705 are repealed.

(3) Subsections (b), (c), (d), (i), and (j) of such section 705, and all references thereto, are redesignated as subsections (c), (d), (e), (h), and (i), respectively.

(f) Section 705(g)(6) of such Act, is amended to read as follows:

"(6) to intervene in a civil action brought under section 706 by an aggrieved party against a respondent other than a government, governmental agency or political subdivision."

42 USC 2000e-13.

(g) Section 714 of such Act is amended to read as follows:

"FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

62 Stat. 688; 65 Stat. 721.

"SEC. 714. The provisions of sections 111 and 1114, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life."

80 Stat. 460; 84 Stat. 1604; 85 Stat. 625.

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

Repeal. 84 Stat. 968.

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

SEC. 10. Section 715 of the Civil Rights Act of 1964 is amended to read as follows: 78 Stat. 265. 42 USC 2000e-14 note.

"EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

"SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section." Report to President and Congress.

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section: Ante, p. 103.

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin. 80 Stat. 378.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall— Enforcement; rules and regulations.

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment; National and regional plan, annual review.

Progress reports, publication.

"(2) be responsible for the review and evaluation of the oper tion of all agency equal employment opportunity programs, pe odically obtaining and publishing (on at least a semiannual basi progress reports from each such department, agency, or unit; a

"(3) consult with and solicit the recommendations of interest individuals, groups, and organizations relating to equal emplo ment opportunity.

The head of each such department, agency, or unit shall comply wit such rules, regulations, orders, and instructions which shall include provision that an employee or applicant for employment shall notified of any final action taken on any complaint of discriminatio filed by him thereunder. The plan submitted by each departmen agency, and unit shall include, but not be limited to—

"(1) provision for the establishment of training and educatio programs designed to provide a maximum opportunity fo employees to advance so as to perform at their highest potential and

"(2) a description of the qualifications in terms of training an experience relating to equal employment opportunity for th principal and operating officials of each such department, agency or unit responsible for carrying out the equal employment oppor tunity program and of the allocation of personnel and resource proposed by such department, agency, or unit to carry out its equal employment opportunity program.

Librarian of Congress, authority.

With respect to employment in the Library of Congress, authoritie granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

"(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any suc- ceeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

42 USC 2000e note.

Ante, p. 104.

78 Stat. 259. 42 USC 2000e-5.

"(d) The provisions of section 706 (f) through (k), as applicable, shall govern civil actions brought hereunder.

"(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure non- discrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government."

USC prec. title 1.

80 Stat. 453; 84 Stat. 1955.

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS-16, GS-17, and GS-18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

SEC. 13. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is further amended by adding at the end thereof the following new section: Ante, p. 111.

"SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

"SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan." 80 Stat. 384.

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter. Effective date. Ante, p. 104.

Approved March 24, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-238 (Comm. on Education and Labor) and No. 92-899 (Comm. of Conference).

SENATE REPORTS: No. 92-415 accompanying S. 2515 (Comm. on Labor and Public Welfare) and No. 92-681 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 117 (1971): Sept. 15,16, considered and passed House.

Vol. 118 (1972): Jan. 19-21, 24-28, 31, Feb. 1-4, 7-9, 14-18, 21, 22, considered and passed Senate, amended, in lieu of S. 2515.
Mar. 6, Senate agreed to conference report.
Mar. 8, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 13:
Mar. 25, Presidential statement.

92d Congress
2d Session

COMMITTEE PRINT

THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

Title VII of Civil Rights Act of 1964 Showing Changes Made by Public Law 92–261 Approved March 24, 1972

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE



MARCH 1972

Printed for the use of the Committee on Labor and Public Welfare

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U.S. GOVERNMENT PRINTING OFFICE

74-307 O

WASHINGTON : 1972

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FOREWORD

This Committee Print contains the text of the Equal Opportunity
t of 1972 (Public Law 92–261), together with the text of Title VII
the Civil Rights Act of 1964 (78 Stat 253; 42 U.S.C. 2000e *et seq.*)
amended by the Equal Employment Opportunity Act of 1972. The
actment of this Public Law is a major step forward in assuring the
al of equal employment opportunity to millions of minorities and
men in our society. The expanded coverage provided by the Act,
gether with the newly created enforcement powers represents sig-
icant advancement in the Civil Rights field. This print has been pre-
red in order to provide information and assistance to the Members
Congress and other interested parties with regard to the new fea-
es in the law.

HARRISON A. WILLIAMS, JR.,
Chairman.

CIVIL RIGHTS ACT OF 1964 AS AMENDED

AN ACT To enforce the constitutional right to vote, to confer jurisdiction u the district courts of the United States to provide injunctive relief aga discrimination in public accommodations, to authorize the Attorney Gen to institute suits to protect constitutional rights in public facilities and pu education, to extend the Commission on Civil Rights, to prevent discrimina in federally assisted programs, to establish a Commission on Equal Empl ment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the Un States of America in Congress assembled, That this Act may be ci as the "Civil Rights Act of 1964".

* * * * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY[1]

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *gove ments, governmental agencies, political subdivisions*, labor unions, pa nerships, associations, corporations, legal representatives, mutu companies, joint-stock companies, trusts, unincorporated organiz tions, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an indust affecting commerce who has *fifteen* or more employees for each worki day in each of twenty or more calendar weeks in the current or pr ceding calendar year, and any agent of such a person, but such te does not include (1) the United States, a corporation wholly owned the Government of the United States, an Indian tribe, or *any depa ment or agency of the District of Columbia subject by statute to procedu of the competitive service (as defined in section 2102 of title 5 of the Unit States Code)*, or (2) a bona fide private membership club (other th a labor organization) which is exempt from taxation under secti 501(c) of the Internal Revenue Code of 1954, *except that during t first year after the date of enactment of the Equal Employment Opportuni Act of 1972*, persons having fewer than *twenty-five* employees (a their agents) shall not be considered *employers*.

(c) The term "employment agency" means any person regular undertaking with or without compensation to procure employees f an employer or to procure for employees opportunities to work f an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization e gaged in an industry affecting commerce, and any agent of such a organization, and includes any organization of any kind, any agency or employee representation committee, group, association, or plan s engaged in which employees participate and which exists for th

[1] Includes 1972 amendments made by P.L. 92 261 printed in italic.

urpose, in whole or in part, of dealing with employers concerning rievances, labor disputes, wages, rates of pay, hours, or other terms conditions of employment, and any conference, general committee, int or system board, or joint council so engaged which is subordinate a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry fecting commerce if (1) it maintains or operates a hiring hall or hiring fice which procures employees for an employer or procures for em- oyees opportunities to work for an employer, or (2) the number of its embers (or, where it is a labor organization composed of other labor ganizations or their representatives, if the aggregate number of the embers of such other labor organization) is (A) *twenty-five* or more ıring the first year after the *date of enactment of the Equal Employ- ent Opportunity Act of 1972, or* (*B*) *fifteen* or more thereafter, and ch labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an ıployer, *except that the term 'employee' shall not include any person cted to public office in any State or political subdivision of any State the qualified voters thereof, or any person chosen by such officer to be such officer's personal staff, or an appointee on the policymaking level an immediate adviser with respect to the exercise of the constitutional legal powers of the office. The exemption set forth in the preceding ıtence shall not include employees subject to the civil service laws of a ıte government, governmental agency or political subdivision.*

(g) The term "commerce" means trade, traffic, commerce, trans- rtation, transmission, or communication among the several States; between a State and any place outside thereof; or within the strict of Columbia, or a possession of the United States; or between ints in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, siness, or industry in commerce or in which a labor dispute would ıder or obstruct commerce or the free flow of commerce and includes y activity or industry "affecting commerce" within the meaning of

the Labor-Management Reporting and Disclosure Act of 1959, *further includes any governmental industry, business, or activity.*

(i) The term "State" includes a State of the United States, District of Columbia, Puerto Rico, the Virgin Islands, Ameri Samoa, Guam, Wake Island, the Canal Zone, and Outer Contine Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observa and practice, as well as belief, unless an employer demonstrates that is unable to reasonably accommodate to an employee's or prospec employee's, religious observance or practice without undue hardship the conduct of the employer's business.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect the employment of aliens outside any State, or to a religious corpo tion, association, *educational institution*, or society with respect the employment of individuals of a particular religion to perform wo connected with the carrying on by such corporation, associati *educational institution*, or society of its *activities*.

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for employer—

(1) to fail or refuse to hire or to discharge any individu or otherwise to discriminate against any individual with respe to his compensation, terms, conditions, or privileges of emplo ment, because of such individual's race, color, religion, sex, national origin; or

(2) to limit, segregate, or classify his employees *or applicants employment* in any way which would deprive or tend to depri any individual of employment opportunities or otherwise a versely affect his status as an employee, because of such ind vidual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an emplo ment agency to fail or refuse to refer for employment, or otherwi to discriminate against, any individual because of his race, colo religion, sex, or national origin, or to classify or refer for emplo ment any individual on the basis of his race, color, religion, sex, national origin.

(c) It shall be an unlawful employment practice for a lab organization—

(1) to exclude or to expel from its membership, or otherwi to discriminate against, any individual because of his race, colo religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, *or applicat for membership* or to classify or fail or refuse to refer for emplo ment any individual, in any way which would deprive or tend deprive any individual of employment opportunities, or woul limit such employment opportunities or otherwise adversely affe his status as an employee or as an applicant for employment, b cause of such individual's race, color, religion, sex, or nation origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, ıbor organization, or joint labor-management committee controlling ıprenticeship or other training or retraining, including on-the-job ıining programs to discriminate against any individual because of s race, color, religion, sex, or national origin in admission to, or ıployment in, any program established to provide apprenticeship or ıer training.

(e) Notwithstanding any other provision of this title, (1) it shall ıt be an unlawful employment practice for an employer to hire and ıploy employees, for an employment agency to classify, or refer for ıployment any individual, for a labor organization to classify its embership or to classify or refer for employment any individual, or r an employer, labor organization, or joint labor-management com-ittee controlling apprenticeship or other training or retraining pro-ams to admit or employ any individual in any such program, on the sis of his religion, sex, or national origin in those certain instances ere religion, sex, or national origin is a bona fide occupational quali-ation reasonably necessary to the normal operation of that particular siness or enterprise, and (2) it shall not be an unlawful employment actice for a school, college, university, or other educational institu-on or institution of learning to hire and employ employees of a par-ular religion if such school, college, university, or other educational stitution or institution of learning is, in whole or in substantial part, ned, supported, controlled, or managed by a particular religion or a particular religious corporation, association, or society, or if the rriculum of such school, college, university, or other educational stitution or institution of learning is directed toward the propagation a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" all not be deemed to include any action or measure taken by an ıployer, labor organization, joint labor-management committee, or ıployment agency with respect to an individual who is a member the Communist Party of the United States or of any other organiza-on required to register as a Communist-action or Communist-front ganization by final order of the Subversive Activities Control Board rsuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not an unlawful employment practice for an employer to fail or refuse hire and employ any individual for any position, for an employer discharge any individual from any position, or for an employment ency to fail or refuse to refer any individual for employment in any sition, or for a labor organization to fail or refuse to refer any lividual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall be an unlawful employment practice for an employer to apply di ent standards of compensation, or different terms, conditions privileges of employment pursuant to a bona fide seniority or m system, or a system which measures earnings by quantity or qualit production or to employees who work in different locations, prov that such differences are not the result of an intention to discrimi because of race, color, religion, sex, or national origin, nor shall i an unlawful employment practice for an employer to give and to upon the results of any professionally developed ability test provi that such test, its administration or action upon the results is designed, intended or used to discriminate because of race, co religion, sex or national origin. It shall not be an unlawful emp ment practice under this title for any employer to differentiate u the basis of sex in determining the amount of the wages or comp sation paid or to be paid to employees of such employer if s differentiation is authorized by the provisions of section 6(d) of Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)

(i) Nothing contained in this title shall apply to any busines enterprise on or near an Indian reservation with respect to any publ announced employment practice of such business or enterprise un which a preferential treatment is given to any individual because is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to requ any employer, employment agency, labor organization, or joint lab management committee subject to this title to grant preferential tre ment to any individual or to any group because of the race, color, r gion, sex, or national origin of such individual or group on accoun an imbalance which may exist with respect to the total number or p centage of persons of any race, color, religion, sex, or national ori employed by any employer, referred or classified for employment any employment agency or labor organization, admitted to memb ship or classified by any labor organization, or admitted to, or e ployed in, any apprenticeship or other training program, in comp son with the total number or percentage of persons of such race, co religion, sex, or national origin in any community, State, section, other area, or in the available work force in any community, Sta section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for employer to discriminate against any of his employees or applica for employment, for an employment agency, *or joint labor-manageme committee controlling apprenticeship or other training or retraini including on-the-job training programs*, to discriminate against a individual, or for a labor organization to discriminate against a member thereof or applicant for membership, because he has oppos any practice made an unlawful employment practice by this title, because he has made a charge, testified, assisted, or participated in a manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employ labor organization, employment *agency, or joint labor-manageme committee controlling apprenticeship or other training or retraining,*

luding on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment *agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee* indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. *Members of the Commission* shall be appointed by the President by and with the advice and consent of the *Senate* for a term of five *years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.* The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and *except as provided in subsection (b)*, shall appoint, in accordance with the *provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, that assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.*

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the directio the Commission, appear for and represent the Commission in any in court, provided that the Attorney General shall conduct all litig to which the Commission is a party in the Supreme Court pursua this title.

(*c*) A vacancy in the Commission shall not impair the right of remaining members to exercise all the powers of the Commission three members thereof shall constitute a quorum.

(*d*) The Commission shall have an official seal which shal judicially noticed.

(*e*) The Commission shall at the close of each fiscal year re to the Congress and to the President concerning the action it taken; the names, salaries, and duties of all individuals in its em and the moneys it has disbursed; and shall make such further rep on the cause of and means of eliminating discrimination and s recommendations for further legislation as may appear desirable.

(*f*) The principal office of the Commission shall be in or near District of Columbia, but it may meet or exercise any or all its po at any other place. The Commission may establish such regiona State offices as it deems necessary to accomplish the purpose of title.

(*g*) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regio State, local, and other agencies, both public and private, individuals;

(2) to pay to witnesses whose depositions are taken or who summoned before the Commission or any of its agents the s witness and mileage fees as are paid to witnesses in the co of the United States;

(3) to furnish to persons subject to this title such techn assistance as they may request to further their compliance w this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose emplo or some of them, or (ii) any labor organization, whose mem or some of them, refuse or threaten to refuse to cooperat effectuating the provisions of this title, to assist in such effec tion by conciliation or such other remedial action as is provi by this title;

(5) to make such technical studies as are appropriate effectuate the purposes and policies of this title and to make results of such studies available to the public;

(6) to *intervene* in a civil action brought *under section 706* by aggrieved party *against a respondent other than a governm governmental agency, or political subdivision*.

(*h*) The Commission shall, in any of its educational or promotio activities, cooperate with other departments and agencies in performance of such educational and promotional activities.

(*i*) All officers, agents, attorneys, and employees of the Commiss shall be subject to the provisions of section 9 of the Act of Augus 1939, as amended (the Hatch Act), notwithstanding any exempt contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) *The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.*

(b) Whenever *a charge is filed by or on behalf of a* person claiming to be aggrieved, or by a member of the Commission, *alleging* that an employer, employment agency, labor *organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,* has engaged in an unlawful employment practice, the Commission shall *serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on* such employer, employment agency, labor *organization, or joint labor-management committee* (hereinafter referred to as the "respondent") *within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges* shall not be made public by the Commission. If the Commission *determines* after such investigation that there is *not* reasonable cause to believe that the charge is true, *it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true,* the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such *informal* endeavors may be made public by the *Commission, its officers or employees, or used as evidence in a subsequent proceeding* without the written consent of the *persons concerned.* Any *person* who *makes* public information in violation of this subsection shall be fined not more than $1,000 or imprisoned *for* not more than one *year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) from the date upon which the Commission is authorized to take action with respect to the charge.*

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts

upon which the proceeding is based, the proceeding shall be deem to have been commenced for the purposes of this subsection at time such statement is sent by registered mail to the appropri State or local authority.

(*d*) In the case of any charge filed by a member of the Commiss alleging an unlawful employment practice occurring in a State political subdivision of a State which has a State or local law prohib ing the practice alleged and establishing or authorizing a State or lo authority to grant or seek relief from such practice or to instit criminal proceedings with respect thereto upon receiving not thereof, the Commission shall, before taking any action with respect such charge, notify the appropriate State or local officials and, up request, afford them a reasonable time, but not less than sixty da (provided that such sixty-day period shall be extended to one hundr and twenty days during the first year after the effective *date* of su State or local law), unless a shorter period is requested, to act un such State or local law to remedy the practice alleged.

(*e*) A charge under *this section* shall be filed within *one hundred a eighty* days after the alleged unlawful employment practice *occur and notice of the charge* (*including the date, place and circumstan of the alleged unlawful employment practice*) *shall be served upon person against whom such charge is made within ten days thereaf* except that in *a* case of an unlawful employment practice with respe to which the person aggrieved has *initially instituted proceedings w a State or local agency with authority to grant or seek relief from su practice or to institute criminal proceedings with respect thereto up receiving notice thereof*, such charge shall be filed by *or on behalf* the person aggrieved within *three hundred* days after the alleg unlawful employment practice occurred, or within thirty days af receiving notice that the State or local agency has terminated t proceedings under the State or local law, whichever is earlier, and copy of such charge shall be filed by the Commission with the St or local agency.

(*f*)(*1*) If within thirty days after a charge is filed with the Comm sion or within thirty days after expiration of any period of referen under subsection (*c*) *or* (*d*), the Commission has been unable to *sec from the respondent a conciliation agreement acceptable to the Commissi* the Commission *may bring a civil action against any respondent no government, governmental agency, or political subdivision named in charge. In the case of a respondent which is a government, governmen agency, or political subdivision, if the Commission has been unable secure from the respondent a conciliation agreement acceptable to Commission, the Commission shall take no further action and sh refer the case to the Attorney General who may bring a civil action agai such respondent in the appropriate United States district court. The pers or persons aggrieved shall have the right to intervene in a civil acti brought by the Commission or the Attorney General in a case involving government, governmental agency, or political subdivision. If a cha filed with the Commission pursuant to subsection (*b*) is dismissed by t Commission, or if within one hundred and eighty days from the filing such charge or the expiration of any period of reference under subsecti (*c*) or (*d*), whichever is later, the Commission has not filed a civil acti under this section or the Attorney General has notified a civil action in

se involving a government, governmental agency, or political subdivision, the Commission has not entered into a conciliation agreement to which e person aggrieved is a party, the Commission, or the Attorney General a case involving a government, governmental agency, or political subvision, shall so notify the person aggrieved and within ninety days after e giving of such notice a civil action may be brought against the spondent named in the charge (A) by the person claiming to be grieved, or (B) if such charge was filed by a member of the Comission, by any person whom the charge alleges was aggrieved by e alleged unlawful employment practice. Upon application by e complainant and in such circumstances as the court may deem st, the court may appoint an attorney for such complainant and ay authorize the commencement of the action without the payment fees, costs, or security. Upon timely application, the court may, its discretion, permit the *Commission*, or the Attorney General a case involving a government, governmental agency, or political bdivision, to intervene in such civil action *upon certification* that e case is of general public importance. Upon request, the court may, its discretion, stay further proceedings for not more than sixty ys pending the termination of State or local proceedings described subsections (*c*) or (*d*) *of this section or further* efforts of the Comssion to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission ncludes on the basis of a preliminary investigation that prompt judicial tion is necessary to carry out the purposes of this Act, the Commission, the Attorney General in a case involving a government, governmental ency, or political subdivision, may bring an action for appropriate mporary or preliminary relief pending final disposition of such charge. ny temporary restraining order or other order granting preliminary temporary relief shall be issued in accordance with rule 65 of the deral Rules of Civil Procedure. It shall be the duty of a court having risdiction over proceedings under this section to assign cases for hearing the earliest practicable date and to cause such cases to be in every way pedited.

(3) Each United States district court and each United States court of place subject to the jurisdiction of the United States shall have jurisction of actions brought under this title. Such an action may be brought any judicial district in the State in which the unlawful employment ctice is alleged to have been committed, in the judicial district in which employment records relevant to such practice are maintained and ministered, or in the judicial district in which the aggrieved person uld have worked but for the alleged unlawful employment practice, but the respondent is not found within any such district, such an action y be brought within the judicial district in which the respondent has principal office. For purposes of sections 1404 and 1406 of title 28 the United States Code, the judicial district in which the respondent s his principal office shall in all cases be considered a district in which action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his sence, the acting chief judge) in which the case is pending immediately designate a judge in such district to hear and determine the case. In event that no judge in the district is available to hear and determine case, the chief judge of the district, or the acting chief judge, as the

case may be, shall certify this fact to the chief judge of the circuit (
his absence, the acting chief judge) who shall then designate a di
or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this
section to assign the case for hearing at the earliest practicable date
to cause the case to be in every way expedited. If such judge has
scheduled the case for trial within one hundred and twenty days
issue has been joined, that judge may appoint a master pursuant to
53 of the Federal Rules of Civil Procedure.

(g) If the court finds that the respondent has intentionally engage
or is intentionally engaging in an unlawful employment practice cha
in the complaint, the court may enjoin the respondent from engagin
such unlawful employment practice, and order such affirmative actio
may be appropriate, which may include, but is not limited to, reins
ment or hiring of employees, with or without back pay (payable by
employer, employment agency, or labor organization, as the case ma
responsible for the unlawful employment practice), or any other equi
relief as the court deems appropriate. Back pay liability shall not ac
from a date more than two years prior to the filing of a charge with
Commission. Interim earnings or amounts earnable with reason
diligence by the person or persons discriminated against shall opera
reduce the back pay otherwise allowable. No order of the court s
require the admission or reinstatement of an individual as a member
union, or the hiring, reinstatement, or promotion of an individual a
employee, or the payment to him of any back pay, if such individual
refused admission, suspended, or expelled, or was refused employ
or advancement or was suspended or discharged for any reason other
discrimination on account of race, color, religion, sex, or national or
or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend
Judicial Code and to define and limit the jurisdiction of courts sit
in equity, and for other purposes," approved March 23, 1932
U.S.C. 101–115), shall not apply with respect to civil actions brou
under this section.

(i) In any case in which an employer, employment agency, or la
organization fails to comply with an order of a court issued in a
action brought under *this section*, the Commission may comme
proceedings to compel compliance with such order.

(j) Any civil action brought under *this section* and any proce
ings brought under subsection (i) shall be subject to appeal as
vided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in
discretion, may allow the prevailing party, other than the Commis
or the United States, a reasonable attorney's fee as part of the co
and the Commission and the United States shall be liable for c
the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasona
cause to believe that any person or group of persons is engaged i
pattern or practice of resistance to the full enjoyment of any of
rights secured by this title, and that the pattern or practice is
such a nature and is intended to deny the full exercise of the rig
herein described, the Attorney General may bring a civil action
the appropriate district court of the United States by filing with i

omplaint (1) signed by him (or in his absence the Acting Attorney
eneral), (2) setting forth facts pertaining to such pattern or prac-
ce, and (3) requesting such relief, including an application for a
ermanent or temporary injunction, restraining order or other order
gainst the person or persons responsible for such pattern or practice,
s he deems necessary to insure the full enjoyment of the rights
erein described.

(b) The district courts of the United States shall have and shall
xercise jurisdiction of proceedings instituted pursuant to this sec-
on, and in any such proceeding the Attorney General may file with
ie clerk of such court a request that a court of three judges be con-
ened to hear and determine the case. Such request by the Attorney
eneral shall be accompanied by a certificate that, in his opinion, the
ase is of general public importance. A copy of the certificate and
quest for a three-judge court shall be immediately furnished by such
erk to the chief judge of the circuit (or in his absence, the presiding
rcuit judge of the circuit) in which the case is pending. Upon receipt
such request it shall be the duty of the chief judge of the circuit or
e presiding circuit judge, as the case may be, to designate imme-
ately three judges in such circuit, of whom at least one shall be a
rcuit judge and another of whom shall be a district judge of the court
which the proceeding was instituted, to hear and determine such
se, and it shall be the duty of the judges so designated to assign the
se for hearing at the earliest practicable date, to participate in the
aring and determination thereof, and to cause the case to be in
ery way expedited. An appeal from the final judgment of such
urt will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any
ch proceeding, it shall be the duty of the chief judge of the district
r in his absence, the acting chief judge) in which the case is pending
mediately to designate a judge in such district to hear and deter-
ne the case. In the event that no judge in the district is available
hear and determine the case, the chief judge of the district, or the
ting chief judge, as the case may be, shall certify this fact to the
ief judge of the circuit (or in his absence, the acting chief judge)
io shall then designate a district or circuit judge of the circuit to
ar and determine the case.

It shall be the duty of the judge designated pursuant to this section
assign the case for hearing at the earliest practicable date and to
ise the case to be in every way expedited.

*(c) Effective two years after the date of enactment of the Equal Employ-
nt Opportunity Act of 1972, the functions of the Attorney General under
s section shall be transferred to the Commission, together with such
rsonnel, property, records, and unexpended balances of appropriations,
ocations, and other funds employed, used, held, available, or to be made
ilable in connection with such functions unless the President submits,
d neither House of Congress vetoes, a reorganization plan pursuant to
apter 9, of title 5, United States Code, inconsistent with the provisions
this subsection. The Commission shall carry out such functions in
ordance with subsections (d) and (e) of this section.*

*(d) Upon the transfer of functions provided for in subsection (c) of
s section, in all suits commenced pursuant to this section prior to the
e of such transfer, proceedings shall continue without abatement, all*

court orders and decrees shall remain in effect, and the Commission s be substituted as a party for the United States of America, the Attor General, or the Acting Attorney General, as appropriate.

(e) Subsequent to the date of enactment of the Equal Employm Opportunity Act of 1972, the Commission shall have authority to vestigate and act on a charge of a pattern or practice of discriminat whether filed by or on behalf of a person claiming to be aggrieved or a member of the Commission. All such actions shall be conducted accordance with the procedures set forth in section 706 of this Act.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or reli any person from any liability, duty, penalty, or punishment p vided by any present or future law of any State or political sub vision of a State, other than any such law which purports to requ or permit the doing of any act which would be an unlawful empl ment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge fi under section 706, the Commission or its designated representat shall at all reasonable times have access to, for the purposes of exa ination, and the right to copy any evidence of any person be investigated or proceeded against that relates to unlawful empl ment practices covered by this title and is relevant to the cha under investigation.

(b) The Commission may cooperate with State and local agenc charged with the administration of State fair employment practi laws and, with the consent of such agencies, may, for the purpose carrying out its functions and duties under this title and within limitation of funds appropriated specifically for such purpose, *eng in and contribute to the cost of research and other projects of mutual terest undertaken by such agencies, and* utilize the services of st agencies and their employees, and, notwithstanding any other p vision of law, *pay by advance or reimbursement* such agencies a their employees for services rendered to assist the Commission carrying out this title. In furtherance of such cooperative effo the Commission may enter into written agreements with such St or local agencies and such agreements may include provisions un which the Commission shall refrain from processing a charge in a cases or class of cases specified in such agreements or under wh the Commission shall relieve any person or class of persons in su State or locality from requirements imposed under this section. T Commission shall rescind any such agreement whenever it determi that the agreement no longer serves the interest of effective enfor ment of this title.

(c) *Every* employer, employment agency, and labor organization su ject to this title shall (1) make and keep such records relevant to t determinations of whether unlawful employment practices have be or are being committed, (2) preserve such records for such perio and (3) make such reports therefrom, as the Commission shall pr scribe by regulation or order, after public hearing, as reasonab

ecessary, or appropriate for the enforcement of this title or the gulations or orders thereunder. The Commission shall, by regula- on, require each employer, labor organization, and joint labor- anagement committee subject to this title which controls an ap- enticeship or other training program to maintain such records as e reasonably necessary to carry out the purpose of this title, in- uding, but not limited to, a list of applicants who wish to participate such program, including the chronological order in which applica- ons were received, and to furnish to the Commission upon request, detailed description of the manner in which persons are selected participate in the apprenticeship or other training program. Any nployer, employment agency, labor organization, or joint labor- anagement committee which believes that the application to it of y regulation or order issued under this section would result in undue rdship may apply to the Commission for an exemption from the plication of such regulation or order, *and, if such application for exemption is denied,* bring a civil action in the United States strict court for the district where such records are kept. If the ommission or the court, as the case may be, finds that the applica- on of the regulation or order to the employer, employment agency, labor organization in question would impose an undue hardship, e Commission or the court, as the case may be, may grant appro- iate relief. *If any person required to comply with the provisions of s subsection fails or refuses to do so, the United States district court the district in which such person is found, resides, or transacts business, all, upon application of the Commission, or the Attorney General in a se involving a government, governmental agency or political subdivision, ve jurisdiction to issue to such person an order requiring him to comply. (d) In prescribing requirements pursuant to subsection (c) of this sec- n, the Commission shall consult with other interested State and Federal encies and shall endeavor to coordinate its requirements with those opted by such agencies. The Commission shall furnish upon request and thout cost to any State or local agency charged with the administration of fair employment practice law information obtained pursuant to sub- tion (c) of this section from any employer, employment agency, labor ganization, or joint labor-management committee subject to the jurisdic- n of such agency. Such information shall be furnished on condition that not be made public by the recipient agency prior to the institution of a oceeding under State or local law involving such information. If this ndition is violated by a recipient agency, the Commission may decline honor subsequent requests pursuant to this subsection.*

e) It shall be unlawful for any officer or employee of the Commis- n to make public in any manner whatever any information obtained the Commission pursuant to its authority under this section prior the institution of any proceeding under this title involving such ormation. Any officer or employee of the Commission who shall ke public in any manner whatever any information in violation of s subsection shall be guilty of a misdemeanor and upon conviction reof, shall be fined not more than $1,000, or imprisoned not more an one year.

INVESTIGATORY POWERS

SEC. 710. *For the purpose of all hearings and investigations conducted the Commission or its duly authorized agents or agencies, section 11 of*

the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) apply.

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor o nization, as the case may be, shall post and keep posted in conspic places upon its premises where notices to employees, applicants employment, and members are customarily posted a notice to be pared or approved by the Commission setting forth excerpts fron summaries of, the pertinent provisions of this title and informa pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to peal or modify any Federal, State, territorial, or local law crea special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from tim time to issue, amend, or rescind suitable procedural regulation carry out the provisions of this title. Regulations issued under section shall be in conformity with the standards and limitation the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unla employment practice, no person shall be subject to any liabilit punishment for or on account of (1) the commission by such pe of an unlawful employment practice if he pleads and proves that act or omission complained of was in good faith, in conformity w and in reliance on any written interpretation or opinion of the C mission, or (2) the failure of such person to publish and file information required by any provision of this title if he pleads proves that he failed to publish and file such information in good fa in conformity with the instructions of the Commission issued un this title regarding the filing of such information. Such a defens established, shall be a bar to the action or proceeding, notwithsta ing that (A) after such act or omission, such interpretation or opi is modified or rescinded or is determined by judicial authority to invalid or of no legal effect, or (B) after publishing or filing the desc tion and annual reports, such publication or filing is determined judicial authority not to be in conformity with the requirements this title.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of *sections 111 and 1114* title 18, Uni States Code, shall apply to officers, agents, and employees of Commission in the performance of their official duties. *Notwithstand the provisions of sections 111 and 1114 of title 18, United States Co whoever in violation of the provisions of section 1114 of such title k a person while engaged in or on account of the performance of his offi*

nctions under this Act shall be punished by imprisonment for any rm of years or for life.

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

Sec. 715. There shall be established an Equal Employment Opportunity ordinating Council (hereinafter referred to in this section as the ouncil) composed of the Secretary of Labor, the Chairman of the Equal mployment Opportunity Commission, the Attorney General, the Chairan of the United States Civil Service Commission, and the Chairman of e United States Civil Rights Commission, or their respective delegates. he Council shall have the responsibility for developing and implementing reements, policies and practices designed to maximize effort, promote iciency, and eliminate conflict, competition, duplication and inconstency among the operations, functions and jurisdictions of the various partments, agencies and branches of the Federal government responsible r the implementation and enforcement of equal employment opportunity islation, orders, and policies. On or before July 1 of each year, the ouncil shall transmit to the President and to the Congress a report of activities, together with such recommendations for legislative or adinistrative changes as it concludes are desirable to further promote the urposes of this section.

EFFECTIVE DATE

Sec. 716. (a) This title shall become effective one year after the date its enactment.

(b) Notwithstanding subsection (a), sections of this title other than ctions 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of is title, convene one or more conferences for the purpose of enabling e leaders of groups whose members will be affected by this title to ecome familiar with the rights afforded and obligations imposed by s provisions, and for the purpose of making plans which will result the fair and effective administration of this title when all of its ovisions become effective. The President shall invite the participaon in such conference or conferences of (1) the members of the resident's Committee on Equal Employment Opportunity, (2) the embers of the Commission on Civil Rights, (3) representatives of ate and local agencies engaged in furthering equal employment pportunity, (4) representatives of private agencies engaged in furhering equal employment opportunity, and (5) representatives of nployers, labor organizations, and employment agencies who will be ubject to this title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

Sec. 717. (a) All personnel actions affecting employees or applicants r employment (except with regard to aliens employed outside the limits f the United States) in military departments as defined in section 102 of tle 5, United States Code, in executive agencies (other than the General ccounting Office) as defined in section 105 of title 5, United States Code ncluding employees and applicants for employment who are paid from onappropriated funds), in the United States Postal Service and the Postal ate Commission, in those units of the Government of the District of olumbia having positions in the competitive service, and in those units of

the legislative and judicial branches of the Federal Government h positions in the competitive service, and in the Library of Congress be made free from any discrimination based on race, color, religion, or national origin.

(b) Except as otherwise provided in this subsection, the Civil Se Commission shall have authority to enforce the provisions of subse (a) through appropriate remedies, including reinstatement or hirin employees with or without back pay, as will effectuate the policies of section, and shall issue such rules, regulations, orders, and instruc as it deems necessary and appropriate to carry out its responsibi under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a nati and regional equal employment opportunity plan which each partment and agency and each appropriate unit referred t subsection (a) of this section shall submit in order to maintain affirmative program of equal employment opportunity for all employees and applicants for employment;

(2) be responsible for the review and evaluation of the opera of all agency equal employment opportunity programs, periodi obtaining and publishing (on at least a semiannual basis) prog reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of inter individuals, groups, and organizations relating to equal emp ment opportunity.

The head of each such department, agency, or unit shall comply with rules, regulations, orders, and instructions which shall include a provi that an employee or applicant for employment shall be notified of final action taken on any complaint of discrimination filed by thereunder. The plan submitted by each department, agency, and shall include, but not be limited to—

(1) provision for the establishment of training and educa programs designed to provide a maximum opportunity for emplo to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training experience relating to equal employment opportunity for the prin and operating officials of each such department, agency, or responsible for carrying out the equal employment opportu program and of the allocation of personnel and resources prop by such department, agency, or unit to carry out its equal emp ment opportunity program.

With respect to employment in the Library of Congress, authorities gra in this subsection to the Civil Service Commission shall be exercised by Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken b department, agency, or unit referred to in subsection 717(a), or by Civil Service Commission upon an appeal from a decision or order of s department, agency, or unit on a complaint of discrimination based race, color, religion, sex, or national origin, brought pursuant to subsec (a) of this section, Executive Order 11478 or any succeeding Execu orders, or after one hundred and eighty days from the filing of the in charge with the department, agency, or unit or with the Civil Ser Commission on appeal from a decision or order of such department, age or unit until such time as final action may be taken by a departm

ncy, or unit, an employee or applicant for employment, if aggrieved the final disposition of his complaint, or by the failure to take final ion on his complaint, may file a civil action as provided in section 706, which civil action the head of the department, agency, or unit, as propriate, shall be the defendant.

d) The provisions of section 706(f) through (k), as applicable, shall ern civil actions brought hereunder.

) Nothing contained in this Act shall relieve any Government agency fficial of its or his primary responsibility to assure nondiscrimination mployment as required by the Constitution and statutes or of its or his onsibilities under Executive Order 11478 relating to equal employ- t opportunity in the Federal Government.

CIAL PROVISIONS WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

EC. 718. No Government contract, or portion thereof, with any em- yer, shall be denied, withheld, terminated, or suspended, by any agency fficer of the United States under any equal employment opportunity law rder, where such employer has an affirmative action plan which has iously been accepted by the Government for the same facility within past twelve months without first according such employer full hearing adjudication under the provisions of title 5, United States Code, ion 554, and the following pertinent sections: Provided, That if such loyer has deviated substantially from such previously agreed to rmative action plan, this section shall not apply: Provided further, t for the purposes of this section an affirmative action plan shall be ned to have been accepted by the Government at the time the appropriate pliance agency has accepted such plan unless within forty-five days reafter the Office of Federal Contract Compliance has disapproved such n.

OVISIONS OF EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 WHICH RELATE TO BUT DO NOT AMEND HE CIVIL RIGHTS ACT OF 1964

EC. 9. (a) Section 5314 of title 5 of the United States Code is amended dding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

b) Clause (72) of section 5315 of such title is amended to read as ows:

"(72) Members, Equal Employment Opportunity Commission (4)."

c) Clause (111) of section 5316 of such title is repealed.

d) Section 5316 of such title is amended by adding at the end thereof following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

EC. 12. Section 5108(c) of title 5, United States Code, is amended

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it

"(11) the Chairman of the Equal Employment Opportunity
mission, subject to the standards and procedures prescribed by
chapter, may place an additional ten positions in the Equal Em
ment Opportunity Commission in GS–16, GS–17, and GS–18 f
purposes of carrying out title VII of the Civil Rights Act of 1

SEC. 14. The amendments made by this Act to section 706 of the
Rights Act of 1964 shall be applicable with respect to charges pending
the Commission on the date of enactment of this Act and all charges
thereafter.

Public Law 92-261
92nd Congress, H. R. 1746
March 24, 1972

An Act

86 STAT. 103

urther promote equal employment opportunities for American workers.

e it enacted by the Senate and House of Representatives of the ted States of America in Congress assembled, That this Act may ited as the "Equal Employment Opportunity Act of 1972".

Equal Employment Opportunity Act of 1972.

ec. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 C. 2000e) is amended as follows:

Definitions. 80 Stat. 662.

) In subsection (a) insert "governments, governmental agencies, tical subdivisions," after the word "individuals".

) Subsection (b) is amended to read as follows:

b) The term 'employer' means a person engaged in an industry ting commerce who has fifteen or more employees for each work-day in each of twenty or more calendar weeks in the current or eding calendar year, and any agent of such a person, but such does not include (1) the United States, a corporation wholly ed by the Government of the United States, an Indian tribe, or department or agency of the District of Columbia subject by ite to procedures of the competitive service (as defined in section of title 5 of the United States Code), or (2) a bona fide private bership club (other than a labor organization) which is exempt n taxation under section 501(c) of the Internal Revenue Code of , except that during the first year after the date of enactment of Equal Employment Opportunity Act of 1972, persons having r than twenty-five employees (and their agents) shall not be idered employers."

80 Stat. 408.

68A Stat. 163. 26 USC 501.

) In subsection (c) beginning with the semicolon strike out ugh the word "assistance".

) In subsection (e) strike out between "(A)" and "and such labor nization", and insert in lieu thereof "twenty-five or more during irst year after the date of enactment of the Equal Employment ortunity Act of 1972, or (B) fifteen or more thereafter,".

) In subsection (f), insert before the period a comma and the fol-ng: "except that the term 'employee' shall not include any person ed to public office in any State or political subdivision of any State ne qualified voters thereof, or any person chosen by such officer to n such officer's personal staff, or an appointee on the policy making or an immediate adviser with respect to the exercise of the con-tional or legal powers of the office. The exemption set forth in preceding sentence shall not include employees subject to the civil ce laws of a State government, governmental agency or political ivision."

) At the end of subsection (h) insert before the period a comma the following: "and further includes any governmental industry, ness, or activity".

) After subsection (i) insert the following new subsection (j):

"Religion."

j) The term 'religion' includes all aspects of religious observance practice, as well as belief, unless an employer demonstrates that he able to reasonably accommodate to an employee's or prospective loyee's religious observance or practice without undue hardship on onduct of the employer's business."

ec. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; .S.C. 2000e–1) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with res
the employment of aliens outside any State, or to a religious
ration, association, educational institution, or society with res
the employment of individuals of a particular religion to perfor
connected with the carrying on by such corporation, associatio
cational institution, or society of its activities."

Enforcement.

SEC. 4. (a) Subsections (a) through (g) of section 706 of th
Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5(a)-(g
amended to read as follows:

"SEC. 706. (a) The Commission is empowered, as hereinafte
vided, to prevent any person from engaging in any unlawful e

42 USC 2000e-2, 2000e-3.

ment practice as set forth in section 703 or 704 of this title.

Charges.

"(b) Whenever a charge is filed by or on behalf of a person cl
to be aggrieved, or by a member of the Commission, alleging t
employer, employment agency, labor organization, or joint
management committee controlling apprenticeship or other tr
or retraining, including on-the-job training programs, has enga
an unlawful employment practice, the Commission shall serve a
of the charge (including the date, place and circumstances
alleged unlawful employment practice) on such employer, e
ment agency, labor organization, or joint labor-management
mittee (hereinafter referred to as the 'respondent') within ten
and shall make an investigation thereof. Charges shall be in w
under oath or affirmation and shall contain such information
in such form as the Commission requires. Charges shall not be
public by the Commission. If the Commission determines afte
investigation that there is not reasonable cause to believe th
charge is true, it shall dismiss the charge and promptly noti
person claiming to be aggrieved and the respondent of its
In determining whether reasonable cause exists, the Commissio
accord substantial weight to final findings and orders made by
or local authorities in proceedings commenced under State or
law pursuant to the requirements of subsections (c) and (d).
Commission determines after such investigation that there is r
able cause to believe that the charge is true, the Commission
endeavor to eliminate any such alleged unlawful employment pr
by informal methods of conference, conciliation, and persu
Nothing said or done during and as a part of such informal ende
may be made public by the Commission, its officers or employe
used as evidence in a subsequent proceeding without the writte
sent of the persons concerned. Any person who makes public inf

Penalty.

tion in violation of this subsection shall be fined not more than
or imprisoned for not more than one year, or both. The Comm
shall make its determination on reasonable cause as promptly a
sible and, so far as practicable, not later than one hundred and t
days from the filing of the charge or, where applicable under s
tion (c) or (d), from the date upon which the Commission is au
ized to take action with respect to the charge.

State enforcement proceedings, deferral period.

"(c) In the case of an alleged unlawful employment pr
occurring in a State, or political subdivision of a State, which
State or local law prohibiting the unlawful employment pr
alleged and establishing or authorizing a State or local author
grant or seek relief from such practice or to institute criminal
ceedings with respect thereto upon receiving notice thereof, no c
may be filed under subsection (a) by the person aggrieved befo
expiration of sixty days after proceedings have been commenced
the State or local law, unless such proceedings have been earlier t

l, provided that such sixty-day period shall be extended to one red and twenty days during the first year after the effective date ch State or local law. If any requirement for the commencement ch proceedings is imposed by a State or local authority other a requirement of the filing of a written and signed statement of acts upon which the proceeding is based, the proceeding shall be ed to have been commenced for the purposes of this subsection at ime such statement is sent by registered mail to the appropriate or local authority.

d) In the case of any charge filed by a member of the Commission ing an unlawful employment practice occurring in a State or ical subdivision of a State which has a State or local law pro- ing the practice alleged and establishing or authorizing a State al authority to grant or seek relief from such practice or to insti- criminal proceedings with respect thereto upon receiving notice of, the Commission shall, before taking any action with respect h charge, notify the appropriate State or local officials and, upon st, afford them a reasonable time, but not less than sixty days vided that such sixty-day period shall be extended to one hundred wenty days during the first year after the effective day of such or local law), unless a shorter period is requested, to act under State or local law to remedy the practice alleged.

e) A charge under this section shall be filed within one hundred eighty days after the alleged unlawful employment practice red and notice of the charge (including the date, place and cir- tances of the alleged unlawful employment practice) shall be d upon the person against whom such charge is made within ten thereafter, except that in a case of an unlawful employment prac- ith respect to which the person aggrieved has initially instituted edings with a State or local agency with authority to grant or relief from such practice or to institute criminal proceedings respect thereto upon receiving notice thereof, such charge shall ed by or on behalf of the person aggrieved within three hundred after the alleged unlawful employment practice occurred, or n thirty days after receiving notice that the State or local agency erminated the proceedings under the State or local law, which- is earlier, and a copy of such charge shall be filed by the Com- on with the State or local agency. Filing.

f) (1) If within thirty days after a charge is filed with the Com- on or within thirty days after expiration of any period of ence under subsection (c) or (d), the Commission has been unable ure from the respondent a conciliation agreement acceptable to ommission, the Commission may bring a civil action against any ndent not a government, governmental agency, or political sub- on named in the charge. In the case of a respondent which is a rnment, governmental agency, or political subdivision, if the nission has been unable to secure from the respondent a concilia- greement acceptable to the Commission, the Commission shall no further action and shall refer the case to the Attorney Gen- who may bring a civil action against such respondent in the ppriate United States district court. The person or persons ved shall have the right to intervene in a civil action brought e Commission or the Attorney General in a case involving a rnment, governmental agency, or political subdivision. If a charge with the Commission pursuant to subsection (b) is dismissed by ommission, or if within one hundred and eighty days from the of such charge or the expiration of any period of reference under ction (c) or (d), whichever is later, the Commission has not filed l action under this section or the Attorney General has not filed Civil action.

a civil action in a case involving a government, governmental
or political subdivision, or the Commission has not entered int
ciliation agreement to which the person aggrieved is a pa
Commission, or the Attorney General in a case involving a
ment, governmental agency, or political subdivision, shall so
the person aggrieved and within ninety days after the giving
notice a civil action may be brought against the respondent n
the charge (A) by the person claiming to be aggrieved or (B)
charge was filed by a member of the Commission, by any perso
the charge alleges was aggrieved by the alleged unlawful empl
practice. Upon application by the complainant and in such
stances as the court may deem just, the court may appoint an a
for such complainant and may authorize the commencement
action without the payment of fees, costs, or security. Upon
application, the court may, in its discretion, permit the Comm
or the Attorney General in a case involving a government,
mental agency, or political subdivision, to intervene in suc
action upon certification that the case is of general public impo
Upon request, the court may, in its discretion, stay further proc
for not more than sixty days pending the termination of State
proceedings described in subsections (c) or (d) of this sec
further efforts of the Commission to obtain voluntary compli

"(2) Whenever a charge is filed with the Commission and th
mission concludes on the basis of a preliminary investigatio
prompt judicial action is necessary to carry out the purposes
Act, the Commission, or the Attorney General in a case invol
government, governmental agency, or political subdivision, may
an action for appropriate temporary or preliminary relief p
final disposition of such charge. Any temporary restraining or
other order granting preliminary or temporary relief shall be is
28 USC app. accordance with rule 65 of the Federal Rules of Civil Proced
shall be the duty of a court having jurisdiction over proceedings
this section to assign cases for hearing at the earliest practicab
and to cause such cases to be in every way expedited.

Jurisdiction. "(3) Each United States district court and each United State
of a place subject to the jurisdiction of the United States shal
jurisdiction of actions brought under this title. Such an action
brought in any judicial district in the State in which the un
employment practice is alleged to have been committed, in the j
district in which the employment records relevant to such pract
maintained and administered, or in the judicial district in whi
aggrieved person would have worked but for the alleged unl
employment practice, but if the respondent is not found withi
such district, such an action may be brought within the judici
trict in which the respondent has his principal office. For purp
62 Stat. 937; sections 1404 and 1406 of title 28 of the United States Code, th
74 Stat. 912; cial district in which the respondent has his principal office shall
76A Stat. 699. cases be considered a district in which the action might hav
brought.

Judge, designation. "(4) It shall be the duty of the chief judge of the district (or
absence, the acting chief judge) in which the case is pending
diately to designate a judge in such district to hear and dete
the case. In the event that no judge in the district is available t
and determine the case, the chief judge of the district, or the
chief judge, as the case may be, shall certify this fact to the chief
of the circuit (or in his absence, the acting chief judge) who shal
designate a district or circuit judge of the circuit to hear and dete
the case.

"(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

28 USC app. Relief.

"(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a)."

Back pay liability.

78 Stat. 257.

(b)(1) Subsection (i) of section 706 of such Act is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

42 USC 2000e-3. 78 Stat. 259. 42 USC 2000e-5.

(2) Subsection (j) of such section is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

42 USC 2000e-6.

"(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of functions.

80 Stat. 394; 85 Stat. 574. 5 USC 901.

"(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

"(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act."

Authority.

Ante, p. 104.

SEC. 6. Subsections (b), (c), and (d) of section 709 of the Civil

Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) ar amended to read as follows:

State and local agencies, cooperation.

"(b) The Commission may cooperate with State and local agencie charged with the administration of State fair employment practice laws and, with the consent of such agencies, may, for the purpose o carrying out its functions and duties under this title and within th limitation of funds appropriated specifically for such purpose, engag in and contribute to the cost of research and other projects of mutua interest undertaken by such agencies, and utilize the services of suc agencies and their employees, and, notwithstanding any other provi sion of law, pay by advance or reimbursement such agencies and thei employees for services rendered to assist the Commission in carryin out this title. In furtherance of such cooperative efforts, the Commis sion may enter into written agreements with such State or loca agencies and such agreements may include provisions under which th Commission shall refrain from processing a charge in any cases or clas of cases specified in such agreements or under which the Commissio shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shal rescind any such agreement whenever it determines that the agree ment no longer serves the interest of effective enforcement of thi title.

Recordkeeping; reports.

"(c) Every employer, employment agency, and labor organiza tion subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable necessary, or appropriate for the enforcement of this title or the regu lations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title, including, but not limited to, a list of applicants who wish to participate in such pro gram, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in ques tion would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon applica tion of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

State and Federal agencies, coordination.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements

with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection." Information, availability.

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e-9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply." 61 Stat. 150;

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees". 84 Stat. 930.

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c)(1) Section 704(a) of such Act is amended by inserting a comma and the following: "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency". 42 USC 2000e-3.

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs.", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) Section 705(a) of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e-4(a)) is amended to read as follows: Equal Employment Opportunity Commission.

"SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States Term.

5 USC 101 et seq.

Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

5 USC 5101, 5331. 5 USC 5332 note. 80 Stat. 415, 425, 473, 528. 78 Stat. 258.

(e) (1) Section 705 of such Act is amended by inserting after subsection (a) the following new subsection (b):

42 USC 2000e-4. General Counsel, appointment.

"(b) (1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

Ante, p. 104. Ante, p. 107.

"(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title."

Repeal.

(2) Subsections (e) and (h) of such section 705 are repealed.

(3) Subsections (b), (c), (d), (i), and (j) of such section 705, and all references thereto, are redesignated as subsections (c), (d), (e), (h), and (i), respectively.

(f) Section 705 (g) (6) of such Act, is amended to read as follows:

"(6) to intervene in a civil action brought under section 706 by an aggrieved party against a respondent other than a government, governmental agency or political subdivision."

42 USC 2000e-13.

(g) Section 714 of such Act is amended to read as follows:

"FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

"SEC. 714. The provisions of sections 111 and 1114, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life."

62 Stat. 688; 65 Stat. 721.

80 Stat. 460; 84 Stat. 1604; 85 Stat. 625.

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

Repeal. 84 Stat. 968.

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

SEC. 10. Section 715 of the Civil Rights Act of 1964 is amended to read as follows: 78 Stat. 265. 42 USC 2000e-14 note.

"EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

"SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section." Report to President and Congress.

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section: Ante, p. 103.

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin. 80 Stat. 378.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall— Enforcement; rules and regulations.

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment; National and regional plan, annual review.

86 STAT. 112

Progress reports, publication.

"(2) be responsible for the review and evaluation of the oper tion of all agency equal employment opportunity programs, pe odically obtaining and publishing (on at least a semiannual basi progress reports from each such department, agency, or unit; a

"(3) consult with and solicit the recommendations of interest individuals, groups, and organizations relating to equal emplo ment opportunity.

The head of each such department, agency, or unit shall comply wi such rules, regulations, orders, and instructions which shall include provision that an employee or applicant for employment shall notified of any final action taken on any complaint of discriminatio filed by him thereunder. The plan submitted by each departmen agency, and unit shall include, but not be limited to—

"(1) provision for the establishment of training and educatio programs designed to provide a maximum opportunity fo employees to advance so as to perform at their highest potentia and

"(2) a description of the qualifications in terms of training an experience relating to equal employment opportunity for th principal and operating officials of each such department, agenc or unit responsible for carrying out the equal employment oppor tunity program and of the allocation of personnel and resource proposed by such department, agency, or unit to carry out it equal employment opportunity program.

Librarian of Congress, authority.

With respect to employment in the Library of Congress, authoritie granted in this subsection to the Civil Service Commission shall b exercised by the Librarian of Congress.

"(c) Within thirty days of receipt of notice of final action taken b a department, agency, or unit referred to in subsection 717(a), or b the Civil Service Commission upon an appeal from a decision or orde of such department, agency, or unit on a complaint of discriminatio based on race, color, religion, sex or national origin, brought pursuan to subsection (a) of this section, Executive Order 11478 or any suc ceeding Executive orders, or after one hundred and eighty days fro the filing of the initial charge with the department, agency, or uni or with the Civil Service Commission on appeal from a decision o order of such department, agency, or unit until such time as fina action may be taken by a department, agency, or unit, an employee o applicant for employment, if aggrieved by the final disposition of hi complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action th head of the department, agency, or unit, as appropriate, shall be the defendant.

42 USC 2000e note.

Ante, p. 104.

78 Stat. 259. 42 USC 2000e-5.

"(d) The provisions of section 706 (f) through (k), as applicable shall govern civil actions brought hereunder.

"(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure non-discrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government."

USC prec. title 1.

80 Stat. 453; 84 Stat. 1955.

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS-16, GS-17, and GS-18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

SEC. 13. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is further amended by adding at the end thereof the following new section:

Ante, p. 111.

"SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

"SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan."

80 Stat. 384.

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.

Effective date.

Ante, p. 104.

Approved March 24, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-238 (Comm. on Education and Labor) and No. 92-899 (Comm. of Conference).

SENATE REPORTS: No. 92-415 accompanying S. 2515 (Comm. on Labor and Public Welfare) and No. 92-416 (Comm. on Labor and Public Welfare) and No. 92-681 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 117 (1971): Sept. 15,16, considered and passed House.

Vol. 118 (1972): Jan. 19-21, 24-28, 31, Feb. 1-4, 7-9, 14-18, 21, 22, considered and passed Senate, amended, in lieu of S. 2515.
Mar. 6, Senate agreed to conference report.
Mar. 8, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 13:
Mar. 25, Presidential statement.

APPENDIX III

EXCERPT FROM CIVIL RIGHTS ACT OF 1964

Public Law 88-352
88th Congress, H. R. 7152
July 2, 1964

An Act

78 STAT. 241.

enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964". Civil Rights Act of 1964.

* * * * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers. "Person."

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a state or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hun- "Employer." 68A Stat. 163; 74 Stat. 534. 26 USC 501.

dred employees (and their agents) shall not be considered employe
and, during the second year after such date, persons having fewer th
seventy-five employees (and their agents) shall not be considered e
ployers, and, during the third year after such date, persons havi
fewer than fifty employees (and their agents) shall not be consider
employers: *Provided further*, That it shall be the policy of the Unit
States to insure equal employment opportunities for Federal e
ployees without discrimination because of race, color, religion, sex
national origin and the President shall utilize his existing authority
effectuate this policy.

"Employment agency." (c) The term "employment agency" means any person regular
undertaking with or without compensation to procure employees f
an employer or to procure for employees opportunities to work f
an employer and includes an agent of such a person; but shall n
include an agency of the United States, or an agency of a State
political subdivision of a State, except that such term shall inclu
the United States Employment Service and the system of State a
local employment services receiving Federal assistance.

"Labor organization." (d) The term "labor organization" means a labor organization e
gaged in an industry affecting commerce, and any agent of such
organization, and includes any organization of any kind, any agenc
or employee representation committee, group, association, or plan
engaged in which employees participate and which exists for t
purpose, in whole or in part, of dealing with employers concernin
grievances, labor disputes, wages, rates of pay, hours, or other tern
or conditions of employment, and any conference, general committe
joint or system board, or joint council so engaged which is subordina
to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an indu
try affecting commerce if (1) it maintains or operates a hiring ha
or hiring office which procures employees for an employer or pr
cures for employees opportunities to work for an employer, or (2
the number of its members (or, where it is a labor organization com
posed of other labor organizations or their representatives, if t
aggregate number of the members of such other labor organizatio
is (A) one hundred or more during the first year after the effecti
date prescribed in subsection (a) of section 716, (B) seventy-five
more during the second year after such date or fifty or more durin
the third year, or (C) twenty-five or more thereafter, and such labo
organization—

61 Stat. 136. 29 USC 167. (1) is the certified representative of employees under the pr
visions of the National Labor Relations Act, as amended, or t
Railway Labor Act, as amended;

44 Stat. 577; 49 Stat. 1189. 45 USC 151. (2) although not certified, is a national or international labo
organization or a local labor organization recognized or acting
the representative of employees of an employer or employe
engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary bod
which is representing or actively seeking to represent employe
of employers within the meaning of paragraph (1) or (2); o

(4) has been chartered by a labor organization representing
actively seeking to represent employees within the meaning o
paragraph (1) or (2) as the local or subordinate body throug
which such employees may enjoy membership or become affiliate
with such labor organization; or

(5) is a conference, general committee, joint or system boar
or joint council subordinate to a national or international labo
organization, which includes a labor organization engaged in a

industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

f) The term "employee" means an individual employed by an "Employee."
ɔloyer.

g) The term "commerce" means trade, traffic, commerce, trans- "Commerce."
tation, transmission, or communication among the several States;
between a State and any place outside thereof; or within the
trict of Columbia, or a possession of the United States; or between
nts in the same State but through a point outside thereof.

h) The term "industry affecting commerce" means any activity, "Industry af-
iness, or industry in commerce or in which a labor dispute would fecting com-
der or obstruct commerce or the free flow of commerce and merce."
udes any activity or industry "affecting commerce" within the
ning of the Labor-Management Reporting and Disclosure Act of
9. 73 Stat. 519.
29 USC 401 note.

i) The term "State" includes a State of the United States, the "State."
trict of Columbia, Puerto Rico, the Virgin Islands, American
ioa, Guam, Wake Island, the Canal Zone, and Outer Continental
lf lands defined in the Outer Continental Shelf Lands Act. 67 Stat. 462.
43 USC 1331
note.

EXEMPTION

EC. 702. This title shall not apply to an employer with respect to Religious organ-
employment of aliens outside any State, or to a religious corpora- izations, etc.
, association, or society with respect to the employment of indi-
uals of a particular religion to perform work connected with the
rying on by such corporation, association, or society of its religious
vities or to an educational institution with respect to the employ-
t of individuals to perform work connected with the educational
vities of such institution.

RIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

EC. 703. (a) It shall be an unlawful employment practice for an Unlawful
ɔloyer— practices.

(1) to fail or refuse to hire or to discharge any individual, Employers.
or otherwise to discriminate against any individual with respect
to his compensation, terms, conditions, or privileges of employ-
ment, because of such individual's race, color, religion, sex, or
national origin; or

(2) to limit, segregate, or classify his employees in any way
which would deprive or tend to deprive any individual of
employment opportunities or otherwise adversely affect his
status as an employee, because of such individual's race, color,
religion, sex, or national origin.

) It shall be an unlawful employment practice for an employ- Employment
t agency to fail or refuse to refer for employment, or otherwise agency.
iscriminate against, any individual because of his race, color,
gion, sex, or national origin, or to classify or refer for employ-
t any individual on the basis of his race, color, religion, sex, or
onal origin.

) It shall be an unlawful employment practice for a labor Labor organ-
nization— ization.

(1) to exclude or to expel from its membership, or otherwise
to discriminate against, any individual because of his race, color,
religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to classify
or fail or refuse to refer for employment any individual, in any

way which would deprive or tend to deprive any individual employment opportunities, or would limit such employme opportunities or otherwise adversely affect his status as employee or as an applicant for employment, because of such in vidual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discrimina against an individual in violation of this section.

Training programs.

(d) It shall be an unlawful employment practice for any employ labor organization, or joint labor-management committee controllin apprenticeship or other training or retraining, including on-the-j training programs to discriminate against any individual because his race, color, religion, sex, or national origin in admission to, employment in, any program established to provide apprenticeship other training.

Exceptions.

(e) Notwithstanding any other provision of this title, (1) it sha not be an unlawful employment practice for an employer to hire a employ employees, for an employment agency to classify, or refer f employment any individual, for a labor organization to classify membership or to classify or refer for employment any individual, for an employer, labor organization, or joint labor-management co mittee controlling apprenticeship or other training or retraining pr grams to admit or employ any individual in any such program, on t basis of his religion, sex, or national origin in those certain instanc where religion, sex, or national origin is a bona fide occupational qua fication reasonably necessary to the normal operation of that particul business or enterprise, and (2) it shall not be an unlawful employme practice for a school, college, university, or other educational instit tion or institution of learning to hire and employ employees of a pa ticular religion if such school, college, university, or other educatio institution or institution of learning is, in whole or in substantial par owned, supported, controlled, or managed by a particular religio by a particular religious corporation, association, or society, or if t curriculum of such school, college, university, or other educatio institution or institution of learning is directed toward the propag tion of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice shall not be deemed to include any action or measure taken by a employer, labor organization, joint labor-management committee, employment agency with respect to an individual who is a membe of the Communist Party of the United States or of any other organiza tion required to register as a Communist-action or Communist-fron organization by final order of the Subversive Activities Control Boar pursuant to the Subversive Activities Control Act of 1950.

64 Stat. 987.
50 USC 781 note.

(g) Notwithstanding any other provision of this title, it shall no be an unlawful employment practice for an employer to fail or refus to hire and employ any individual for any position, for an employe to discharge any individual from any position, or for an employmen agency to fail or refuse to refer any individual for employment in an position, or for a labor organization to fail or refuse to refer an individual for employment in any position, if—

(1) the occupancy of such position, or access to the premise in or upon which any part of the duties of such position is per formed or is to be performed, is subject to any requiremen imposed in the interest of the national security of the Unite States under any security program in effect pursuant to or admin istered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill tha requirement.

(h) Notwithstanding any other provision of this title, it shall not e an unlawful employment practice for an employer to apply differnt standards of compensation, or different terms, conditions, or rivileges of employment pursuant to a bona fide seniority or merit ystem, or a system which measures earnings by quantity or quality of roduction or to employees who work in different locations, provided iat such differences are not the result of an intention to discriminate ecause of race, color, religion, sex, or national origin, nor shall it be n unlawful employment practice for an employer to give and to act pon the results of any professionally developed ability test provided iat such test, its administration or action upon the results is not esigned, intended or used to discriminate because of race, color, eligion, sex or national origin. It shall not be an unlawful employent practice under this title for any employer to differentiate upon ie basis of sex in determining the amount of the wages or compenation paid or to be paid to employees of such employer if such ifferentiation is authorized by the provisions of section 6(d) of the air Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)). 77 Stat. 56.
29 USC 206.

(i) Nothing contained in this title shall apply to any business or nterprise on or near an Indian reservation with respect to any publicly nnounced employment practice of such business or enterprise under hich a preferential treatment is given to any individual because he an Indian living on or near a reservation. Indians.

(j) Nothing contained in this title shall be interpreted to require ny employer, employment agency, labor organization, or joint labor- anagement committee subject to this title to grant preferential treatent to any individual or to any group because of the race, color, reliion, sex, or national origin of such individual or group on account of n imbalance which may exist with respect to the total number or pertntage of persons of any race, color, religion, sex, or national origin mployed by any employer, referred or classified for employment by ny employment agency or labor organization, admitted to membernip or classified by any labor organization, or admitted to, or emloyed in, any apprenticeship or other training program, in comparion with the total number or percentage of persons of such race, color, eligion, sex, or national origin in any community, State, section, or her area, or in the available work force in any community, State, ection, or other area. Preferential treatment.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an mployer to discriminate against any of his employees or applicants or employment, for an employment agency to discriminate against ny individual, or for a labor organization to discriminate against any ember thereof or applicant for membership, because he has opposed ny practice made an unlawful employment practice by this title, or ecause he has made a charge, testified, assisted, or participated in any anner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, abor organization, or employment agency to print or publish or ause to be printed or published any notice or advertisement relating employment by such an employer or membership in or any clasfication or referral for employment by such a labor organization, or elating to any classification or referral for employment by such an mployment agency, indicating any preference, limitation, specifica- on, or discrimination, based on race, color, religion, sex, or national rigin, except that such a notice or advertisement may indicate a reference, limitation, specification, or discrimination based on reli-

gion, sex, or national origin when religion, sex, or national origin
a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Establishment.

SEC. 705. (a) There is hereby created a Commission to be known
the Equal Employment Opportunity Commission, which shall be co
posed of five members, not more than three of whom shall be membe
of the same political party, who shall be appointed by the Preside
Term of office. by and with the advice and consent of the Senate. One of the origin
members shall be appointed for a term of one year, one for a term
two years, one for a term of three years, one for a term of four yea
and one for a term of five years, beginning from the date of enac
ment of this title, but their successors shall be appointed for terms
five years each, except that any individual chosen to fill a vacan
shall be appointed only for the unexpired term of the member who
he shall succeed. The President shall designate one member to ser
as Chairman of the Commission, and one member to serve as Vi
Chairman. The Chairman shall be responsible on behalf of the Co
mission for the administrative operations of the Commission, an
shall appoint, in accordance with the civil service laws, such officer
agents, attorneys, and employees as it deems necessary to assist it
the performance of its functions and to fix their compensation
63 Stat. 954; 76 Stat. 843. accordance with the Classification Act of 1949, as amended. Th
5 USC 1071 note. Vice Chairman shall act as Chairman in the absence or disability
the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of th
remaining members to exercise all the powers of the Commission an
three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be jud
cially noticed.

Reports to the President and Congress.

(d) The Commission shall at the close of each fiscal year report t
the Congress and to the President concerning the action it has taken
the names, salaries, and duties of all individuals in its employ and th
moneys it has disbursed; and shall make such further reports on th
cause of and means of eliminating discrimination and such recom
mendations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C
70 Stat. 736. 2201–2209), is further amended—
5 USC 2201 note.

(1) by adding to section 105 thereof (5 U.S.C. 2204) the fo
lowing clause:

"(32) Chairman, Equal Employment Opportunity Commis
sion"; and

(2) by adding to clause (45) of section 106(a) thereof (
70 Stat. 737. U.S.C. 2205(a)) the following: "Equal Employment Opportu
5 USC 2205. nity Commission (4)."

(f) The principal office of the Commission shall be in or near th
District of Columbia, but it may meet or exercise any or all its power
at any other place. The Commission may establish such regional o
State offices as it deems necessary to accomplish the purpose of thi
title.

Powers.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional
State, local, and other agencies, both public and private, and
individuals;

(2) to pay to witnesses whose depositions are taken or who ar
summoned before the Commission or any of its agents the same
witness and mileage fees as are paid to witnesses in the courts
of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the direction f the Commission, appear for and represent the Commission in any ıse in court.

(i) The Commission shall, in any of its educational or promotional ctivities, cooperate with other departments and agencies in the perormance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commison shall be subject to the provisions of section 9 of the Act of ugust 2, 1939, as amended (the Hatch Act), notwithstanding any xemption contained in such section. 53 Stat. 1148; 64 Stat. 475. 5 USC 1181.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) Whenever it is charged in writing under oath by a erson claiming to be aggrieved, or a written charge has been filed y a member of the Commission where he has reasonable cause to elieve a violation of this title has occurred (and such charge sets orth the facts upon which it is based) that an employer, employment gency, or labor organization has engaged in an unlawful employment ractice, the Commission shall furnish such employer, employment gency, or labor organization (hereinafter referred to as the "respondnt") with a copy of such charge and shall make an investigation of ich charge, provided that such charge shall not be made public by the ommission. If the Commission shall determine, after such investiation, that there is reasonable cause to believe that the charge is true, e Commission shall endeavor to eliminate any such alleged unlawful nployment practice by informal methods of conference, conciliation, id persuasion. Nothing said or done during and as a part of such ideavors may be made public by the Commission without the written nsent of the parties, or used as evidence in a subsequent proceeding. ny officer or employee of the Commission, who shall make public any manner whatever any information in violation of this subsection all be deemed guilty of a misdemeanor and upon conviction thereof all be fined not more than $1,000 or imprisoned not more than one ar.

(b) In the case of an alleged unlawful employment practice occur- Legal proceedings.
ng in a State, or political subdivision of a State, which has a State local law prohibiting the unlawful employment practice alleged d establishing or authorizing a State or local authority to grant or ek relief from such practice or to institute criminal proceedings ith respect thereto upon receiving notice thereof, no charge may be ed under subsection (a) by the person aggrieved before the expira-

tion of sixty days after proceedings have been commenced under
State or local law, unless such proceedings have been earlier ter
nated, provided that such sixty-day period shall be extended to
hundred and twenty days during the first year after the effec
date of such State or local law. If any requirement for the co
mencement of such proceedings is imposed by a State or local auth
ity other than a requirement of the filing of a written and sig
statement of the facts upon which the proceeding is based, the p
ceeding shall be deemed to have been commenced for the purposes
this subsection at the time such statement is sent by registered m
to the appropriate State or local authority.

Time require-
ments.

(c) In the case of any charge filed by a member of the Commiss
alleging an unlawful employment practice occurring in a State
political subdivision of a State, which has a State or local law p
hibiting the practice alleged and establishing or authorizing a St
or local authority to grant or seek relief from such practice or
institute criminal proceedings with respect thereto upon receiv
notice thereof, the Commission shall, before taking any action w
respect to such charge, notify the appropriate State or local offic
and, upon request, afford them a reasonable time, but not less th
sixty days (provided that such sixty-day period shall be exten
to one hundred and twenty days during the first year after the ef
tive day of such State or local law), unless a shorter period
requested, to act under such State or local law to remedy the prac
alleged.

(d) A charge under subsection (a) shall be filed within ninety d
after the alleged unlawful employment practice occurred, except t
in the case of an unlawful employment practice with respect to wh
the person aggrieved has followed the procedure set out in subsect
(b), such charge shall be filed by the person aggrieved within
hundred and ten days after the alleged unlawful employment pr
tice occurred, or within thirty days after receiving notice that
State or local agency has terminated the proceedings under the St
or local law, whichever is earlier, and a copy of such charge shall
filed by the Commission with the State or local agency.

(e) If within thirty days after a charge is filed with the Comm
sion or within thirty days after expiration of any period of refere
under subsection (c) (except that in either case such period may
extended to not more than sixty days upon a determination by
Commission that further efforts to secure voluntary compliance
warranted), the Commission has been unable to obtain volunt
compliance with this title, the Commission shall so notify the per
aggrieved and a civil action may, within thirty days thereafter,
brought against the respondent named in the charge (1) by the per
claiming to be aggrieved, or (2) if such charge was filed by a mem
of the Commission, by any person whom the charge alleges w
aggrieved by the alleged unlawful employment practice. Up
application by the complainant and in such circumstances as the co
may deem just, the court may appoint an attorney for such co
plainant and may authorize the commencement of the action with
the payment of fees, costs, or security. Upon timely application,
court may, in its discretion, permit the Attorney General to interv
in such civil action if he certifies that the case is of general pub
importance. Upon request, the court may, in its discretion, s
further proceedings for not more than sixty days pending the ter
nation of State or local proceedings described in subsection (b) or
efforts of the Commission to obtain voluntary compliance.

Courts.
Jurisdiction.

(f) Each United States district court and each United Sta
court of a place subject to the jurisdiction of the United States sh

have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought. 62 Stat. 937. 74 Stat. 912; 76A Stat. 699.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section. 47 Stat. 70.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (e), the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under subsection (e) and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code. 62 Stat. 929.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person. 65 Stat. 726; 72 Stat. 348, 1770. Costs, fees.

Sec. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the Suits by Attorney General.

person or persons responsible for such pattern or practice, as he deem necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shal exercise jurisdiction of proceedings instituted pursuant to this sec tion, and in any such proceeding the Attorney General may file wit the clerk of such court a request that a court of three judges be con vened to hear and determine the case. Such request by the Attorne General shall be accompanied by a certificate that, in his opinion, th case is of general public importance. A copy of the certificate an request for a three-judge court shall be immediately furnished by suc clerk to the chief judge of the circuit (or in his absence, the presidin circuit judge of the circuit) in which the case is pending. Upon receip of such request it shall be the duty of the chief judge of the circuit o the presiding circuit judge, as the case may be, to designate imme diately three judges in such circuit, of whom at least one shall be circuit judge and another of whom shall be a district judge of the cour in which the proceeding was instituted, to hear and determine suc case, and it shall be the duty of the judges so designated to assign th case for hearing at the earliest practicable date, to participate in th hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such cour will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

Agreements, State and local agencies.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of such agencies and their employees and, notwithstand-

ing any other provision of law, may reimburse such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements and under which no person may bring a civil action under section 706 in any cases or class of cases so specified, or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

Records.

(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

Exceptions.

(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.

3 CFR, 1961 Supp., p. 86.
5 USC 631 note.

Prohibited disclosures.

(e) It shall be unlawful for any officer or employee of the Commi sion to make public in any manner whatever any information obtain by the Commission pursuant to its authority under this section pri to the institution of any proceeding under this title involving su information. Any officer or employee of the Commission who sha make public in any manner whatever any information in violation this subsection shall be guilty of a misdemeanor and upon convictio thereof, shall be fined not more than $1,000, or imprisoned not mo than one year.

* * * * * * *

92d Congress
1st Session

COMMITTEE PRINT

PROPOSED EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

S. 2515, S. 2617, and H.R. 1746

BILL TEXTS, SECTION-BY-SECTION ANALYSES, CHANGES IN EXISTING LAW, COMPARISON OF BILLS INTRODUCED

PREPARED FOR THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE
UNITED STATES SENATE



OCTOBER 1971

Printed for the use of the Committee on Labor and Public Welfare

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U.S. GOVERNMENT PRINTING OFFICE

67-104 O

WASHINGTON : 1971

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FOREWORD

The Senate Subcommittee on Labor recently completed hearing on important admendments to title VII of the Civil Rights Act o 1964. These amendments would provide enforcement authority to th Equal Employment Opportunity Commission, expand the coverag of title VII and make other changes relevant to the administratio of that act. This committee print of relevant documents has bee prepared to provide the members of the committee and the Membe of the Senate with information which will assist them in their con sideration of the Equal Employment Opportunities Enforcement Ac of 1971.

I hope this information will prove helpful to all those who mus consider this important legislation.

HARRISON A. WILLIAMS, JR., *Chairman.*

92D CONGRESS
1ST SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 1971

Mr. BYRD of West Virginia (for Mr. WILLIAMS) (for himself, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MCGOVERN, Mr. MAGNUSON, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. SCOTT, Mr. SCHWEIKER, Mr. STEVENSON, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1971".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, govern-

II

mental agencies, political subdivisions," after the word "individuals".

(2) In subsection (b) strike out all before "*Provided further*", and insert in lieu thereof the following:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (c) strike out between "(A)" and "and such labor organization", and insert in lieu thereof

"twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, or (B) eight or more thereafter,"

(5) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e–2) is amended to read as follows:

"EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its religious activities."

SEC. 4. (a) Subsections (a) through (e) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5(a)–(e)) are amended to read as follows:

"(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a

person claiming to be aggrieved, or by a member of the Commission upon the request of any person claiming to be aggrieved, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') as soon as practicable thereafter and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used

as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after

the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered or certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful

employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less

than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other person a right to intervene or to file briefs or make oral arguments an amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure for the district courts of the United States.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such un-

lawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organizations, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: *Provided*, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsections (l) through (n) and the provisions

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of those subsections shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsections (h) or (i) of this section shall be determined on the record. Section 554, 555, 556, and 557 of title 5 of the United States Code shall apply to such proceedings.

"(k) Any party aggrieved by a final order of the Commission granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals for the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days after the service of such order, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to any other party to the proceeding before the Commission, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant to the petitioner or any other party, including the Commission, such temporary relief or restraining order as it

deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall

file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) The Commission may petition any United States court of appeals for the circuit in which the unlawful employment practice in question occurred or in which the respondent resides or transacts business, for the enforcement of its order and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that its order be enforced and for appropriate temporary relief or restraining order. The Commission shall file in court with its petition the record in the proceeding as provided in section 2112 of title 28, United States Code. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the Commission. Upon the filing of such petition, the court shall have jurisdiction of the proceeding and of the question determined therein and shall

have power to grant to the Commission, or any other party, such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. No objection that has not been urged before the Commission, its members, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and

filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(m) If no petition for review, as provided in subsection (k), is filed within sixty days after service of the Commission's order the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Commission under subsection (l) after the expiration of such sixty-day period. The clerk of the court of appeals in which such petition for enforcement is filed shall forthwith enter a decree enforcing the order of the Commission and shall submit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Commission.

"(n) If within ninety days after service of the Commission's order, no petition for review has been filed as provided in subsection (k), and the Commission has not sought

enforcement of its order as provided in subsection (l), any person entitled to relief under the Commission's order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the unlawful employment practice in question occurred, or in which a respondent named in the order resides or transacts business. The provisions of subsection (m) shall apply to such petitions for enforcement.

"(o) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by attorneys appointed by the Commission.

"(p) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding, the Commission shall, after it issues a complaint, bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, or until the filing of a petition under subsections (k), (l), (m), or (n) of this section, as the case may be, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judi-

cial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection.

"(q) (1) If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has neither issued a complaint under subsection (f) nor entered into an agreement under subsection (f) or (i) which is acceptable to the Commission and to the person aggrieved, the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil

action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto, except that, upon timely application, the court in its discretion may permit the Commission to intervene in such civil action if the Commisson certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

"(2) The right of an aggrieved person to bring a civil action under paragraph (1) of this subsection shall terminate once the Commission has issued a complaint under subsection (f), or has entered into an agreement under subsection (f) or (i) which is acceptable to the Commission and to the

person aggrieved: *Provided*, That if after issuing a complaint the Commission has not issued an order under subsection (h) within a period of one hundred and eighty days of the issuance of the complaint, the Commission shall so notify the person aggrieved and a civil action may be brought against the respondent named in the charge at any time prior to the Commission's issuance of an order under subsection (h): *Provided further*, That if the person aggrieved files a civil action against the respondent during the period from one hundred and eighty days to one year after the issuance of the complaint such person shall notify the Commission of such action and the Commission may petition the court not to proceed with the suit. The court may dismiss or stay any such action upon a showing that the Commission has been acting with due diligence on the complaint, that the Commission anticipates the issuance of an order under subsection (h) within a reasonable period of time, that the case is exceptional, and that extension of the Commission's jurisdiction is warranted."

(b) Subsections (f) through (k) of section 706 of such Act and references thereto are redesignated as subsections (r) through (w), respectively.

(c) Section 706 (r) of such Act, as redesignated by this section, is amended by adding at the end the following sentence: "Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper."

(d) Section 706(u) and (v) of such Act, as redesignated by this section, are amended (1) by striking out "(e)" and inserting in lieu thereof "(q)", and (2) by striking out "(i)" and inserting in lieu thereof "(u)".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(c) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (d) and (e) of this section.

"(d) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substi-

tuted as a party for the United States of America or the Attorney General or Acting Attorney General, as appropriate.

"(e) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: *Provided*, That all such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof."

SEC. 6. (a) Subsections (b), (c), and (d) of section 709 of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e–8 (b) – (d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, not-

withstanding any other provision of law, may pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class or persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this

title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commis-

sion, have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

(b) Section 709 of the Civil Rights Act of 1964 is amended by: (1) redesignating section 709 (e) as 709 (f) and (2) by adding immediately after section 709 (d) as amended, the following subsection (e):

"(e) Any record or paper required by section 709 (c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the

Commission or its representative, or to the Attorney General or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the members of the Commission nor its representative, or the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e–9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply: *Provided*, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served

upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703 (a) (2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e–2 (a) (2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703 (c) (2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c) (1) Section 704 (a) of such Act is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704 (a).

(2) Section 704 (b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) (1) The second sentence of section 705 (a) is amended by inserting before the period at the end thereof a

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comma and the following: "and all members of the Commission shall continue to serve until their successors are appointed and qualified: *Provided,* That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted".

(2) The fourth sentence of section 705(a) of such Act is amended to read as follows: "The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearings examiners, and employees as he deems necessary to assist it in the performance of its functions and fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided,* That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(e) Section 705(g)(1) of such Act is amended by inserting at the end thereof the following: ", and to accept

voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))".

(f) Section 705(g)(6) of such Act is amended to read as follows:

"(6) to intervene in a civil action brought by an aggrieved party under section 706."

(g) Section 713 of such Act is amended by adding at the end thereof the following new subsections:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i), (k), and (l) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and pow-

ers with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided*, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

(h) Section 714 of such Act is amended by striking out "section 111" and inserting in lieu thereof "sections 111 and 1114".

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(55) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

SEC. 10. Section 715 of the Civil Rights Act of 1964

(78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended to read as follows:

"SEC. 715. All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Rights Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5,

United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), and in those portions of the government of the District of Columbia, and the legislative and judicial branches of the Federal Government having positions in the competitive service, shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: *Provided*, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

"(c) Within thirty days of receipt of notice, given pursuant to subsection (b), of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an

employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 706 (q) through (w), as applicable, shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission which the Director of the Office of Management and Budget determines relate to nondiscrimination in Government employment are transferred to the Equal Employment Opportunity Commission.

"(f) This section shall become effective six months after the date of enactment of this Act.

"(g) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

SEC. 12. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall not be applicable to charges filed with the Commission prior to the enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF EQUAL EMPLO MENT OPPORTUNITIES ENFORCEMENT ACT OF 1971 S. 2515

SECTION 2

This section amends certain definitions in section 701 of the Civ Rights Act of 1964.

Section 701(a).—This subsection defines "person" to include Sta and local governments, governmental agencies and political su divisions.

Section 701(b).—This subsection would extend coverage of employe to those with 8 or more employees one year after enactment. Th standard for determining the number of employees of an employe that is, "employees for each working day in each of 20 or more calend weeks in the current or preceding calendar year", would apply t employers of 25 or more employees during the first year as well as th final coverage of eight or more employees. This subsection wou broaden the meaning of "employer" to include State and local gover ments and the District of Columbia departments or agencies (exce those subject by statute to procedures of the Federal competiti service as defined in 5 USC 2102).

Section 701(c).—This subsection eliminates the exemption f agencies of the United States, States or political subdivisions States from the definition of "employment agency" in order to confor with the expanded coverage of State and local governments in sectio 701 (a) and (b).

Section 701(e).—This subsection is revised to include coverage labor organizations with 8 or more members one year after enactmen

SECTION 3

Section 702 is amended to eliminate the exemption for employmen of individuals engaged in educational activities of non-religious edu cational institutions. It continues the exemption for employment aliens outside the United States and to a religious corporation, asso ciation, educational institution or society with respect to employmen of individuals of a particular religion to perform work connected wit religious activities.

SECTION 4(a)

This section amends sections 706 (a)–(e) of the Civil Rights Act o 1964 entitled "Prevention of Unlawful Employment Practices."

Section 706(a).—This subsection would empower the Commissio to prevent persons from engaging in unlawful employment practice under sections 703 and 704 of title VII of the Civil Rights Act of 1964

Section 706(b).—This subsection prescribes the procedures to b followed when a charge of an unlawful employment practice is file with the Commission. The Commission must serve a copy of th charge on the respondent, investigate the charge and make its deter

nination on whether there is reasonable cause to believe that the harge is true. If it finds no reasonable cause, the Commission must lismiss the charge; if it finds reasonable cause, it must attempt to onciliate the case. The subsection makes a number of changes in xisting law:

1. Under present law, a charge may be filed only by a person ggrieved under oath. This subsection would permit a charge to be led by or on behalf of a person aggrieved, and eliminates the require- nent of an oath.

2. The Commission would be required to make its determination n reasonable cause as promptly as possible and, "so far as practicable," ithin 120 days from the filing of the charge or from the date upon hich the Commission is authorized to act on the charge under ection 706(c) or (d).

3. This subsection and section 8(c) of the bill add appropriate rovisions to carry out the intent of the present statute to provide ill coverage for joint labor-management committees controlling pprenticeship or other training or retraining, including on-the-job raining programs. While these joint labor-management committees re prohibited under section 703(d) of the present act from discriminat- ig, they were not expressly included in the prohibition against iscriminatory advertising or retaliation against persons participating Commission proceedings (sec. 704(a) and (b)) or in the procedures r filing charges in section 706(a).

Section 706(c).—This provision retains the present requirement at the Commission defer for a period of 60 days to State or local gencies functioning under appropriate anti-discrimination laws r 120 days during the first year after the effective date of such law). he only change in the present law is to delete the term "no charge ay be filed" by an aggrieved person in such State or locality. The resent statute is somewhat ambiguous respecting Commission action charges filed prior to resort to the State or local agency. The new nguage clarifies the present statute by permitting the charge to be led but prohibiting the Commission from taking action with respect ereto until the prescribed period has elapsed.

Section 706(d).—This subsection, requiring deferral to State or cal anti-discrimination agencies in the case of charges filed by a ember of the Commission, follows the language of the present atute.

Section 706(e).—This subsection prescribes the time limits for the ing of a charge. Under the present statute, the charge must be ed within 90 days after the alleged unlawful employment practice curred. In cases where the Commission defers to a State or local ency, the charge must presently be filed within 210 days of the currence of the alleged unlawful practice, or within 30 days after e person aggrieved receives notice that State or local agency has rminated its proceedings, whichever is earlier. This subsection ould permit charges to be filed within 180 days of the alleged unlaw- l practice—a limitation period similar to that contained in the abor-Management Relations Act, as amended (29 U.S.C. 160(b)). here the Commission defers to a State or local agency, the time nit is extended to 300 days after the occurrence of the alleged lawful practice or 30 days after receipt of notice that the State or cal agency has terminated its proceedings. This subsection also

requires that the charge be served on the respondent as soo practicable after its having been filed.

Sections 706(f) through 706(p).—These subsections, which are set forth the procedure to be followed where the Commission, finding reasonable cause to believe that the allegations of the ch are true, is unable to conciliate the case. The hearing and review quirements are similar to those found in most statutes governing ministrative agencies.

Section 706(f).—Under this subsection, if the Commission is un to secure a conciliation agreement pursuant to section 706(b) tha acceptable to the Commission and to the person aggrieved, it w promptly issue and serve upon the respondent a complaint and no of hearing. The Commission's determination that it is unable to se such an agreement would not be reviewable in court. Conciliat agreements entered into by the Commission would be enforceabl court in accordance with the provisions of section 706(1). If a C missioner files a charge, he shall not participate in a hearing in complaint arising out of such charge, except as a witness.

Section 706(g).—This subsection prescribes certain statutory cedural requirements after a complaint is issued by the Commiss The respondent would be provided an opportunity to file an answe the complaint, and to amend its answer upon a showing of reasona ness and fairness. The respondent and the aggrieved person are parties and permitted to appear at any stage of the proceeding. provision for active participation of the aggrieved persons dif from the Labor-Management Relations Act (29 U.S.C. 160(under which the person filing the charge is permitted to interv only in the discretion of the person conducting the hearing. Commission could also, in its discretion, grant to other persons right to intervene, to file briefs, or to make oral argument, as it de appropriate. Testimony at hearings must be under oath and redu to writing and proceedings shall, so far as practicable, be conduc in accordance with the rules of evidence in the district courts of United States. This last provision is similar to that contained in Labor-Management Relations Act (29 U.S.C. 160(b)). As specifie section 706(j), all hearings must be conducted in accordance with Administrative Procedure Act. The only persons, in addition to m bers of the Commission, who may preside at hearings are hear examiners appointed under section 3105 of title 5 of the Uni States Code.

Section 706(h).—This subsection provides that if the Commissi following a hearing, finds that the respondent has engaged in an unl ful employment practice, it shall state its findings of fact and is an order to be served on the parties, requiring that the respond cease and desist from its unlawful conduct and take such affirmat action, including reinstatement or hiring of employees, with or wi out backpay as will effectuate the policies of the Act. Interim earni or amounts earnable with reasonable diligency by the aggrieved p sons would operate to reduce the backpay otherwise allowable. order could also require that the respondent make reports from ti to time to the Commission. If the Commission finds no unlawful e ployment practice, it would state such findings and issue an or dismissing the complaint. This provision is intended to give the C mission wide discretion in fashioning the most complete relief possi

o eliminate all of the consequences of the unlawful employment
ractice, caused by, or attributable to the respondent.

Section 706(i).—This subsection would make clear the authority
f the Commission, any time after a charge has been filed until the
ecord is filed in court, to end proceedings by agreement with the
arties for the elimination of the alleged unlawful employment
ractice. Agreements entered into under this section or section 706(f)
ould be enforceable in the appropriate court of appeals under section
06 (l) through (n). The Commission would also be able, upon reason-
ble notice, to modify or set aside, in whole or in part, any finding
r order made or issued by it.

Section 706(j).—This subsection requires that findings of fact and
rders made or issued under subsection (h) or (i) be on the record in
ccordance with Administrative Procedure Act.

Section 706(k).—This subsection would permit a party aggrieved
y a final order of the Commission—the respondent or the person or
ersons on whose behalf the charge was filed—to seek review of such
rder in a U.S. court of appeals within 60 days after the service of the
ommission's order. The subsection specifies the procedures to be
llowed after a petition for review is filed, including:

(1) The clerk of the court transmits a copy of the petition to the Commission and to any other party to the proceeding before the Commission;

(2) The Commission files in court the record in the proceedings pursuant to 28 U.S.C. 2112 at which time the court of appeals has exclusive jurisdiction;

(3) The Court of Appeals is authorized to grant such temporary relief, restraining order, or other orders as it deems just and proper and may enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The findings of fact by the Commission are conclusive if they are supported by substantial evidence on the record considered as a whole;

(4) Any party to the proceedings before the Commission may intervene in the court of appeals and a party may apply for leave to adduce additional evidence before the Commission, which could then modify its original findings. Modified findings would also be conclusive if supported by substantial evidence on the record considered as a whole;

(5) Objections not urged before the Commission, its member, or agent, will not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances;

(6) Commencement of proceedings under this subsection would not stay the Commission's order unless ordered by the court; and

(7) The courts of appeals are required to hear petitions expeditiously. This requirement is intended to emphasize to the courts of appeals the need for promptly acting on petitions in order to have speedy resolution of these cases.

Section 706(l).—This subsection would authorize the Commission
petition a U.S. court of appeals for enforcement of its order. The
escribed procedures in the case of petitions for enforcement under
is subsection are similar to section 706(k) except that no time limit
specified for the enforcement petition (but, see section 706(m)

regarding the self-enforcement procedure), and the Commission wo be authorized to seek an order from the court for temporary preliminary enforcement of its order pending complete review by court of appeals.

Section 706(m).—Under this subsection, if there is no petition review filed within 60 days as provided in section 706(k), the Comm sion's findings of fact and order would become conclusive in conn tion with any petition for enforcement filed pursuant to section 706(If the Commission petitions for an enforcement order, the clerk of court of appeals would enter a decree enforcing the order of the Co mission and transmit copies to the Commission, the respondent, a any other parties to the proceeding before the Commission.

Section 706(n).—This subsection provides that any person entit to relief under a Commission order could obtain enforcement of order if within 90 days after service of the Commission's order th has been no petition for review filed under subsection (k) or no petit for enforcement filed by the Commission under subsections (l) or (The procedures and provisions of subsection (m) would apply to su petition for enforcement.

Section 706(o).—This subsection provides that the Attorney G eral would conduct all litigation to which the Commission is a pa in the Supreme Court of the United States pursuant to this title. other Commission litigation, including litigation arising under sect 706(k), (l), (m), (n), (p), or (q), litigation arising in connection w the Commission's record keeping requirements under section 709. enforcement of the Commission's authority to conduct investigati under section 710, and private litigation in which the Commission involved as amicus curiae, as well as judicial proceedings in which Commission intervenes, shall be conducted by attorneys appoint by the Commission.

Section 706(p).—Under this subsection, if, after a charge is fi under section 706(b), the Commission concludes on the basis of a p liminary investigation that prompt judicial action is necessary to p serve its power to grant effective relief in the proceeding, it must bri an action for appropriate preliminary or temporary relief in the Uni States district court in the judicial district in which the unlaw employment practice is alleged to have been committed, where person would have been employed but for the alleged unlawful practi or if the respondent is not to be found in any of these districts, in judicial district where the respondent has its principal office. The su section further provides that for purposes of 28 U.S.C. 1404 and 14 (which permit the court to transfer an action to another judic district where the action might have been brought) the district which the respondent has his principal office is to be considered judicial district where the action might have been brought.

This subsection, in addition, would make rule 65 of the Fede Rules of Civil Procedure, except paragraph (a)(2) thereof, applica to proceedings under section 706(p). Rule 65 prescribes procedu requirements for the granting of temporary restraining orders and p liminary injunctions. Paragraph (a)(2) of rule 65 permits the co to advance the trial of the merits and to consolidate the trial on t merits with the hearing on the application for injunction. This p vision would be inapplicable to proceedings under section 706(p).

Any relief ordered by the court under this subsection would be permitted to run until such time as a court of appeals has assumed jurisdiction of a review or enforcement petition.

Section 706(q).—This subsection preserves the private right of action by an aggrieved person. Under this subsection, the aggrieved person may bring such an action within 60 days after being notified by the Commission that it has dismissed the charge, or that 180 days have elapsed from the filing of the charge without the Commission either issuing a complaint or entering into an agreement under section 706 (f) (i) which is acceptable to the Commission and to the person aggrieved.

The subsection would also divest the Commission of jurisdiction over any pending proceedings upon the filing of a private action. Conversely, the right of an aggrieved party to bring a private action would terminate once the Commission issued a complaint under subsection 706(f) or entered into a conciliation agreement under subsection 706(f) or (i) which is agreeable to the Commission and to the person aggrieved. If the Commission does not issue an order within 180 days after it issues a complaint, the aggrieved person may also institute a civil action. If such action is instituted within one year of the issuance of the Commission's complaint, the Commission may request that it be stayed or dismissed upon a showing that it has been acting with due diligence, that it anticipates issuance of an order within a reasonable time on the complaint, that the case or proceeding is exceptional and that extension of exclusive jurisdiction of the Commission is warranted.

SECTION 4(b) AND (d)

These sections redesignate the paragraph numbers of subsections of section 706(e) through (k) of the Civil Rights Act of 1964 that would be retained as section 706(q) through (w), and also redesignate other paragraph numbers to be consistent with the changes made in section 706.

Section 4(c).—This section adds a sentence to subsection 706(a) relating to an action by a District Court that would permit just and proper preliminary relief.

SECTION 5

Section 707, establishing the Attorney General's "pattern or practice" action, is amended to provide for a transfer of this function to the Commission upon the enactment of the bill. The subsection would provide that currently pending proceedings would continue without abatement, that all court orders and decrees remain in effect, and that the Commission would be substituted as a party for the United States of America or the Attorney General or Acting Attorney General as appropriate. The Commission would have authority to investigate and act on pattern or practice charges except that any action would follow the procedures of Section 706.

SECTION 6

This section amends section 709 of the Civil Rights Act of 1964, entitled "Investigations, Inspections, Records, State Agencies."

Section 709(a).—This subsection, which gives the Commission the right to examine and copy documents in connection with its investigation of a charge, would remain unchanged.

Section 709(b).—This subsection would authorize the Commiss to cooperate with State and local fair employment practices agen in order to carry out the purposes of the title, and to enter into ag ments with such agencies, under which the Commission would ref from processing certain types of charges or relieve persons from recordkeeping requirements. This subsection would make two chan in the present statute. Under this subsection, the Commission co within the limitations of funds appropriated for the purpose, engage in and contribute to the cost of research and other proje undertaken by these State and local agencies and pay these agen in advance for services rendered to the Commission. The subsect also deletes the reference to private civil actions under section 706 of the present statute.

Section 709(c).—This subsection, like the present statute, wo require employers, employment agencies, labor organizations, and jo labor-management apprenticeship committees subject to the title make and keep certain records and to make reports therefrom to Commission. Under the present statute, a party required to k records could seek an exemption from these requirements on ground of undue hardship either by applying to the Commission bringing a civil action in the district court. This subsection would quire the party seeking the exemption first to make an application the Commission and only if the Commission denies the request co the party bring an action in the district court. This subsection wo also authorize the Commission to apply for a court order compelli compliance with the recordkeeping and reporting obligations forth in the subsection.

Section 709(d).—This subsection would eliminate the present exem tion from recordkeeping requirements for those employers in Sta and political subdivisions with fair employment practice laws or employers subject to Federal executive order or agency recordkeepi requirements. Under this subsection, the Commission would cons with interested State and other Federal agencies in order to coordin the Federal recordkeeping requirements under section 709(c) wi those adopted by such agencies. The subsection further provides th the Commission furnish information pertaining to State and local f employment agencies, on condition that the information would not made public prior to the institution of State or local proceedings.

Section 709(e).—Under this subsection, the Commission, or t Attorney General, would have the authority to direct the person havi custody of any record or paper required by section 709(c) to be p served or maintained to make such record or paper available for insp tion or copying by the Commission or the Attorney General. T district court of the judicial district where the demand is made or t papers are located would have jurisidction by appropriate process compel the production of such record or paper. The subsection furth provides that the members of the Commission and its representativ or the Attorney General and his representatives, would not, unle ordered by the court, disclose any record or paper produced except Congress or a congressional committee, to other government agenci or in the presentation of cases before a court or a grand jury.

SECTION 7

This section would amend section 710 of the Civil Rights Act of 964 to make section 11 of the National Labor Relations Act (29 .S.C. 161), except for one provision thereof, applicable to Commission vestigations. This section would require the Commission or a member ereof, upon application of a party, to issue a subpoena requiring the ttendance and testimony of a witness or the production of any idence in a proceeding. The person served with the subpoena could tition the Commission to revoke the subpoena within 5 days. On plication of the Commission, an appropriate district court could der a person to obey a subpoena and failure to comply with the court der would be punishable in contempt proceedings.

Under this section, the Commission would not be authorized to sue a subpena on the application of a private party before it issues complaint and notice of hearing. This provision, which is in accord ith the actual practice of the National Labor Relations Board, ould give the Commission exclusive authority to conduct the rehearing investigation.

Section 11 of the National Labor Relations Act also contains ovisions relating to privileges of witnesses, immunity from prosecu-n, fees, process, service, and return, and information and assistance om other agencies.

SECTION 8(a) AND (b)

These subsections would amend sections 703(a)(2) and 703(c)(2) the present statute to make it clear that discrimination against plicants for employment and applicants for membership in labor ganizations is an unlawful employment practice. This subsection ould merely be declaratory of present law.

SECTIONS 8(c) (1) AND (2)

These subsections would amend section 704 (a) and (b) of the pres-t statute to make clear that joint labor-management apprenticeship mmittees are covered by those provisions which relate to discrimin-ory advertising and retaliation against individuals participating in mmission proceedings.

SECTION 8(d)(1)

This subsection would amend section 705 of the present statute permit a member of the Commission to serve until his successor appointed but not for more than 60 days when Congress is in ssion unless the successor has been nominated and the nomination bmitted to the Senate, or after the adjournment sine die of the ses-n of the Senate in which such nomination was submitted.

SECTION 8(d)(2)

The subsection is substantially the same as present section 705 and ould make the Chairman of the Commission, on behalf of the mmission, responsible for the administrative operations of the

Commission and for the appointment of officers, agents, attorn hearing examiners, and other employees of the Commission accordance with Federal law.

SECTION 8(e)

This subsection would amend section 705(g)(1) of the present ac permit the Commission to accept uncompensated services. It intended to permit the Commission to utilize these services for s purposes as education, publicity, and the collection of data. It wo not be expected to accept such services in connection with prosecution or decision of cases before it except in extraordin situations.

SECTION 8(f)

This subsection would eliminate the provision in present sect 705(g) authorizing the Commission to request the Attorney General intervene in private civil actions and instead permit the Commiss itself to intervene in such civil actions as provided in section 706(

SECTION 8(g)

This subsection would, subject to certain exceptions, permit Commission to delegate any of its functions, duties and powers such persons as it may designate by regulation. A number of ot agencies have broad authority to delegate functions; for exam the Securities and Exchange Commission (15 U.S.C. 78d-1), Interstate Commerce Commission (49 U.S.C. 17 (5)), and the Fede Communications Commission (47 U.S.C. 155(d)). The exceptions as follows:

(1) The Commission could not delegate its powers to ma decisions on the merits after administrative hearings under s tion 706(h) or to modify or set aside its findings or make n findings under section 706(i), (k), and (l). However, like National Labor Relations Board (29 U.S.C. 153(b)), the Co mission would be authorized to delegate this power or any its other powers to groups of three or more members of Commission;

(2) The Commission could not delegate its authority und section 713(c) to make rules of general applicability. A simi limitation is imposed on the Securities and Exchange Commissi (15 U.S.C. 78d-1(a));

(3) The Commission could not delegate its authority und section 709(b) to make agreements with States under which Commission agrees to refrain from processing certain charges to relieve certain persons from the recordkeeping requiremen and

(4) The Commission could not provide for the conduct administrative hearings except by members of the Commissi or by hearing officers appointed in accord with 5 U.S.C. 556.

SECTION 8(h)

This subsection would afford additional protection to office agents, and employees of the Commission in the performance of th official duties by making 18 U.S.C. 1114 applicable to them.

SECTION 9(a), (b), AND (c)

These subsections would make certain modifications in the position of the Chairman of the Commission and the members of the Commission in the executive pay scale, so as to place them in a position of parity with officials in comparable positions in agencies having substantially equivalent powers such as the National Labor Relations Board, the Federal Trade Commission and the Federal Power Commission.

SECTION 10

Section 715.—This section transfers the powers and duties of the Secretary of Labor under Executive Order 11246 (as amended by Executive Order 11375) to the Equal Employment Opportunity Commission. Executive Order 11246 enunciates the policy of the Government of the United States " . . . to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex, or natural origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. . . " (E.O. 11246 § 101 as amended) The Executive order program is presently administered within the Department of Labor by the Office of Federal Contract Compliance, a division of the Employment Standards Administration.

The present section 715 relating to a special study by the Secretary of Labor is repealed by the substitution of the new provisions. That study has been completed and the section has no more effect.

SECTION 11

Section 717(a).—This subsection would make clear that personnel actions of the U.S. Government affecting employees or applicants for employment shall be made free from any discrimination based on race, color, religion, sex, or national origin. All employees subject to the executive branch and Civil Service Commission control or protection are covered by this section.

Section 717(b).—Under this subsection, the Commission would have the authority to enforce the provision of subsection 715(a). The Commission would be empowered to issue rules, regulations, orders and instructions as it deems necessary. The head of each executive department and agency and the appropriate officer of the District of Columbia would be required to comply with such Commission directives. Employees or applicants must be notified of final action on their complaints.

Section 717(c) and (d).—The provision of section 706(q) concerning private civil actions by aggrieved persons would apply to aggrieved Federal employees or applicants. They could file a civil action within

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30 days of notice of final action on a complaint given pursuant
subsection 717(b), or after 90 days from the filing of an initial charg

Section 717(e).—This section would transfer nondiscriminati
functions of the Civil Service Commission to the Equal Employme
Opportunity Commission.

Section 717(f).—This subsection would make the effective date
section 717 six months after the date of enactment of this act.

Section 717(g).—This subsection provides that nothing in this a
relieves any Government agency or official of his existing nondiscrim
nation obligations under the Constitution, other statutes, or executiv
orders.

SECTION 12

This section provides that the amended provisions of section 70
concerning the cease and desist enforcement powers would not appl
to charges filed with the Commission prior to the effective date
this act. In addition, those new or amended sections of title VII n
specifically stated in this section to be inapplicable to current charge
such as the amendments to sections 705, 709, 710, 713, and 715 woul
cover existing charges.

SHOWING CHANGES MADE IN THE CIVIL RIGHTS ACT OF 1964 BY S. 2515 (EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971)

Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

CIVIL RIGHTS ACT OF 1964

AN ACT To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * * * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *governments, governmental agencies, political subdivisions,* labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has [twenty-five] *eight* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or [a State or political subdivision thereof,] *any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code),* (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided,* That during the first year after the [effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, having fewer than seventy-five employees (and their agents) shall not

be considered employers, and, during the third year after such dat
date of enactment of the Equal Employment Opportunities Enforcem
Act of 1971, persons having fewer than [fifty] *twenty-five* employ
(and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regula
undertaking with or without compensation to procure employees
an employer or to procure for employees opportunities to work
an employer and includes an agent of such a person [; but shall n
include an agency of the United States, or an agency of a State
political subdivision of a State, except that such term shall inclu
the United States Employment Service and the system of State a
local employment services receiving Federal assistance].

(d) The term "labor organization" means a labor organizati
engaged in an industry affecting commerce, and any agent of such
organization, and includes any organization of any kind, any agenc
or employee representation committee, group, association, or plan
engaged in which employees participate and which exists for t
purpose, in whole or in part, of dealing with employers concerni
grievances, labor disputes, wages, rates of pay, hours, or other ter
or conditions of employment, and any conference, general committe
joint or system board, or joint council so engaged which is subordina
to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in a
industry affecting commerce if (1) it maintains or operates a hiri
hall or hiring office which procures employees for an employer
procures for employees opportunities to work for an employer, or (
the number of its members (or, where it is a labor organization co
posed of other labor organizations or their representatives, if t
aggregate number of the members of such other labor organizatio
is (A) [one hundred] *twenty-five* or more during the first year aft
the [effective date prescribed in subsection (a) of section 716, (B
seventy-five or more during the second year after such date or fift
or more during the third year, or (C) twenty-five] *date of enactme*
of the Equal Employment Opportunities Enforcement Act of 1971,
(*B*) *eight* or more thereafter, and such labor organization—

(1) is the certified representative of employees under th
provisions of the National Labor Relations Act, as amended,
the Railway Labor Act, as amended;

(2) although not certified, is a national or international labo
organization or a local labor organization recognized or acting a
the representative of employees of an employer or employer
engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary bod
which is representing or actively seeking to represent employee
of employers within the meaning of paragraph (1) or (2); o

(4) has been chartered by a labor organization representing o
actively seeking to represent employees within the meaning
paragraph (1) or (2) as the local or subordinate body through
which such employees may enjoy membership or become affiliate
with such labor organization; or

(5) is a conference, general committee, joint or system board
or joint council subordinate to a national or international labo
organization, which includes a labor organization engaged in a

industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of [1959.] *1959, and further includes any governmental industry, business, or activity.*

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, *educational institution*, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, *educational institution*, or society of its religious activities [or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution].

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals' race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees *or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a lab organization—

(1) to exclude or to expel from its membership, or otherwi to discriminate against, any individual because of his race, colo religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, *or applican for membership* or to classify or fail or refuse to refer for emplo ment any individual, in any way which would deprive or tend deprive any individual of employment opportunities, or wou limit such employment opportunities or otherwise adversely affe his status as an employee or as an applicant for employmen because of such individual's race, color, religion, sex, or nation origin; or

(3) to cause or attempt to cause an employer to discrimina against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employe labor organization, or joint labor-management committee controllin apprenticeship or other training or retraining, including on-the-jo training programs to discriminate against any individual because o his race, color, religion, sex, or national origin in admission to, o employment in, any program established to provide apprenticeship o other training.

(e) Notwithstanding any other provision of this title, (1) it sha not be an unlawful employment practice for an employer to hire an employ employees, for an employment agency to classify, or refer fo employment any individual, for a labor organization to classify it membership or to classify or refer for employment any individual, o for an employer, labor organization, or joint labor-management com mittee controlling apprenticeship or other training or retraining pro grams to admit or employ any individual in any such program, on th basis of his religion, sex, or national origin in those certain instance where religion, sex, or national origin is a bona fide occupational quali fication reasonably necessary to the normal operation of that particula business or enterprise, and (2) it shall not be an unlawful employmen practice for a school, college, university, or other educational institu tion or institution of learning to hire and employ employees of a par ticular religion if such school, college, university, or other educationa institution or institution of learning is, in whole or in substantial part owned, supported, controlled, or managed by a particular religion o by a particular religious corporation, association, or society, or if th curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propaga tion of a particular religion.

(f) As used in this title, the phrase "unlawful employment prac tice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other orga nization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse

to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if -

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor orginization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for employer to discriminate against any of his employees or applica for employment, for an employment agency *or joint labor-manageme committee controlling apprenticeship or other training or retraining, cluding on-the-job training programs*, to discriminate against any i dividual, or for a labor organization to discriminate against a member thereof or applicant for membership, because he has oppos any practice made an unlawful employment practice by this title, because he has made a charge, testified, assisted, or participated in a manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employe labor organization, [or employment agency] *employment agency joint labor-management committee controlling apprenticeship or oth training or retraining including on-the-job training programs*, to pri or publish or cause to be printed or published any notice or advertis ment relating to employment by such an employer or membersh in or any classification or referral for employment by such a lab organization, or relating to any classification or referral for emplo ment by such an employment agency, *or relating to admission to, employment in, any program established to provide apprenticeship other training by such a joint labor-management committee* indicati any preference, limitation, specification, or discrimination, based race, color, religion, sex, or national origin, except that such a noti or advertisement may indicate a preference, limitation, specificatio or discrimination based on religion, sex, or national origin wh religion, sex, or national origin, is a bona fide occupational qualificati for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known the Equal Employment Opportunity Commission, which shall be co posed of five members, not more than three of whom shall be membe of the same political party, who shall be appointed by the Presid by and with the advice and consent of the Senate *and all members the Commission shall continue to serve until their successors are appoint and qualified: Provided, That no such member of the Commission sha continue to serve (1) for more than sixty days when the Congress is session unless a nomination to fill such vacancy shall have been submitt to the Senate, or (2) after the adjournment sine die of the session of th Senate in which such nomination was submitted.* One of the origin members shall be appointed for a term of one year, one for a term two years, one for a term of three years, one for a term of four years and one for a term of five years, beginning from the date of enact ment of this title, but their successors shall be appointed for terms five years each, except that any individual chosen to fill a vacanc shall be appointed only for the unexpired term of the member who he shall succeed. The President shall designate one member to serv as Chairman of the Commission, and one member to serve as Vic Chairman. The Chairman shall be responsible on behalf of the Com mission for the administrative operations of the Commission, an

hall appoint, in accordance with the [civil service laws, such officers, gents, attorneys,] *provisions of title 5, United States Code, governing ppointments in the competitive service, such officers, agents, attorneys, earings examiners,* and employees as it deems necessary to assist it in ie performance of its functions and to fix their compensation in ccordance with the [Classification Act of 1949, as amended. The ice Chairman shall act as Chairman in the absence or disability of ie Chairman or in the event of a vacancy in that office] *provisions of hapter 51 and subchapter III of chapter 53 of title 5, United States Code, elating to classification and General Schedule pay rates: Provided, That ssignment, removal, and compensation of hearing examiners shall be in ccordance with sections 3105, 3344, 5362, and 7521 of title 5, United tates Code.*

(b) A vacancy in the Commission shall not impair the right of the emaining members to exercise all the powers of the Commission and hree members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judi- ally noticed.

(d) The Commission shall at the close of each fiscal year report to he Congress and to the President concerning the action it has taken; e names, salaries, and duties of all individuals in its employ and the oneys it has disbursed; and shall make such further reports on the use of and means of eliminating discrimination and such recom- endations for further legislation as may appear desirable.

(e) [The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 201–2209), is further amended—

[(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

["(32) Chairman, Equal Employment Opportunity Commission": and

[(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205(a)) the following: "Equal Employment Opportunity Commission (4)."]

(1) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause.

"(55) Chairman, Equal Employment Opportunity Commission."

(2) Clause (72) of section 5315 of such title is amended to read as follows.

"(72) Members, Equal Employment Opporuntity Commission (4)."

(3) Clause (111) of section 5316 of such title is repealed.

(f) The principal office of the Commission shall be in or near the istrict of Columbia, but it may meet or exercise any or all its powers any other place. The Commission may establish such regional or ate offices as it deems necessary to accomplish the purpose of this le.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and [individuals;] *individuals, and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))".*

(2) to pay to witnesses whose depositions are taken or who summoned before the Commission or any of its agents the s witness and mileage fees as are paid to witnesses in the co of the United States;

(3) to furnish to persons subject to this title such techn assistance as they may request to further their compliance w this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employ or some of them, or (ii) any labor organization, whose mem or some of them, refuse or threaten to refuse to cooperate effectuating the provisions of this title, to assist in such effect tion by conciliation or such other remedial action as is provi by this title;

(5) to make such technical studies as are appropriate effectuate the purposes and policies of this title and to make results of such studies available to the public;

[(6) to refer matters to the Attorney General with recomm dations for intervention in a civil action brought by an aggrie party under section 706, or for the institution of a civil act by the Attorney General under section 707, and to advise, cons and assist the Attorney General on such matters.]

(6) *to intervene in a civil action brought by an aggrieved pa under section 706.*

(h) Attorneys appointed under this section may, at the direct of the Commission, appear for and represent the Commission in a case in court.

(i) The Commission shall, in any of its educational or promotio activities, cooperate with other departments and agencies in the p formance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commissi shall be subject to the provisions of section 9 of the Act of August 1939, as amended (the Hatch Act), notwithstanding any exempti contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. [(a) Whenever it is charged in writing under oath by person claiming to be aggrieved, or a written charge has been fil by a member of the Commission where he has reasonable cause believe a violation of this title has occurred (and such charge se forth the facts upon which it is based) that an employer, employme agency, or labor organization has engaged in an unlawful employme practice, the Commission shall furnish such employer, employme agency, or labor organization (hereinafter referred to as the "respon ent") with a copy of such charge and shall make an investigation such charge, provided that such charge shall not be made public b the Commission. If the Commission shall determine, after such inve tigation, that there is reasonable cause to believe that the charge true, the Commission shall endeavor to eliminate any such alleg unlawful employment practice by informal methods of conferenc conciliation, and persuasion. Nothing said or done during and as

art of such endeavors may be made public by the Commission with-
it the written consent of the parties, or used as evidence in a subse-
ient proceeding. Any officer or employee of the Commission, who
all make public in any manner whatever any information in violation
this subsection shall be deemed guilty of a misdemeanor and upon
nviction thereof shall be fined not more than $1,000 or imprisoned
t more than one year.]

SEC. 706. (a) *The Commission is empowered, as hereinafter provided,*
prevent any person from engaging in any unlawful employment prac-
e as set forth in section 703 or 704 of this title.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

[(a)] (*b*) Whenever [it is charged in writing under oath by a]
harge is filed by or on behalf of a person claiming to be aggrieved, or
written charge has been filed] by a member of the Commission
here he has reasonable cause to believe a violation of this title has
curred (and such charge sets forth the facts upon which it is based)]
on the request of any person claiming to be aggrieved, alleging that an
ployer, employment agency, [or] labor [organization] *organiza-*
n, or joint labor-management committee controlling apprenticeship
other training or retraining, including on-the-job training programs,
s engaged in an unlawful employment practice, the Commission
all [furnish] *serve a copy of the charge on* such employer, employment
ency, [or] labor [organization] *organization, or joint labor-manage-*
nt committee (hereinafter referred to as the "respondent") [with a
py of such charge and shall make an investigation of such charge,
ovided that such charge] *as soon as practicable thereafter and shall*
ke an investigation thereof. Charges shall be in writing and shall
ntain such information and be in such form as the Commission requires.
arges shall not be made public by the Commission. If the Com-
ssion [shall determine,] *determines* after such investigation[,]
at there is *not* reasonable cause to believe that the charge is true,
shall dismiss the charge and promptly notify the person claiming to be
grieved and the respondent of its action. If the Commission determines
er such investigation that there is reasonable cause to believe that the
arge is true, the Commission shall endeavor to eliminate any such
eged unlawful employment practice by informal methods of con-
ence, conciliation, and persuasion. Nothing said or done during
d as a part of such *informal* endeavors may be made public by the
Commission] *Commission, its officers or employees, or used as evidence*
a subsequent proceeding without the written consent of the [parties,
used as evidence in a subsequent proceeding] *persons concerned.*
y [officer or employee of the Commission,] *person* who [shall
ake] *makes* public [in any manner whatever any] information in
olation of this subsection [shall be deemed guilty of a misdemeanor
d upon conviction thereof] shall be fined not more than $1,000 or
prisoned *for* not more than one [year.] *year, or both. The Com-*
ssion shall make its determination on reasonable cause as promptly
possible and, so far as practicable, not later than one hundred and
enty days from the filing of the charge or, where applicable under sub-

section (c) or (d), from the date upon which the Commission is autho
to take action with respect to the charge.

[(b)] *(c)* In the case of [an alleged] *a charge filed by or on b*
of a person claiming to be aggrieved alleging an unlawful employ
practice occurring in a State, or political subdivision of a S
which has a State or local law prohibiting the unlawful employ
practice alleged and establishing or authorizing a State or
authority to grant or seek relief from such practice or to insti
criminal proceedings with respect thereto upon receiving n
thereof, [no charge may be filed under subsection (a) by the pe
aggrieved] *the Commission shall take no action with respect to*
investigation of such charge before the expiration of sixty days
proceedings have been commenced under the State or local
unless such proceedings have been earlier [terminated, provi
that] *terminated: Provided, That* such sixty-day period shall
extended to one hundred and twenty days during the first year a
the effective date of such State or local law. If any requirement
the commencement of such proceedings is imposed by a State
local authority other than a requirement of the filing of a writ
and signed statement of the facts upon which the proceedin
based, the proceeding shall be deemed to have been commenced
the purposes of this subsection at the time such statement is sen
registered *or certified* mail to the appropriate State or local autho

[(c)] *(d)* In the case of any charge filed by a member of the C
mission alleging an unlawful employment practice occurring in a S
or political subdivision of a State[,] which has a State or local law
hibiting the practice alleged and establishing or authorizing a S
or local authority to grant or seek relief from such practice o
institute criminal proceedings with respect thereto upon receiv
notice thereof[,] the Commission shall, before taking any action w
respect to such charge, notify the appropriate State or local offic
and, upon request, afford them a reasonable time, but not less t
sixty [days (provided that] *days: Provided*, That such sixty-day per
shall be extended to one hundred and twenty days during the f
year after the effective day of such State or local [law),] *law*, un
a shorter period is requested, to act under such State or local law
remedy the practice alleged.

[(d)] *(e)* A charge under [subsection (a)] *this section* shall be fi
with [ninety] *one hundred and eighty* days after the alleged unlaw
employment practice [occurred.] *occurred and a copy shall be ser*
upon the person against whom such charge is made as soon as practica
thereafter, except that in [the] *a* case of an unlawful employm
practice with respect to which the person aggrieved has [follow
the procedure set out in subsection (b).] *initially instituted proceedi*
with a State or local agency with authority to grant or seek relief from s
practice or to institute criminal proceedings with respect thereto u
receiving notice thereof, such charge shall be filed by *or on behalf*
the person aggrieved within [two hundred and ten] *three hund*
days after the alleged unlawful employment practice occurred,
within thirty days after receiving notice that the State or local agen

as terminated the proceedings under the State or local law, whichver is earlier, and a copy of such charge shall be filed by the Commison with the State or local agency.

(f) *If the Commission determines after attempting to secure voluntary* mpliance *under subsection (b) that it is unable to secure from the respond*nt *a conciliation agreement acceptable to the Commission and to the* erson *aggrieved, which determination shall not be reviewable in any* ourt, *the Commission shall issue and cause to be served upon the respond*nt *a complaint stating the facts upon which the allegation of the unlawful* nployment *practice is based, together with a notice of hearing before the* ommission, *or a member or agent thereof, at a place therein fixed not less* an *five days after the serving of such complaint. Related proceedings may* consolidated *for hearing. Any member of the Commission who filed a* harge *in any case shall not participate in a hearing on any complaint* rising *out of such charge, except as a witness.*

(g) *A respondent shall have the right to file an answer to the complaint* gainst *him and with the leave of the Commission, which shall be granted* henever *it is reasonable and fair to do so, may amend his answer at any* me. *Respondents and the person aggrieved shall be parties and may* ppear *at any stage of the proceedings, with or without counsel. The* ommission *may grant such other person a right to intervene or to file* iefs *or make oral arguments an amicus curiae or for other purposes, as* considers *appropriate. All testimony shall be taken under oath and* all *be reduced to writing. Any such proceeding shall, so far as practicable,* conducted *in accordance with the rules of evidence applicable in the* strict *courts of the United States under the Rules of Civil Procedure for* e *district courts of the United States.*

"(h) *If the Commission finds that the respondent has engaged in an* nlawful *employment practice, the Commission shall state its findings of* ct *and shall issue and cause to be served on the respondent and the person* persons *aggrieved by such unlawful employment practice an order re*iring *the respondent to cease and desist from such unlawful employment* ractice *and to take such affirmative action, including reinstatement or* ring *of employees, with or without backpay (payable by the employer,* nployment *agency, or labor organizations, as the case may be, responsible* r *the unlawful employment practice), as will effectuate the policies of this* le: *Provided, That interim earnings or amounts earnable with reasonable* ligence *by the aggrieved person or persons shall operate to reduce the* ckpay *otherwise allowable. Such order may further require such respond*t *to make reports from time to time showing the extent to which he has* mplied *with the order. If the Commission finds that the respondent has* t *engaged in any unlawful employment practice, the Commission shall* ate *its findings of fact and shall issue and cause to be served on the* spondent *and the person or persons alleged in the complaint to be ag*ieved *an order dismissing the complaint.*

(i) *After a charge has been filed and until the record has been filed in* urt *as hereinafter provided, the proceeding may at any time be ended by* reement *between the Commission and the parties for the elimination of* e *alleged unlawful employment practice and the Commission may at any* ne, *upon reasonable notice, modify or set aside, in whole or in part,*

any finding or order made or issued by it. An agreement approved b
Commission shall be enforceable under subsections (l) through (n) an
provisions of those subsections shall be applicable to the extent appro
to a proceeding to enforce an agreement.

(j) Findings of fact and orders made or issued under subsection
or (i) of this section shall be determined on the record. Section 554,
556, and 557 of title 5 of the United States Code shall apply to
proceedings.

(k) Any party aggrieved by a final order of the Commission granti
denying in whole or in part the relief sought may obtain a review of
order in any United States court of appeals for the circuit in whic
unlawful employment practice in question is alleged to have occ
or in which such party resides or transacts business, or in the Cou
Appeals for the District of Columbia Circuit, by filing in such court w
sixty days after the service of such order, a written petition praying
the order of the Commission be modified or set aside. A copy of such pet
shall be forthwith transmitted by the clerk of the court to the Commis
and to any other party to the proceeding before the Commission,
thereupon the Commission shall file in the court the record in the proceed
as provided in section 2112 of title 28, United States Code. Upon the fi
of the petition the court shall have jurisdiction of the proceeding and o
question determined therein, and shall have power to grant to the petiti
or any other party, including the Commission, such temporary relie
restraining order as it deems just and proper, and to make and enter u
the pleadings, testimony, and proceedings set forth in such record a de
affirming, modifying, or setting aside, in whole or in part, the order o
Commission and enforcing the same to the extent that such order is affir
or modified. Any party to the proceeding before the Commission shal
permitted to intervene in the court of appeals. The commencement
proceedings under this subsection shall not, unless ordered by the co
operate as a stay of the order of the Commission. No objection that
not been urged before the Commission, its member, or agent shall be c
sidered by the court, unless the failure or neglect to urge such object
shall be excused because of extraordinary circumstances. The findings
the Commission with respect to questions of fact, if supported by s
stantial evidence on the record considered as a whole, shall be conclus
If any party shall apply to the court for leave to adduce additional evide
and shall show to the satisfaction of the court that such additional evide
is material and that there were reasonable grounds for the failure
adduce such evidence in the hearing before the Commission, its memb
or its agent, the court may order such additional evidence to be taken be
the Commission, its member, or its agent, and to be made a part of
record. The Commission may modify its findings as to the facts, or ma
new findings, by reason of additional evidence so taken and filed, and
shall file such modified or new findings, which findings with respect
questions of fact, if supported by substantial evidence on the record co
sidered as a whole, shall be conclusive, and its recommendations, if an
for the modification or setting aside of its original order. Upon the fili
of the record with it, the jurisdiction of the court shall be exclusive and
judgment and decree shall be final, except that the same shall be subj
to review by the Supreme Court of the United States, as provided in secti
1254 of title 28, United States Code. Petitions filed under this subsecti
shall be heard expeditiously.

(l) The Commission may petition any United States court of appeals for the circuit in which the unlawful employment practice in question occurred or in which the respondent resides or transacts business, for the enforcement of its order and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that its order be enforced and for appropriate temporary relief or restraining order. The Commission shall file in court with its petition the record in the proceeding as provided in section 2112 of title 28, United States Code. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the Commission. Upon the filing of such petition, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant to the Commission, or any other party, such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. No objection that has not been urged before the Commission, its members, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(m) If no petition for review, as provided in subsection (k), is filed within sixty days after service of the Commission's order the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Commission under subsection (l) after expiration of such sixty-day period. The clerk of the court of appeals in which such petition for enforcement is filed shall forthwith enter a decree enforcing the order of the Commission and shall submit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Commission.

"(n) If, within ninety days after service of the Commission's order, no petition for review has been filed as provided in subsection (k), and the Commission has not sought enforcement of its order as provided in sub-

section (1), any person entitled to relief under the Commission's order petition for a decree enforcing the order in the United States co appeals for the circuit in which the unlawful employment practi question occurred, or in which a respondent named in the order resi transacts business. The provisions of subsection (m) shall apply to petitions for enforcement.

(o) The Attorney General shall conduct all litigation to which Commission is a party in the Supreme Court of the United States purs to this title. All other litigation affecting the Commission, or to whi is a party, shall be conducted by attorneys appointed by the Commis

(p) Whenever a charge is filed with the Commission pursuant to section (b) and the Commission concludes on the basis of a prelimi investigation that prompt judicial action is necessary to preserve power of the Commission to grant effective relief in the proceeding Commission shall, after it issues a complaint, bring an action for ap priate temporary or preliminary relief pending its final disposition such charge, or until the filing of a petition under subsections (k), (l), or (n) of this section, as the case may be, in the United States district for any judicial district in the State in which the unlawful employ practice concerned is alleged to have been committed, or the judicial dis in which the aggrieved person would have been employed but for the all unlawful employment practice, but, if the respondent is not found w any such judicial district, such an action may be brought in the jud district in which the respondent has his principal office. For purpose sections 1404 an 1406 of title 28, United States Code, the judicial dis in which the respondent has his principal office shall in all case considered a judicial district in which such an action might have brought. Upon the bringing of any such action, the district court s have jurisdiction to grant such injunctive relief or temporary restrai order as it deems just and proper, notwithstanding any other provisio law. Rule 65 of the Federal Rules of Civil Procedure, except paragr (a)(2) thereof, shall govern proceedings under this subsection.

(q)(1) If a charge filed with the Commission pursuant to subsection is dismissed by the Commission, or within one hundred and eighty d from the filing of such charge or the expiration of any period of refer under subsection (c) or (d), whichever is later, the Commission has not issued a complaint under subsection (f) nor entered into an agreem under subsection (f) or (i) which is acceptable to the Commission and to person aggrieved, the Commission shall so notify the person aggri and within sixty days after the giving of such notice a civil action may brought against the respondent named in the charge (1) by the per claiming to be aggrieved, or (2) if such charge was filed by a member of Commission, by any person whom the charge alleges was aggrieved by alleged unlawful employment practice. Upon application by the comp ant and in such circumstances as the court may deem just, the court m appoint an attorney for such complainant and may authorize the c mencement of the action without the payment of fees, costs, or secur Upon the commencement of such civil action, the Commission shall divested of jurisdiction over the proceeding and shall take no further act with respect thereto, except that, upon timely application, the court in discretion may permit the Commission to intervene in such civil action the Commission certifies that the case is of general public importance. Up request, the court may, in its discretion, stay further proceedings for

more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

(2) The right of an aggrieved person to bring a civil action under paragraph (1) of this subsection shall terminate once the Commission has issued a complaint under subsection (f), or has entered into an agreement under subsection (f) or (i) which is acceptable to the Commission and to the person aggrieved: Provided, That if after issuing a complaint the Commission has not issued an order under subsection (h) within a period of one hundred and eighty days of the issuance of the complaint, the Commission shall so notify the person aggrieved and a civil action may be brought against the respondent named in the charge at any time prior to the Commission's issuance of an order under subsection (h): Provided further, That if the person aggrieved files a civil action against the respondent during the period from one hundred and eighty days to one year after the issuance of the complaint such person shall notify the Commission of such action and the Commission may petition the court not to proceed with the suit. The court may dismiss or stay any such action upon a showing that the Commission has been acting with due diligence on the complaint, that the Commission anticipates the issuance of an order under subsection (h) within a reasonable period of time, that the case is exceptional, and that extension of the Commission's jurisdiction is warranted.

[(f)](*r*) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought. *Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper.*

[(g)](*s*) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charge in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order or the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an

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employee, or the payment to him of any back pay, if such individ
was refused admission, suspended, or expelled or was refused empl
ment or advancement or was suspended or discharged for any r
son other than discrimination on account of race, color, religion, s
or national origin or in violation of section 704(a).

[(h)] (*t*) The provisions of the Act entitled "An Act to amend
Judicial Code and to define and limit the jurisdiction of courts sitt
in equity, and for other purposes," approved March 23, 1932
U.S.C. 101–115), shall not apply with respect to civil actions brou
under this section.

[(i)] (*u*) In any case in which an employer, employment agen
or labor organization fails to comply with an order of a court issu
in a civil action brought under subsection [(e),] (*g*), the Commissi
may commence proceedings to compel compliance with such order.

[(j)] (*v*) Any civil action brought under subsection (e) and a
proceedings brought under subsection [(i)] (*u*) shall be subject
appeal as provided in sections 1291 and 1292, title 28, United Sta
Code.

[(k)] (*w*) In any action or proceeding under this title the court,
its discretion, may allow the prevailing party, other than the Co
mission or the United States, a reasonable attorney's fee as part
the costs, and the Commission and the United States shall be liab
for costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonable cau
to believe that any person or group of persons is engaged in a patte
or practice of resistance to the full enjoyment of any of the righ
secured by this title, and that the pattern or practice is of such a natu
and is intended to deny the full exercise of the rights herein describe
the Attorney General may bring a civil action in the appropria
district court of the United States by filing with it a complai
(1) signed by him (or in his absence the Acting Attorney Genera
(2) setting forth facts pertaining to such pattern or practice, a
(3) requesting such relief, including an application for a permane
or temporary injunction, restraining order or other order against t
person or persons responsible for such pattern or practice, as he deem
necessary to insure the full enjoyment of the rights herein describe

(b) The district courts of the United States shall have and sha
exercise jurisdiction of proceedings instituted pursuant to this se
tion, and in any such proceeding the Attorney General may file wi
the clerk of such court a request that a court of three judges be co
vened to hear and determine the case. Such request by the Attorne
General shall be accompanied by a certificate that, in his opinion, th
case is of general public importance. A copy of the certificate an
request for a three-judge court shall be immediately furnished by suc
clerk to the chief judge of the circuit (or in his absence, the presidin
circuit judge of the circuit) in which the case is pending. Upon receip
of such request it shall be the duty of the chief judge of the circuit o
the presiding circuit judge, as the case may be, to designate imme
diately three judges in such circuit, of whom at least one shall be
circuit judge and another of whom shall be a district judge of the cour
in which the proceeding was instituted, to hear and determine such
case, and it shall be the duty of the judges so designated to assign th
case for hearing at the earliest practicable date, to participate in th

hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (d) and (e) of this section.

(d) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the Attorney General or Acting Attorney General, as appropriate.

(e) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: Provided, That all such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative

shall at all reasonable times have access to, for the purposes of exa
ination, and the right to copy any evidence of any person being inves
gated or proceeded against that relates to unlawful employme
practices covered by this title and is relevant to the charge und
investigation.

(b) The Commission may cooperate with State and local agenc
charged with the administration of State fair employment practi
laws and, with the consent of such agencies, may for the purpose
carrying out its functions and duties under this title and within t
limitation of funds appropriated specifically for such purpose, *engo
in and contribute to the cost of research and other projects of mutu
interest undertaken by such agencies, and* utilize the services of su
agencies and their employees and, notwithstanding any other pro
sion of law, may *pay by advance or* reimburse such agencies and th
employees for services rendered to assist the Commission in carryi
out this title. In furtherance of such cooperative efforts, the Co
mission may enter into written agreements with such State or loc
agencies and such agreements may include provisions under whi
the Commission shall refrain from processing a charge in any cas
or class of cases specified in such agreements [and under which
person may bring a civil action under section 706 in any cases or cla
of cases so specified, or under which the Commission shall relie
any person or class of] *or under which the Commission shall relieve a
person or class or* persons in such State or locality from requiremen
imposed under this section. The Commission shall rescind any su
agreement whenever it determines that the agreement no long
serves the interest of effective enforcement of this title.

(c) [Except as provided in subsection (d), every] *Every* employe
employment agency, and labor organization subject to this title sh
(1) make and keep such records relevant to the determinations
whether unlawful employment practices have been or are being co
mitted, (2) preserve such records for such periods, and (3) make su
reports therefrom, as the Commission shall prescribe by regulatio
or order, after public hearing, as reasonable, necessary, or appropria
for the enforcement of this title or the regulations or orders there
under. The Commission shall, by regulation, require each employe
labor organization, and joint labor-management committee subject t
this title which controls an apprenticeship or other training program t
maintain such records as are reasonably necessary to carry out th
purpose of this title, including, but not limited to, a list of applicant
who wish to participate in such program, including the chronologica
order in which such [applications] *applicants* were received, an
[shall] *to* furnish to the Commission, upon request, a detailed de
scription of the manner in which persons are selected to participat
in the apprenticeship or other training program. Any employe
employment agency, labor organization, or joint labor-managemen
committee which believes that the application to it of any regulatio
or order issued under this section would result in undue hardship ma
[(1)] apply to the Commission for an exemption from the applicatio
of such regulation or order, [or (2)] *and, if such application for a
exemption is denied,* bring a civil action in the United States distric
court for the district where such records are kept. If the Commission o

the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. *If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.*

[(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.]

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished in condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission or its representative, or to the Attorney General or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the members of the Commission nor its representative, or the Attorney General, or his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any

case or proceeding before any court or grand jury. The United States d trict court for the district in which a demand is made or in which a rec or paper so demanded is located, shall have jurisdiction to compel by app priate process the production of such record or paper.

[(e)] *(f)* It shall be unlawful for any officer or employee of t Commission to make public in any manner whatever any informati obtained by the Commission pursuant to its authority under t section prior to the institution of any proceeding under this ti involving such information. Any officer or employee of the Commissi who shall make public in any manner whatever any information violation of this subsection shall be guilty of a misdemeanor and up conviction thereof, shall be fined not more than $1,000, or imprison not more than one year.

INVESTIGATORY POWERS

[SEC. 710. (a) For the purposes of any investigation of a char filed under the authority contained in section 706, the Commissi shall have authority to examine witnesses under oath and to requi the production of documentary evidence relevant or material to t charge under investigation.

[(b) If the respondent named in a charge filed under section 7 fails or refuses to comply with a demand of the Commission for pe mission to examine or to copy evidence in conformity with the pr visions of section 709(a), or if any person required to comply wi the provisions of section 709 (c) or (d) fails or refuses to do so, if any person fails or refuses to comply with a demand by the Cor mission to give testimony under oath, the United States district cou for the district in which such person is found, resides, or transac business, shall, upon application of the Commission, have jurisdicti to issue to such person an order requiring him to comply with th provisions of section 709 (c) or (d) or to comply with the dema of the Commission, but the attendance of a witness may not b required outside the State where he is found, resides, or transac business and the production of evidence may not be required outsi the State where such evidence is kept.

[(c) Within twenty days after the service upon any person charge under section 706 of a demand by the Commission for the productio of documentary evidence or for permission to examine or to cop evidence in conformity with the provisions of section 709(a), suc person may file in the district court of the United States for th judicial district in which he resides, is found, or transacts business, an serve upon the Commission a petition for an order of such cou modifying or setting aside such demand. The time allowed for con pliance with the demand in whole or in part as deemed proper an ordered by the court shall not run during the pendency of such petitio in the court. Such petition shall specify each ground upon which th petitioner relies in seeking such relief, and may be based upon an failure of such demand to comply with the provisions of this title o with the limitations generally applicable to compulsory process o upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may b urged in the defense to a proceeding initiated by the Commission unde

subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

[(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.]

Sec. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply: Provided, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706.

NOTICES TO BE POSTED

Sec. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' PREFERENCE

Sec. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

Sec. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense,

if established, shall be a bar to the action or proceeding, notwi
standing that (A) after such act or omission, such interpretation
opinion is modified or rescinded or is determined by judicial author
to be invalid or of no legal effect, or (B) after publishing or filing t
description and annual reports, such publication or filing is det
mined by judicial authority not to be in conformity with the requi
ments of this title.

*(c) Except for the powers granted to the Commission under subsecti
(h) of section 706, the power to modify or set aside its findings, or ma
new findings, under subsections (i), (k), and (l) of section 706, the ru
making power as defined in subchapter II of chapter 5 of title 5, Uni
States Code, with reference to general rules as distinguished from rules
specific applicability, and the power to enter into or rescind agreemer
with State and local agencies, as provided in subsection (b) of section 70
under which the Commission agrees to refrain from processing a charge
any cases or class of cases or under which the Commission agrees
relieve any person or class of persons in such State or locality fr
requirements imposed by section 709, the Commission may delegate any
its functions, duties, and powers to such person or persons as the Co
mission may designate by regulation, including functions, duties, a
powers with respect to hearing, determining, ordering, certifying, reporti
or otherwise acting as to any work, business, or matter: Provided, Th
nothing in this subsection authorizes the Commission to provide for perso
other than those referred to in clauses (2) and (3) of subsection (b)
section 556 of title 5 of the United States Code to conduct any hearing
which that section applies.*

*(d) The Commission is authorized to delegate to any group of three
more members of the Commission any or all of the powers which it m
itself exercise.*

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of section 111, title 18, United Stat
Code, shall apply to officiers, agents, and employees of the Con
mission in the performance of their official duties.

SPECIAL STUDY BY SECRETARY OF LABOR

[SEC. 715. The Secretary of Labor shall make a full and complet
study of the factors which might tend to result in discrimination i
employment because of age and of the consequences of such discrim
nation on the economy and individuals affected. The Secretary o
Labor shall make a report to the Congress not later than June 30
1965, containing the results of such study and shall include in suc
report such recommendations for legislation to prevent arbitrary di
crimination in employment because of age as he determines advisable.]

*SEC. 715. All authority, functions, and responsibilities vested in th
Secretary of Labor pursuant to Executive Order 11246 relating to non
discrimination in employemnt by Government contractors and subcon
tractors and nondiscrimination in federally assisted construction contract
are transferred to the Equal Rights Employment Opportunity Commission
together with such personnel, property, records, and unexpended balance
of appropriations, allocations, and other funds employed, used, held*

vailable or to be made available in connection with the functions trans-rred to the Commission hereby as may be necessary to enable the Com-ission to carry out its functions pursuant to this subsection, and the ommission shall hereafter carry out all such authority, functions, and sponsibilities pursuant to such order.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the ate of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than ctions 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of is title, convene one or more conferences for the purpose of enabling e leaders of groups whose members will be affected by this title to ecome familiar with the rights afforded and obligations imposed by s provisions, and for the purpose of making plans which will result the fair and effective administration of this title when all of its ovisions become effective. The President shall invite the participa-on in such conference or conferences of (1) the members of the esident's Committee on Equal Employment Opportunity, (2) the embers of the Commission on Civil Rights, (3) representatives of ate and local agencies engaged in furthering equal employment portunity, (4) representatives of private agencies engaged in fur-ering equal employment opportunity, and (5) representatives of nployers, labor organizations, and employment agencies who will be bject to this title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) All personnel actions affecting employees or applicants r employment (except with regard to aliens employed outside the limits the United States) in military departments as defined in section 102 of le 5, United States Code, in executive agencies (other than the General ccounting Office) as defined in section 105 of title 5, United States Code ncluding employees and applicants for employment who are paid from nappropriated funds), and in those portions of the government of the istrict of Columbia, and the legislative and judicial branches of the ederal Government having positions in the competitive service, shall be ade free from any discrimination based on race, color, religion, sex, or tional origin.

(b) The Equal Employment Opportunity Commission shall have thority to enforce the provision of subsection (a) and shall issue such les, regulations, orders, and instructions as it deems necessary and propriate to carry out its responsibilities hereunder, and the head of ch executive department and agency and the appropriate officers of the istrict of Columbia shall comply with such rules, regulations, orders, d instructions: Provided, That such rules and regulations shall provide at an employee or applicant for employment shall be notified of any al action taken on any complaint filed by him thereunder.

(c) Within thirty days of receipt of notice, given pursuant to subsection), of final action taken on a complaint of discrimination based on race, lor, religion, sex, or national origin, or after ninety days from the filing

of the initial charge until such time as final action may be take
employee or applicant for employment, if aggrieved by the final dispos
of his complaint, or by the failure to take final action on his comp
may file a civil action as provided in section 706(q), in which civil a
the head of the executive department or agency, or the District of Colu
as appropriate, shall be the respondent.

(d) The provisions of section 706 (q) through (w), as applicable,
govern civil actions brought hereunder.

(e) All functions of the Civil Service Commission which the Di
of the Office of Management and Budget determines relate to no
crimination in Government employment are transferred to the E
Employment Opportunity Commission.

(f) This section shall become effective six months after the dat
enactment of this Act.

(g) Nothing contained in this Act shall relieve any Government ag
or official of its or his primary responsibility to assure nondiscrimina
in employment as required by the Constitution, statutes, and Exec
orders.

92D CONGRESS
1ST SESSION

S. 2617

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1971

Mr. DOMINICK introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 (f) (6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General

under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an em-

ployer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within five days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informed methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed within one hundred and eighty days after the alleged unlaw-

ful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or

refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) are redesignated as subsections (g) through (l), respectively, and, in newly designated subsection (k) the reference to

subsection (i) is changed to subsection (j), and the following new section is added after section 706(e) thereof:

"(f) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative

action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

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92D CONGRESS
1ST SESSION

H. R. 1746

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 1971

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 (f) (6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General

under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an em-

ployer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within five days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed within one hundred and eighty days after the alleged unlaw-

ful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent

named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) are redesignated as subsections (g) through (l), respectively, and, in newly designated subsection (k) the reference to subsection (i) is changed to subsection (j), and the following new section is added after section 706(e) thereof:

"(f) Whenever a charge is filed with the Commission

and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(c) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlaw-

ful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

Passed the House of Representatives September 16, 1971.

Attest: W. PAT JENNINGS,

82 *Clerk.*

SECTION-BY-SECTION ANALYSIS OF EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1971—S. 2617 AND H.R. 1746

SECTION 2

Section 705(6).—This subsection is amended to provide authority for the Equal Employment Opportunity Commission to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under Section 706 or permit the Attorney General to institute a civil action under Section 707 and to provide for the Justice Department instituting of appellate proceedings in the public interest.

Section 706(h).—This subsection would authorize attorneys appointed by the Commission to appear to represent the Commission in any case in court. The Attorney General would retain the authority to conduct all litigations to which the Commission is a party in the Supreme Court or in the Courts of Appeals of the United States. All other litigation affecting the Commission or to which it is a party would be conducted by the Commission.

SECTION 3

Section 706.—This section amends several subsections of 706 of the Civil Rights Act of 1964 as follows:

SECTION 3(a)

Section 706(a).—This subsection prescribes the procedures to be followed when a charge of an unlawful employment practice is filed with the Commission. The Commission must serve a copy of the charge on the respondent within five days, investigate the charge and make its determination on whether there is reasonable cause to believe that the charge is true. If it finds reasonable cause, it must endeavor to eliminate the unlawful employment practice by conference conciliation and persuasion.

The subsection would also require that in addition to a charge being made in writing under oath by persons claiming to be aggrieved, where there is a charge filed by a member of the Commission who has reasonable cause to believe a violation of the title has occurred, the charge must set forth the facts upon which it is based and the person or persons aggrieved.

SECTION 3(b)

Section 706(b).—This subsection would provide that a charge under Section 706(a)) shall be filed within 180 days after the alleged unlawful employment practice occurred, with provisions for extending the time where there has been a deferral to a State agency. The effect of this subsection would be to extend the time from 90 days for

charges of unlawful employment practice to 180 days. This subsect would make the charges filed under Section 706 the exclusive reme of any person claiming to be aggrieved by unlawful employm practices of an employer, employment agency or labor organizati With the exception of pattern and practice cases under Section 7 the effect of this subsection would be to preclude complaints of ra discrimination under any other Federal statute including the Natio Labor Relations Act, the Civil Rights Act of 1966, the Equal P Act of 1963 and probably State and Local Fair Employment Practi Acts.

SECTION 3(c)

Section 706(e).—This subsection provides that within thirty da after a charge is filed with the Commission, or within thirty days aft the expiration of a period of reference to a state agency, if the Co mission cannot obtain voluntary compliance, it is authorized to bri a civil action against the respondent. The subsection also provid that if the Commission does not obtain voluntary compliance a does not institute a civil action against the respondent within 1 days of the filing of the charge, a civil action may be brought by t respondent against the respondent within the next 90 days by t person claiming to be aggrieved or if it is a Commission charge by a person whom the charge alleges was aggrieved by the alleged unlaw employment practice. The subsection permits the District Court appoint an attorney for the complainant and authority to waive cos The court is given the discretion to permit the Attorney General intervene in the civil action if he certifies that the case is of gene importance and authorizes the court in its discretion to stay furth proceedings for not more than 60 days pending termination of st and local proceedings or effort by the Commission to obtain volunta compliance.

SECTION 3(d)

This section renumbers sections 706(f) through (k) to beco Sections 706(g) through (l) and redesignates other references.

Section 706(f).—Under this subsection if after a charge is filed t Commission concludes on the basis of a preliminary investigation prompt judicial action is necessary to carry out the purposes of t Act, it may bring an action for appropriate temporary and prelimina relief in the United States District Court in the judicial district which the unlawful employment practice is alleged to have be committed, where the party would have been employed but for t alleged unlawful practice. The District Court is authorized to gra such temporary or permanent relief as it deems just and prop There is a proviso in the subsection that no such order shall be order absent a showing that substantial and irreparable injury to the a grieved party will be unavoidable. The subsection provides an exp dited hearing of the cases filed under this subsection.

SECTION (3e)

Section 706(h).—This subsection provides the authority for t Court to issue relief for violations of Title VII. If the Court fin that the respondent is intentionally engaged in an unlawful emplo ment practice the court may enjoin the respondent from engaging

such unlawful employment practice and order such affirmative action as may be appropriate including reinstatement or rehiring of employees, without back pay. Interim earnings would operate to reduce the back pay, otherwise allowable. The subsection also provides that a court order shall not require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement or promotion of an individual as an employee or the payment of any back pay if such individual did not file a charge nor was named in a charge or amendment or was refused admission, suspended or expelled or refused employment or advancement, suspended or discharged for any reason other than discrimination in violation of such in Section 704(a). A limitation in back pay or other liability accruing more than two years is contained in the subsection.

SHOWING CHANGES MADE IN THE CIVIL RIGHTS ACT OF 1964 BY S. 2617 AND H.R. 1746 (EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1971)

Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

CIVIL RIGHTS ACT OF 1964

AN ACT To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * * * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivisions thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided,* That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees

for an employer or to procure for employees opportunities to wo
for an employer and includes an agent of such a person; but sha
not include an agency of the United States, or an agency of
State or political subdivision of a State, except that such ter
shall include the United States Employment Service and th
system of State and local employment services receiving Federa
assistance.

(d) The term "labor organization" means a labor organizatio
engaged in an industry affecting commerce, and any agent o
such an organization, and includes any organization of any kind
any agency, or employee representation committee, group
association, or plan so engaged in which employees participat
and which exists for the purpose, in whole or in part, of dealin
with employers concerning grievances, labor disputes, wages
rates of pay, hours, or other terms or conditions of employment
and any conference, general committee, joint or system board, o
joint council so engaged which is subordinate to a national o
international labor organization.

(e) A labor organization shall be deemed to be engaged in a
industry affecting commerce if (1) it maintains or operates
hiring hall or hiring office which procures employees for a
employer or procures for employees opportunties to work for a
employer, or (2) the number of its members (or, where it is
labor organization composed of other labor organizations or thei
representatives, if the aggregate number of the members of suc
other labor organization) is (A) one hundred or more during th
first year after the effective date prescribed in subsection (a) o
section 716, (B) seventy-five or more during the second yea
after such date or fifty or more during the third year, or (C)
twenty-five or more thereafter, and such labor organization—

(1) is the certified representative of employees under th
provisions of the National Labor Relations Act, as amended
or the Railway Labor Act, as amended;

(2) although not certified, is a national or internationa
labor organization or a local labor organization recognized o
acting as the representative of employees of an employe
or employers engaged in an industry affecting commerce; o

(3) has chartered a local labor organization or subsidiary
body which is representing or actively seeking to represen
employees of employers within the meaning of paragraph (1)
or (2); or

(4) has been chartered by a labor organization representing
or actively seeking to represent employees within the
meaning of paragraph (1) or (2) as the local or subordinate
body through which such employees may enjoy membership
or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system
board or joint council subordinate to a national or inter-
national labor organization, which includes a labor organi-
zation engaged in an industry affecting commerce within
the meaning of any of the preceding paragraphs of this
subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to he employment of aliens outside any State, or to a religious corporaion, association, or society, with respect to the employment of ndividuals of a particular religion to perform work connected with he carrying on by such corporation, association, or society of its eligious activities or to an educational institution with respect to the mployment of individuals to perform work connected with the ducational activities of such institution.

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an mployer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise o discriminate against, any individual because of his race, color, eligion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or ational origin.

(c) It shall be an unlawful employment practice for a labor rganization—

(1) to exclude or to expel from its membership, or other
to discriminate against, any individual because of his race, co
religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to clas
or fail or refuse to refer for employment any individual, in
way which would deprive or tend to deprive any individua
employment opportunities, or would limit such employment
portunities or otherwise adversely affect his status as an empl
or as an applicant for employment, because of such individu
race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discrimi
against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any emplo
labor organization, or joint labor-management committee controll
apprenticeship or other training or retraining, including on-the-
training programs to discriminate against any individual because
his race, color, religion, sex, or national origin in admission to,
employment in, any program established to provide apprenticeshi
other training.

(e) Notwithstanding any other provision of this title, (1) it sh
not be an unlawful employment practice for an employer to hire
employ employees, for an employment agency to classify, or refer
employment any individual, for a labor organization to classify
membership or to classify or refer for employment any individual,
for an employer, labor organization, or joint labor-management co
mittee controlling apprenticeship or other training or retraining p
grams to admit or employ any individual in any such program, on
basis of his religion, sex, or national origin in those certain instan
where religion, sex, or national origin is a bona fide occupational qu
fication reasonably necessary to the normal operation of that particu
business or enterprise, and (2) it shall not be an unlawful employm
practice for a school, college, university, or other educational insti
tion or institution of learning to hire and employ employees of a p
ticular religion if such school, college, university, or other educatio
institution or institution of learning is, in whole or in substantial pa
owned, supported, controlled, or managed by a particular religion
by a particular religious corporation, association, or society, or if
curriculum of such school, college, university, or other educatio
institution or institution of learning is directed toward the propa
tion of a particular religion.

(f) As used in this title, the phrase "unlawful employment practic
shall not be deemed to include any action or measure taken by
employer, labor organization, joint labor-management committee,
employment agency with respect to an individual who is a mem
of the Communist Party of the United States or of any other organi
tion required to register as a Communist-action or Communist-fr
organization by final order of the Subversive Activities Control Bo
pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall
be an unlawful employment practice for any employer to fail or ref
to hire and employ any individual for any position, for an emplo
to discharge any individual from any position, or for an employm
agency to fail or refuse to refer any individual for employment in a

osition, or for a labor organization to fail or refuse to refer any ndividual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not e an unlawful employment practice for an employer to apply differt standards of compensation, or different terms, conditions, or ivileges of employment pursuant to a bona fide seniority or merit stem, or a system which measures earnings by quantity or quality of oduction or to employees who work in different locations, provided at such differences are not the result of an intention to discriminate cause of race, color, religion, sex, or national origin, nor shall it be unlawful employment practice for an employer to give and to act on the results of any professionally developed ability test provided at such test, its administration or action upon the results is not signed, intended or used to discriminate because of race, color, ligion, sex or national origin. It shall not be an unlawful employment actice under this title for any employer to differentiate upon the sis of sex in determining the amount of the wages or compensation id or to be paid to employees of such employer if such differentiation authorized by the provisions of section 6(d) of the Fair Labor andards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or terprise on or near an Indian reservation with respect to any publicly nounced employment practice of such business or enterprise under ich a preferential treatment is given to any individual because he an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require y employer, employment agency, labor organization, or joint labornagement committee subject to this title to grant preferential treatnt to any individual or to any group because of the race, color, ligion, sex, or national origin of such individual or group on account an imbalance which may exist with respect to the total number or rcentage of persons of any race, color, religion, sex, or national origin ployed by any employer, referred or classified for employment by y employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or emyed in, any apprenticeship or other training program, in compari with the total number or percentage of persons of such race, color, gion, sex, or national origin in any community, State, section, or er area, or in the available work force in any community, State, tion, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

EC. 704. (a) It shall be an unlawful employment practice for an ployer to discriminate against any of his employees or applicants employment, for an employment agency to discriminate against any

individual, or for a labor organization to discriminate against
member thereof or applicant for membership, because he has opp
any practice made an unlawful employment practice by his titl
because he has made a charge, testified, assisted, or participated in
manner in an investigation, proceeding, or hearing under this tit

(b) It shall be an unlawful employment practice for an empl
labor organization, or employment agency to print or publis
cause to be printed or published any notice or advertisement rel
to employment by such an employer or membership in or any cl
fication or referral for employment by such a labor organizatio
relating to any classification or referral for employment by suc
employment agency, indicating any preference, limitation, speci
tion, or discrimination, based on race, color, religion, sex, or nati
origin, except that such a notice or advertisement may indic
preference, limitation, specification, or discrimination based
religion, sex, or national origin when religion, sex, or national orig
a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be know
the Equal Employment Opportunity Commission, which shall be
posed of five members, not more than three of whom shall be mem
of the same political party, who shall be appointed by the Presi
by and with the advice and consent of the Senate. One of the ori
members shall be appointed for a term of one year, one for a ter
two years, one for a term of three years, one for a term of four y
and one for a term of five years, beginning from the date of en
ment of this title, but their successors shall be appointed for term
five years each, except that any individual chosen to fill a vac
shall be appointed only for the unexpired term of the member w
he shall succeed. The President shall designate one member to s
as Chairman of the Commission, and one member to serve as
Chairman. The Chairman shall be responsible on behalf of the C
mission for the administrative operations of the Commission,
shall appoint, in accordance with the civil service laws, such offi
agents, attorneys, and employees as it deems necessary to assist
the performance of its functions and to fix their compensatio
accordance with the Classification Act of 1949, as amended.
Vice Chairman shall act as Chairman in the absence or disabilit
the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right o
remaining members to exercise all the powers of the Commission
three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shal
judicially noticed.

(d) The Commission shall at the close of each fiscal year repo
the Congress and to the President concerning the action it has ta
the names, salaries, and duties, of all individuals in its employ an
moneys it has disbursed; and shall make such further reports on
cause of and means of eliminating discrimination and such re
mendations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.
2201–2209), is further amended—

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

"(32) Chairman, Equal Employment Opportunity Commission", and

(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205(a)) the following: "Equal Employment Opportunity Commission (4)."

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

[(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.]

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

[(h) Attorneys appointed under this section may at the direction of the Commission, appear for and represent the Commission in any case in court.]

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of

appeals of the United States pursuant to this title. All other litiga affecting the Commission, or to which it is a party, shall be conducte the Commission.

(i) The Commission shall, in any of its educational or promoti activities, cooperate with other departments and agencies in the formance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commiss shall be subject to the provisions of section 9 of the Act of Augus 1939, as amended (the Hatch Act), notwithstanding any exemp contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

[SEC. 706. (a) Whenever it is charged in writing under oath b person claiming to be aggrieved, or a written charge has been filed a member of the Commission where he has reasonable cause to beli a violation of this title has occurred (and such charge sets forth facts upon which it is based) that an employer, employment agency labor organization has engaged in an unlawful employment pract the Commission shall furnish such employer, employment agency labor organization (hereinafter referred to as the "respondent") w a copy of such charge and shall make an investigation of such cha provided that such charge shall not be made public by the Commiss If the Commission shall determine, after such investigation, that th is reasonable cause to believe that the charge is true, the Commiss shall endeavor to eliminate any such alleged unlawful employm practice by informal methods of conference, conciliation and pers sion. Nothing said or done during and as a part of such endeavors m be made public by the Commission without the written consent of parties, or used as evidence in a subsequent proceeding. Any office employee of the Commission, who shall make public on any man whatever any information in violation of this subsection shall deemed guilty of a misdemeanor and upon conviction thereof shal fined not more than $1,000 or imprisoned not more than one ye

SEC. 706. (a) Whenever it is charged in writing under oath by a per claiming to be aggrieved, or a written charge has been filed by a membe the Commission where he has reasonable cause to believe a violation this title has occurred (and such charge sets forth the facts upon whic is based and the person or persons aggrieved) that an employer, emp ment agency or labor organization has engaged in an unlawful emp ment practice, the Commission, within five days thereafter, shall furn such employer, employment agency, or labor organization (hereina referred to as the 'respondent') with a copy of such charge and s make an investigation of such charge, provided that such charge shall be made public by the Commission. If the Commission shall determ after such investigation, that there is reasonable cause to believe that charge is true, the Commission shall endeavor to eliminate any s alleged unlawful employment practice by informal methods of confere conciliation, and persuasion. Nothing said or done during and as a p of such endeavors may be made public by the Commission without written consent of the parties, or used as evidence in a subsequent ceeding. Any officer or employee of the Commission, who shall make pu in any manner whatever any information in violation of this subsec shall be deemed guilty of a misdemeanor and upon conviction the shall be fined not more than $1,000 or imprisoned not more than one y

(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

[(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

[(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the com-

plainant and in such circumstances as the court may deem just, court may appoint an attorney for such complainant and may autho the commencement of the action without the payment of fees, co or security. Upon timely application, the court may, in its discret permit the Attorney General to intervene in such civil action i certifies that the case is of general public importance. Upon requ the court may, in its discretion, stay further proceedings for not m than sixty days pending the termination of State or local proceedi described in subsection (b) or the efforts of the Commission to ob voluntary compliance.]

(d) A charge under subsection (a) shall be filed within one hund and eighty days after the alleged unlawful employment practice occur except that in the case of an unlawful employment practice with respe which the person aggrieved has followed the procedure set out in subsect (b), such charge shall be filed by the person aggrieved within two hund and ten days after the alleged unlawful employment practice occur or within thirty days after receiving notice that the State or local age has terminated the proceedings under the State or local law, whichev earlier, and a copy of such charge shall be filed by the Commission with State or local agency. Except as provided in subsections (a) through of this section and in section 707 of this Act, a charge filed hereunder s be the exclusive remedy of any person claiming to be aggrieved by unlawful employment practice of an employer, employment agency, labor organization.

(e) If within thirty days after a charge is filed with the Commissio within thirty days after expiration of any period of reference under s section (c), the Commission has been unable to obtain voluntary compli with this Act, the Commission may bring a civil action against the spondent named in the charge: Provided, That if the Commission fail obtain voluntary compliance and fails or refuses to institute a civil act against the respondent named in the charge within one hundred and eig days from the date of the filing of the charge, a civil action may be bro after such failure or refusal within ninety days against the respon named in the charge (1) by the person claiming to be aggrieved, or (2 such charge was filed by a member of the Commission, by any person w the charge alleges was aggrieved by the alleged unlawful employment p tice. Upon application by the complainant and in such circumstance the court may deem just, the court may appoint an attorney for such c plainant and may authorize the commencement of the action without payment of fees, costs, or security. Upon timely application, the c may, in its discretion, permit the Attorney General to intervene in s civil action if he certifies that the case is of general public importa Upon request, the court may, in its discretion, stay further proceedi for not more than sixty days pending the termination of State or l proceedings described in subsection (b) or further efforts of the Commis to obtain voluntary compliance.

If a charge filed with the Commission pursuant to subsection (b)

(f) Whenever a charge is filed with the Commission and the Commis concludes on the basis of a preliminary investigation that prompt judi action is necessary to carry out the purposes of this Act, the Commis may bring an action for appropriate temporary or preliminary r pending final disposition of such charge and the court having jurisdic over such action shall have the authority to grant such temporary or liminary relief as it deems just and proper: Provided, That no tempo

restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

[(f)] (g) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

[(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).]

(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or

advancement or was suspended or discharged for any reason other tha discrimination on account of race, color, religion, sex, or national origi or in violation of section 704(a). No order made hereunder shall inclu back pay or other liability which has accrued more than two years befo the filing of a complaint with said court under this title.

[(h)] (i) The provisions of the Act entitled "An Act to amend th Judicial Code and to define and limit the jurisdiction of courts sittin in equity, and for other purposes," approved March 23, 1932 (2 U.S.C. 101–115), shall not apply with respect to civil actions brough under this section.

[(i)] (j) In any case in which an employer, employment agency, o labor organization fails to comply with an order of a court issued in civil action brought under subsection (e), the Commission may com mence proceedings to compel compliance with such order.

[(j)] (k) Any civil action brought under subsection (e) and pro ceedings brought under subsection [(i)] (j) shall be subject to appea as provided in sections 1291 and 1292, title 28, United States Code.

[(k)] (l) In any action or proceeding under this title the court, i its discretion, may allow the prevailing party, other than the Commis sion or the United States, a reasonable attorney's fee as part of th costs, and the Commission and the United States shall be liable fo costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonabl cause to believe that any person or group of persons is engaged in pattern or practice of resistance to the full enjoyment of any of th rights secured by this title, and that the pattern or practice is of suc a nature and is intended to deny the full exercise of the rights herei described, the Attorney General may bring a civil action in the appro priate district court of the United States by filing with it a complain (1) signed by him (or in his absence the Acting Attorney General) (2) setting forth facts pertaining to such pattern or practice, an (3) requesting such relief, including an application for a permanen or temporary injunction, restraining order or other order against th person or persons, responsible for such pattern or practice, as he deem necessary to insure the full enjoyment of the rights herein described

(b) The district courts of the United States shall have and shal exercise jurisdiction of proceedings instituted pursuant to this sectio and in any such proceeding the Attorney General may file with th clerk of such court a request that a court of three judges be convene to hear and determine the case. Such request by the Attorney Genera shall be accompanied by a certificate that, in his opinion, the cas is of general public importance. A copy of the certificate and reques for a three-judge court shall be immediately furnished by suc clerk to the chief judge of the circuit (or in his absence, the presidin circuit judge of the circuit) in which the case is pending. Upon receip of such request it shall be the duty of the chief judge of the circuit o the presiding circuit judge, as the case may be, to designate immedi ately three judges in such circuit, of whom at least one shall be circuit judge and another of whom shall be a district judge of the cour in which the proceeding was instituted, to hear and determine suc case, and it shall be the duty of the judges so designated to assign th case for hearing at the earliest practicable date, to participate in th hearing and determination thereof, and to cause the case to be in every

way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding; it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall the the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representatives shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class or cases specified in such agreements and under which no person may bring a civil action under section 706 in any cases or class of cases so specified, or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) Except as provided in subsection (d), every employer, em
ployment agency, and labor organization subject to this title sha
(1) make and keep such records relevant to the determinations
whether unlawful employment practices have been or are being com
mitted, (2) preserve such records for such periods, and (3) make suc
reports therefrom, as the Commission shall prescribe by regulation
order, after public hearing, as reasonable, necessary, or appropriate fo
the enforcement of this title or the regulations or orders thereunde
The Commission shall, by regulation, require each employer, labo
organization, and joint labor-management committee subject to thi
title which controls an apprenticeship or other training program t
maintain such records as are reasonably necessary to carry out th
purpose of this title, including, but not limited to, a list of applicant
who wish to participate in such program, including the chronologica
order in which such applications were received, and shall furnish t
the Commission, upon request, a detailed description of the manne
in which persons are selected to participate in the apprenticeship o
other training program. Any employer, employment agency, labo
organization, or joint labor-management committee which believe
that the application to it of any regulation or order issued under thi
section would result in undue hardship may (1) apply to the Com
mission for an exemption from the application of such regulation o
order, or (2) bring a civil action in the United States district cour
for the district where such records are kept. If the Commission o
the court, as the case may be, finds that the application of the regu
lation or order to the employer, employment agency, or labor organi
zation in question would impose an undue hardship, the Commissio
or the court, as the case may be, may grant appropriate relief.

(d) The provisions of subsection (c) shall not apply to any employer
employment agency, labor organization, or joint labor-management
committee with respect to matters occurring in any State or politica
subdivision thereof which has a fair employment practice law during
any period in which such employer, employment agency, labo
organization, or joint labor-management committee is subject to such
law, except that the Commission may require such notations on
records which such employer, employment agency, labor organization,
or joint labor-management committee keeps or is required to keep as
are necessary because of differences in coverage or methods of enforce-
ment between the State or local law and the provisions of this title.
Where an employer is required by Executive Order 10925, issued
March 6, 1961, or by any other Executive order prescribing fair
employment practices for Government contractors and subcon-
tractors, or by rules or regulations issued thereunder, to file reports
relating to his employment practices with any Federal agency or
committee, and he is substantially in compliance with such require-
ments, the Commission shall not require him to file additional reports
pursuant to subsection (c) of this section.

(e) It shall be unlawful for any officer or employee of the Commis-
sion to make public in any manner whatever any information obtained
by the Commission pursuant to its authority under this section prior
to the institution of any proceeding under this title involving such
information. Any officer or employee of the Commission who shall
make public in any manner whatever any information in violation of

this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

INVESTIGATORY POWERS

SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for permission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with the provisions of section 709 (c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to a proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor orga
nization, as the case may be, shall post and keep posted in conspicuo
places upon its premises where notices to employees, applicants fo
employment, and members are customarily posted a notice to be pr
pared or approved by the Commission setting forth excerpts from o
summaries of, the pertinent provisions of this title and informatio
pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fi
of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repe
or modify any Federal, State, territorial, or local law creating speci
rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time t
time to issue, amend, or rescind suitable procedural regulations t
carry out the provisions of this title. Regulations issued under thi
section shall be in conformity with the standards and limitations o
the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawfu
employment practice, no person shall be subject to any liability o
punishment for or on account of (1) the commission by such perso
of an unlawful employment practice if he pleads and proves that th
act or omission complained of was in good faith, in conformity with
and in reliance on any written interpretation or opinion of the Com
mission, or (2) the failure of such person to publish and file any
information required by any provision of this title if he pleads and
proves that he failed to publish and file such information in good faith
in conformity with the instructions of the Commission issued under
this title regarding the filing of such information. Such a defense,
if established, shall be a bar to the action or proceeding, notwith-
standing that (A) after such act or omission, such interpretation or
opinion is modified or rescinded or is determined by judicial authority
to be invalid or of no legal effect, or (B) after publishing or filing the
description and annual reports, such publication or filing is determined
by judicial authority not to be in conformity with the requirements
of this title.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of section 111, title 18, United States Code,
shall apply to officers, agents, and employees of the Commission in
the performance of their official duties.

SPECIAL STUDY BY SECRETARY OF LABOR

SEC. 715. The Secretary of Labor shall make a full and complete tudy of the factors which might tend to result in discrimination in mployment because of age and of the consequences of such discrimi- ation on the economy and individuals affected. The Secretary of abor shall make a report to the Congress not later than June 30, 965, containing the results of such study and shall include in such eport such recommendations for legislation to prevent arbitrary dis- rimination in employment because of age as he determines advisable.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the ate of its enactment.

(b) Notwithstanding subsection (a), sections of this title other han sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of his title, convene one or more conferences for the purpose of enabling he leaders of groups whose members will be affected by this title to ecome familiar with the rights afforded and obligations imposed by s provisions, and for the purpose of making plans which will result the fair and effective administration of this title when all of its rovisions become effective. The President shall invite the participa- on in such conference or conferences of (1) the members of the resident's Committee on Equal Employment Opportunity, (2) the embers of the Commission on Civil Rights, (3) representatives of tate and local agencies engaged in furthering equal employment pportunity, (4) representatives of private agencies engaged in fur- hering equal employment opportunity, and (5) representatives of mployers, labor organizations, and employment agencies who will be bject to this title.

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Comparison of Title VII, Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, 253; 42 U.S.C. 2000e et seq., as proposed to be amended by S. 2515 (Williams et al.), 92d Cong., 1st sess., S. 2617 (Dominick), and H.R. 1746 (Erlenborn), 92d Cong., 1st sess., passed by the House of Representatives, Sept. 16, 1971

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Who is covered: 1. Employer. A covered "employer" is a "person" engaged in an industry affecting commerce who has 25 or more employees. "Persons," in turn, is defined to include not only one or more natural persons, but also "partnerships, associations, corporations, mutual companies, joint-stock companies, trusts, and unincorporated organizations." Legal representatives, trustees, trustees in bankruptcy and receivers also are "persons." "Commerce" is defined as "trade, traffic, commerce, transportation, transmission or communication" among or between the several States or between points in the same State if the terminus is reached through a point outside such State. The term also includes "commerce" within the District of Columbia and possessions. The term "industry affecting commerce" is patterned after and incorporates the definition of "affecting commerce" in the Labor Management Reporting and Disclosure Act of 1959, which in turn, incorporates the definition of "affecting commerce" of the Labor Management Relations Act of 1947. (By this tech-	The bill would bring States and political subdivisions of States within the definition of covered employers. First, it would redefine "person" to include "governments, governmental agencies, and political subdivisions." Second, it would eliminate the exemption of "State or political subdivision thereof" allowed by the existing law. Third, it would include "any governmental industry, business, or activity" within the term "industry affecting commerce." (Sec. 2(a) (1), (2), (5).) The bill would also define the term "employer" to mean individuals and organizations engaged in an industry affecting commerce if they have eight or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. According to the terms of the bill, this change affecting the numerical standard which brings employers within its requirements would become effective 1 year after enactment. (Sec. 2(2).)	Retains provisions of existing law.

701(a), (g), (h).)

All these individuals and organizations are deemed to be covered employers if they are engaged in an industry affecting commerce and if they have 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. (Sec. 701(b).)

2. Employment agency. A covered "employment agency" is one which "regularly" procures employees for a covered employer or which "regularly" procures for employees opportunities to work for covered employers. The term also includes the United States Employment Service and the system of State and local employment services receiving Federal assistance. (Sec. 701(c).)

3. Labor organization. The definition of labor organization is substantially the same as the definition in the Labor Management Reporting and Disclosure Act of 1959, except that State and local central bodies are treated as are other labor organizations. It includes "any organization of any kind . . . in which employees participate and which exists for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment. . . ." National and international unions and their subordinate units—conferences, general committees, joint or system boards, or joint councils—are included in the definition as well as local unions. (Sec. 701(d).)

Labor organizations are covered only if they are engaged in an "industry affecting

The bill would eliminate the existing law's exemption of all levels of government from the definition of "employment agency". Consequently, to the extent that "an agency of the United States, or an agency of a State or political subdivision of a State" (in addition to "the United States Employment Service and the System of State and local employment services receiving Federal assistance" presently covered by the law) "regularly" procures employees for a covered employer or which "regularly" procures for employees opportunities to work for covered employers, they would be covered. (See 2(3).)

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Who is covered—Continued commerce" within the meaning of the Act. Labor organizations so engaged include: First, a labor organization that maintains or operates a hiring hall or office to provide employees for a covered employer or to procure for employees opportunities to work for a covered employer. Labor organizations operating hiring halls are covered without regard to their numerical strength. Second, a labor organization which has an aggregate number of 25 or more employees. If it meets the numerical standard, a labor organization is covered if it (1) is certified as the bargaining representative under the National Labor Relations Act or Railway Labor Act, or (2) is recognized as the bargaining representative by a covered employer, or (3) has some formal relationship with a covered labor organization whether through a charter or as a joint interest organization. (Sec. 701(e).)	The bill would redefine covered labor organizations by reducing the numerical standard from twenty-five to eight employees. As in the case of the similar change with respect to covered employers, this amendment would not go into effect until 1 year after passage of the act. (Sec. 2(4).)	
Who is not covered: 1. Employer. The Federal Government and corporations wholly owned by it are excluded from the definition of employer. Also excluded are States and their political	As noted above, the provision exempting States and their political subdivisions is eliminated and, instead, departments and	Retains provisions of existing law.

subdivisions, Indian tribes, and private membership clubs. (Sec. 701(b).)

Employers are exempted *with respect to aliens they employ abroad* and educational institutions *with respect to educational personnel*. Religious organizations also have a partial exemption. They are exempt with respect to the "employment of individuals of a particular religion to perform work connected with the carrying on" of its religious activities. (Sec. 702.).

2. Employment agency. Although the term includes the United States Employment Service and the system of State and local employment services receiving Federal assistance, it does not take in any other Federal, State, or local agencies. (Sec. 701(c).)

ject to procedures of the competitive service (see Sec. 11) are excluded from the definition of the term "employer". (Sec. 2(2).)

Repeals the exemption for employment of individuals engaged in educational activities of non-religious educational institutions. (Sec. 3.)

Prohibited practices:

Section 703 of the existing law consists of ten subsections; four of these describe a number of activities which if engaged in by covered persons constitute unlawful employment practices. The balance of the section sets out various limiting qualifications.

1. Employer. Discrimination by employers falls into four general areas: (1) hiring and firing, (2) employment conditions, (3) segregation and classification, and (4) training programs. Thus, it is an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual because of his race, color, religion, sex, or national origin. It is also an unlawful employment practice for an employer to discriminate against an individual because of his race, color, religion,

Retains provisions of existing law with the following changes:

The bill would amend this portion of the Act to make it clear that discrimination against applicants for employment is an unlawful employment practice. (Sec. 8(a).)

Retains provisions of existing law.

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Prohibited practices—Continued sex, or national origin with respect to compensation, terms, conditions, or privileges of employment. Further, an employer is forbidden to limit, segregate, or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of his race, color, religion, sex, or national origin. (Sec. 703(a).)		
Together with labor organizations and joint labor-management committees, employers are prohibited from discriminating on the basis of race, color, religion, sex, or national origin in admission to or employment in any apprenticeship training or retraining programs. This includes on-the-job training programs. (Sec. 703(d).)		
2. Employment agency. It is an unlawful employment practice for an employment agency to (1) fail or refuse to refer for employment, or otherwise discriminate against any individual because of his race, color, religion, sex or national origin, or (2) classify or refer any individual for employment on the basis of his race, color, religion, sex or national origin. (Sec. 703		

3. Labor organization. Labor organizations are affected by the current law both in their capacity as employers and as organizations representating employees. With respect to the former, they are subject to the prohibitions applicable to employers generally, as noted above. In their capacity as labor organizations, unions are affected in three general areas. First, they may not exclude or expel from membership, or otherwise discriminate against any individual because of his race, color, religion, sex, or national origin. Second, they are forbidden to limit, segregate, or classify membership, or classify or fail or refuse to refer or employment any individual in any way that would deprive him of employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment because of his race, color, religion, sex, or national origin. Third, labor organizations are prohibited from attempting to cause employers to discriminate. (Sec. 703(c).)

As is true of employers, labor organizations and joint labor-management comittees are prohibited from discriminating with respect to apprenticeship and other training programs. (Sec. 703(d).)

The bill would amend this portion of the Act to make it clear that discrimination against applicants for union membership is an unlawful employment practice. (Sec. 8(b).)

Other prohibited practices:

Section 704 of the law contains a pair of ancillary prohibitions applicable to employers, employment agencies, and labor organizations. First, it is an unlawful employment practice to discriminate against any person for opposing discriminatory practices, and for bringing charges before the Commission or otherwise participating in

The bill would amend this portion of the Act to make it clear that joint labor-management apprenticeship-committees are subject to provivsions making it an unlawful employment practice to retaliate against persons for bringing charges before the EEOC or otherwise participating in proceedings under the Act. (Sec. 8(c)(1).)

Retains provisions of existing law.

Comparison of Title VII, Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, 253; 42 U.S.C. 2000e et seq., as proposed to be amended by S. 2515 (Williams et al.), 92d Cong., 1st sess., S. 2617 (Dominick), and H.R. 1746 (Erlenborn), 92d Cong., 1st sess., passed by the House of Representatives, Sept. 16, 1971—Continued

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Other prohibited practices—Continued proceedings under the Act. Discriminatory advertising is prohibited unless the discrimination is based on a *bona fide* occupational qualification. (Sec. 704.)	The bill would amend this portion of the Act to make it clear that joint labor-management apprenticeship-committees are subject to provisions making it an unlawful employment practice to engage in discriminatory advertising. (Sec. 8(c)(2).)	
Practices not prohibited by the Act: There are a number of exceptions to the general prohibition against employment discrimination on account of race, color, religion, sex, or national origin. One of the broadest of these permits employers, employment agencies, and labor organizations to discriminate on the basis of religion, sex, or national origin "in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." This exception applies to hiring by employers, classification and referral by employment agencies, classification or referral by labor organizations, and admission to or employment in an apprenticeship or other training program. This exception also applies to the ban against discrimin-	Retains provisions of existing law.	Retains provisions of existing law.

Another exception allows religiously affiliated educational institutions to hire employees along religious lines. Unlike the exception noted above, this one is not limited to educational employees but extends to the institution's entire work force. (Sec. 703(e).)

The Act also provides that the term "unlawful practice" shall not include any action taken against any individual "who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950." (Sec. 703(f).)

Likewise, it is not an unlawful employment practice to deny any person a job if he cannot obtain the requisite security clearance. (Sec. 703(g).)

It is not an unlawful employment practice "for an employer to apply different standards of compensation, or different terms of employment pursuant to a *bona fide* seniority or merit system which measures earning by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discirminate because of race, color, religion, sex, or national origin. In brief, differences in treatment in certain factors will be permitted where they are not intentionally employed to accomplish discrimination by indirection. (Sec. 703(h).)

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Other prohibited practices—Continued Also, it is not an unlawful employment practice for an employer to give and to act upon the result of a professionally developed ability test provided they are not "designed, intended, or used to discriminate because of race, color, religion, sex, or national origin." (Sec . 703(h).) Also, it is not an unlawful employment practice for businesses operating on or near an Indian reservation to accord preferential treatment to Indians. (Sec. 703(i).)		
Administration and enforcement: The principal enforcement organ under title VII is the Equal Employment Opportunity Commission (EEOC). The Commission is composed of five members, not more than three of who may be members of the same political party. EEOC members are appointed by the President by and with the advice and consent of the Senate. Although initial appointments were made for one, two, three, four, and five year terms, respectively, all appointments are now for a full five year term. The President designates both chairman and vice chairman.	The bill would amend provisions of the law relating to the establishment of a 5-man EEOC in several particulars. First, it would provide that all EEOC members "shall continue to serve until their successors are appointed and qualified." However, no person is to serve for more than 60 days when Congress is in session unless his nomination has been submitted for Senate confirmation or after *sine die* adjournment by the Senate without acting on the nomination. Second, "hearing examiners" are added to the list of positions	

staffing the agency in accordance with civil service laws.

Three members comprise a quorum for purposes of conducting Commission business.

The EEOC is authorized a seal which is to be judicially noticed.

The EEOC is required to make an annual report of its activities and other specified matters to the Congress and to the President.

The principal office of the EEOC is to be in or near the District of Columbia, but it is authorized to meet or exercise its powers at any other place. Regional or State offices may be established as the EEOC deems necessary.

The EEOC's chief responsibilities include the investigation and conciliation of complaints, promulgation of recordkeeping requirements, and participation in a variety of cooperative efforts to further *voluntary* compliance with the title. (Sec. 705.)

EEOC procedures are initiated by filing a charge of unlawful discrimination. The charge must be filed within 90 days after the occurrence of the alleged unlawful employment practice. It must be in writing and under oath and may be filed by either the person claiming to be aggrieved or by a member of the Commission who has reasonable cause to believe that a violation of Title VII has occurred. (Sec. 706 (a).)

officer are to be made in accord with 5 U.S.C. and assignment, removal and compensation are subject to sections 3105, 3344, 5362, and 7521 of that title. (Sec. 8(d) (1), (2).)

The bill also would amend the Act to permit the EEOC to accept voluntary and uncompensated services notwithstanding contrary and inconsistent legal requirements. (Sec. 8(e).)

The bill would eliminate provisions of existing law authorizing the EEOC to request the Attorney General to intervene in private suits and substitutes the EEOC instead in conformity with new provisions added by other parts of this bill. (Sec. 8 (f).)

The bill would rewrite substantial portions of this part of the law in conformity with the fundamental change from an EEOC authorized to effect voluntary compliance to an EEOC empowered to compel compliance with its orders. Thus, the Commission is empowered to prevent persons from engaging in unlawful employment practices as defined above. (Sec. 4(a) "(a)".)

The bill would amend the existing law in two ways. First, it would amend portions of the law enumerating the EEOC's powers to permit the Commission to recommend to the Attorney General that the Justice Department intervene in court actions brought by private persons, institute "pattern or practice" suits, and process any appeals on its behalf in the courts of appeals or in the Supreme Court as the case may be. Second it woud amend the provision which permits the EEOC to appoint attorneys to represent it to authorize the Commission to appoint attorneys to handle its litigation in all cases except appeals in the courts of appeals and in the Supreme Court which appeals "shall" be conducted by the Attorney General. (Sec. 2.)

The bill retains the major portions of the administration and enforcement provisions of existing law with a few changes to various subsections which are intended to authorize the *EEOC to bring court suits* to eliminate unlawful employment discrimination. (Sec. 3.)

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Administration and enforcement—Con. Upon receipt of the charge the EEOC is to furnish the accused employer, employment agency or labor organization, as the case may be, with a copy of the complaint and to make an investigation. Charges are required to be kept confidential. (Sec. 706(a).) If, after investigation, the EEOC determines that there is reasonable cause to believe that the charge is true, it "shall endeavor to eliminate any such unlawful employment practice by informal methods of conference, conciliation and persuasion." Other provisions of the Act prohibit the EEOC and its employees from making public, information obtained by compulsory process in the course of its investigation except in the course of litigation arising under the title. (Sec. 706(a).)	An unlawful employment practice charge may be filed "by or on behalf of a person claiming to be aggrieved" or by a member of the EEOC. Oath requirement of the Act is not retained. The EEOC must serve the charge upon employers, employment agency, labor organization, or joint labor-management committee (termed respondent) as the case may be. The requirement of existing law that charges filed by a member of the EEOC must be based upon reasonable cause to believe that a violation has occurred is not retained. The charges must be in writing and contain information specified by the EEOC. The EEOC is not to disclose the contents of the charges. If after investigating, the EEOC determines that there is no reasonable cause to believe that the charge is true, it must dismiss the charge promptly, notifying the parties of its action. Conversely, if the EEOC determines that there is reasonable cause, it is required to correct the unlawful practice by informal methods. The EEOC must make its finding as to reasonable cause as promptly as possible, and,	The bill proposes two amendments to the provision dealing with the filing of charges with the EEOC. First, to the present law's requirement that charges set out the facts upon which they are based, the bill would require that the "person or persons aggrieved" be identified. Second, the bill would require that the Commission serve the respondent with a copy of the complaint within 5 days of its receipt by the EEOC. (Sec. 3(a).)

date it can begin to take action as described shortly hereafter. Personnel of the EEOC are required to maintain information obtained during the preliminary phase in strict confidence and are prohibited from using it in any subsequent proceeding without the consent of the persons concerned. Breaches of confidentiality may be punished by maximum fine of $1,000 or imprisonment for one year or both. (Sec. 4(a) "(b)".)

Charges alleging commission of an unlawful employment practice in an area subject to State or local anti-discrimination law may be filed with the EEOC, but it must defer acting until passage of 60 days from commencement of proceeding under such State or local law unless the proceedings have been terminated earlier. In keeping with similar provisions in existing law, 120 days rather than 60 days are permitted during the first year of operation of a new State or local anti-discrimination law. However, if a State or local law requires something more than the filing of a written charge, proceedings thereunder shall be deemed to have commenced at the time a written statement of the facts is sent to the local agency by certified mail. (Sec. 4(a) "(c)".)

An alternate provision is set out to deal with the case of deferring to State and local agencies when the charge is filed by a Commissioner. The time period is the same as that authorized when the charge is filed by a person aggrieved or someone in his behalf. The procedure also is the same except that the EEOC must notify its

In States and localities which have FEP laws applicable to the incident complained of, and that law establishes or authorizes "a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto", no charge may be filed with the EEOC until the State or local agency has had 60 days to deal with the case. During the first year following the effective date of the State or local law, the time allowed local agencies to effect a resolution is 120 days. In order to insure against the adoption of onerous requirements by State and local agencies as a means of forestalling Federal proceedings, the Act deems it to be sufficient compliance with the requirement of deference to local authority if the person aggrieved submits a written statement of the facts to such agency by registered mail. If the charge is filed by a EEO Commissioner, the Commission "before taking any action," must notify the appropriate State or local agency and "upon request," allow it 60 days (120 days in the case of a new agency) to deal with the complaint. However, once the 60 days have passed, the complainant may take his case to the

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Administration and enforcement—Con.		
EEOC, regardless of the status of the case or its outcome at that time. (Sec. 706 (b), (c).)	State or local counterpart. (Sec. 4(a) "(d)".)	
As previously noted, the charge must be filed within 90 days of the alleged discriminatory practice. If the complainant has pursued the State or local remedy, he may file his charge with the commission within 210 days after the occurrence of the activity complained of, or 30 days after receipt of notice of termination of the State or local proceedings, whichever is earlier. (Sec. 706(d).)	An unlawful employment practice charge must be filed within 180 days after it has occurred. This contrasts with 90 days authorized under existing law. In cases where the EEOC defers to a State or local agency, the charge must be filed within 300 days (the law presently allows 210 in these circumstances) or within 30 days after the person aggrieved receives notice that the State or local agency has terminated proceedings, whichever is earlier. (Sec. 4(a)"(e)".)	Another two amendments are directed to the provisions of Title VII which set out the time for the filing of charges. The first would extend the allowable time for the filing of an unlawful employment practice charge from 90 to 180 days. The second would make EEOC enforcement the person aggrieved's exclusive remedy save for deferrals to State or local FEP agencies and so called "pattern or practice" actions brought by the Attorney General. (Sec. 3(b).)
If attempts at voluntary compliance fail, the EEOC is to notify the complainant. Within 30 days of receipt of such notice, a civil action may be brought by the person claiming to be aggrieved, or if such charge was filed by a Commissioner, by a person whom the charge alleges was aggrieved by the discriminatory practice. If the person aggrieved files suit on his own behalf, the court is authorized to appoint an attorney for him and to discharge him from liability for fees, costs, or security. (Sec. 706(e).)	If the EEOC determines that informal methods cannot produce an acceptable conciliation agreement, it can issue and serve respondent with a complaint stating the facts upon which the alleged unlawful employment practice is based together with notice of an impending hearing. The EEOC's determination in this regard is not subject to judicial review. The hearing may not be held less than 5 days after service of the complaint. An EEOC member who files a charge in a case may not partici-	As proposed by the bill, the EEOC would be authorized to bring a civil action if, within 30 days from the filing of the complaint (or within 30 days of the expiration of the time allowed for complying with the deferral period), it determines that informal methods will not achieve voluntary compliance. However, should the EEOC fail or refuse to bring such proceedings within 180 days following the filing of a charge the person aggrieved has an additional 90 days during which to bring his

If permitted by the court, the Attorney General may intervene in any action brought by an individual under the Act. However, before being permitted to intervene, the Attorney General is required to certify that the case is one of general public importance. (Sec. 706(e).)

Respondent has the right to file an answer to the complaint and the EEOC shall whenever reasonable grant him leave to amend it. Respondent and person aggrieved are deemed to be parties and may appear at any stage of the proceedings with or without counsel. The EEOC has discretion to allow persons other than parties to intervene, file briefs, make *amicus* appearances, etc. All testimony is to be under oath and recorded in writing. To the extent practicable, the EEOC shall conduct its proceedings in accordance with the rules of evidence in U.S. District Courts. (Sec. 4(a)"(g)".)

If the EEOC finds that respondent has engaged in an unlawful employment practice, it shall state its findings of fact and issue and serve the parties with an order requiring the respondent to cease and desist from such unlawful employment practice and take such affirmative action as will effectuate the policies of the Act. Interim earnings operate to reduce backpay otherwise allowable. EEOC also may require respondent to make periodic reports detailing compliance with its order. However, if EEOC does not find an unlawful

whom filed the initial charge. As is the current practice, the court may appoint an attorney to represent the party aggrieved and discharge him from any and all liability for fees, costs, or security. Similarly, the bill retains the provisions of title VII which enable the Attorney General to intervene in job discrimination suits for as much as 60 days to permit further administrative efforts, at any level, to arrive at voluntary compliance. (Sec. 3(c).)

Comparison of Title VII, Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 241, 253; 42 U.S.C. 2000e et seq., as proposed to be amended by S. 2515 (Williams et al.), 92d Cong., 1st sess., S. 2617 (Dominick), and H.R. 1746 (Erlenborn), 92d Cong., 1st sess., passed by the House of Representatives, Sept. 16, 1971—Continued

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Administration and enforcement—Con.	employment practice, it shall state its finding and notifying respondent, dismiss the indictment. (Sec. 4(a)"(h)".) After filing the charge but before filing the record in a court, proceedings may be ended by agreement between EEOC and parties and EEOC may at any time, upon reasonable notice, modify or set aside, wholly or partly, any order or finding issued or made by it. An agreement thus approved by the EEOC is enforceable in the courts in keeping with other provisions of this bill. (Sec. 4(a)"(i)".)	
If an employer, employment agency, or labor organization fails to comply with a court order, the EEOC may institute proceedings to compel compliance. (Sec. 706 (i).) All appeals from a district court judgment are to made to the courts of appeals. (Sec. 706(j).) Reasonable attorney's fees are authorized as an element of costs. Although neither the EEOC nor the United States is eligible to receive attorney's fees, they are liable for such costs the same as a private person. (Sec. 706(k).)	Findings of fact and orders made or issued are to be determined on the record consistent with the requirements of the Administrative Procedure Act. (Sec. 4(a) "(j)".). Any party aggrieved by a final EEOC order may obtain judicial review of the same in the U.S. Courts of Appeals. Petitions for judicial review must be filed within 60 days after service of the order. Review of such an order may be had in the court of appeals having jurisdiction over the place where the act complained of occurred or where respondent resides or	

is to be sent to the EEOC and to all other parties to the administrative proceedings and the EEOC, in turn, is to file a copy of the record of its proceedings with the court in accordance with 28 U.S.C. 2112. Upon filing of the petition, the court acquires jurisdiction and may issue such temporary relief or restraining order as it deems just and proper and enter on the record a decree enforcing, modifying, and enforcing as so modified, or wholly or partly setting aside the EEOC order. Intervention by parties before EEOC is authorized. The filing of a petition for judicial review does not stay the contested order unless the court directs otherwise. Objections not urged before EEOC, its members or agents shall not be considered by the court except in extraordinary circumstances. EEOC findings on questions of fact are conclusive if supported by substantial evidence on the whole record. The court may direct the EEOC to take additional evidence upon a satisfactory showing that such evidence is material and that there were reasonable grounds for failing to adduce it earlier. The record thereafter may be modified in accordance with any evidence so turned up. Upon the filing of the record with the court, its jurisdiction shall be exclusive and its decree final except that it may be reviewed by the Supreme Court. The courts are urged to handle expeditiously all matters related to equal opportunity enforcement proceedings. (Sec. 4(a) "(k)".)

The EEOC may petition the courts of appeals for enforcement of its orders and appropriate temporary relief or restraining orders. Procedures are the same as those

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Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Administration and enforcement—Con.	authorized in connection with review of EEOC orders. (Sec. 4(a) "(l)".) If a petition for judicial review of an EEOC order is not timely filed (within 60 days after service of the order) the findings of fact together with the order become conclusive in any action by the EEOC to enforce the same. Upon the filing of a petition for enforcement by the EEOC in these circumstances, the clerk of the court of appeals is to enter a decree enforcing the order and to transmit copies of the decree to the EEOC and the parties. (Sec. 4(a) "(m)".) Any person entitled to relief under an EEOC order may move to have it enforced if within 90 days of service of the order, neither the losing party has sought to review it nor the EEOC has moved for its enforcement. Here also, findings of fact and the order are deemed to be conclusive and the clerk of the court is to enter a decree enforcing the order and to transmit copies of the decree to the EEOC and the parties. (Sec. 4(a) "(n)".) The EEOC's attorneys are authorized to conduct all litigation involving the Commission except in the Supreme Court. Liti-	

gation involving the Commission in the high court is to be conducted by the Attorney General. (Sec. 4(a) "(o)".)

If, after the filing of a charge, the EEOC's preliminary investigation leads it to conclude that prompt judicial action is necessary to preserve its power to grant effective relief, it may bring an action for appropriate temporary or permanent relief in U.S. District Court for the district where the unlawful employment practice was allegedly committed, or in the district where the aggrieved person would have been employed, or, as a final resort in the district where the respondent had his principal office. Accordingly, the district court in its discretion may grant injunctive relief or temporary restraining order subject to Rule 65 of the Federal Rules of Civil Procedure. (Sec. 4(a) "(p)".)

The occurence of either one of two circumstances enables the person aggrieved to bring a civil action to obtain relief from an alleged unlawful employment practice. First, such an action may be brought within 60 days of receipt of notification from the EEOC that it has dismissed the charge. Second, such an action may be brought if the EEOC fails to act on a charge within 180 days of its filing (or such time as required to defer to State or local law). The commencement of a civil action pursuant to these provisions divest the EEOC of any jurisdiction in the case. However, the court, in its discretion, may allow the EEOC to intervene in any private suit which the EEOC certifies to be of "general public importance." (Sec. 4(a)"(q)(1)".)

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Administration and enforcement—Con.		
The Federal district courts have jurisdiction to try job bias suits authorized by this act. Proper venue lies with the judicial district in the State in which the practice occurred, in the district in which the relevant employment records are kept, or in the district in which the plaintiff would have been employed but for the alleged discrimination. In the rare case where the respondent cannot be served in any of these dis-	Similarly, the right to bring a private action is terminated when the EEOC either issues a complaint or enters into a conciliation agreement which is agreeable to it and the person aggrieved. The party aggrieved may bring a private action if the EEOC does not issue an order within 180 days after it issues a complaint. If a private suit is started within one year of the issuance of the complaint the EEOC may petition the court not to proceed with such suit. The court may dismiss or stay the suit if the EEOC shows that it has been acting with due diligence, that it expects to issue an order within a reasonable time, that the case is exceptional, and the extension of its jurisdiction is warranted. (Sec. 4(a)"(g)(2)".) Retains provision of existing law with language making it clear that the district court shall have jurisdiction to grant "such temporary or preliminary relief as it deems just and proper." (Sec. 4(c).)	

tricts, suit may be brought in the district of his principal office. (Sec. 706(f).)

If the court finds an intentional violation, it may enjoin the respondent from engaging in further violations and order such affirmative action as may be appropriate. Appropriate forms of relief include reinstatement or hiring of employees, with or without back pay, but interim earnings or amounts with earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. The court cannot, however, require the admission or reinstatement or promotion of an individual as a member of a union or the hiring, reinstatement or promotion of an individual as an employee, or the payment to him of any back pay, if he was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin, or for participation in an investigation, proceeding, or hearing designed to eliminate discrimination. (Sec. 706(8).)

Retains provision of existing law.

The bill conditions the grant of relief in two particulars not found in the current law. First, the court may not grant any relief with respect to any person who neither has filed a charge nor had a charge filed on his behalf. Second, the court is prohibited from ordering backpay or other liability which accrued more than two years before the filing of the complaint. (Sec. 3(e).)

The bill would add a new provision which would authorize the EEOC to seek judicial aid as may be needed pending final administrative proceedings in connection with an unlawful employment practice charge. The courts are directed to expedite the handling of this and all other litigation brought by the EEOC. However, before the court may grant any form of temporary, interim relief, the EEOC would be required to show that absent such relief "substantial and irreparable injury to the

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Administration and enforcement—Con.		aggrieved party will be unavoidable." (Sec. 3(f).)
Enforcement (Attorney General): The present law authorizes the Attorney General to bring a civil suit if he believes that there is a "pattern or practice of resistance to the full enjoyment of rights" protected by Title VII. Before bringing suit, however, he must be convinced that the "pattern or practice is of such nature and is intended to deny the full exercise" of these rights. The complaint must be signed by the Attorney General and must set forth facts pertaining to such "pattern or practice" and request such relief, including an application for a permanent or temporary injunction, restraining order or other order as he deems necessary. (Sec. 707.)	The bill would immediately upon passage transfer this responsibility from the Attorney General to the EEOC. Similarly, all "personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in this connection" are to be transferred to the EEOC. During the transfer period, "proceedings shall continue without abatement, all court order and decrees shall remain in effect, and the EEOC will be substituted as a party for the United States." After passage of this bill, the EEOC will investigate "pattern or practice" charges filed by or on behalf of a person or by a Commissioner. Proceedings in "pattern or practice" suits are to be the same as those authorized for judicial review of and enforcement of EEOC orders. (Sec. 5.)	Retains provisions of existing law.
Investigations, inspections, records, State agencies: Title VII grants the EEOC access to and		Retains provisions of existing law

the right to copy evidence of a person being proceeded against or investigated. The right to copy is strictly limited to evidence that relates to unfair labor practices as defined above, and that is relevant to the charge under investigation by the EEOC. (Sec. 709(a).)

The EEOC is authorized to utilize the services of State and local agencies, and with their consent, and reimburse them for services rendered to assist the Commission in carrying out the provisions of this title. In addition the EEOC is authorized to enter into agreements with State and local agencies relinquishing the Commission's concurrent jurisdiction over such classes of cases as may be specified therein. (Sec. 709(b).)

The EEOC is authorized to impose recordkeeping and reporting requirements on employers, employment agencies, and labor organizations subject to the Act. Similarly, covered persons and organizations are required to maintain records including, but not limited to, a list of applicants who wish to participate in apprenticeship and other training programs, the chronological order in which applications are received, and a detailed description of the manner in which participants are selected. (Sec. 709(c).)

If an employer, employment agency, or labor organization is subject to a State or local FEP regulation, it is not subject to the recordkeeping or reporting requirements adopted by the EEOC. However, the EEOC may require such notations on records kept or required to be kept "as are necessary because of differences in cover-

The bill would enlarge the EEOC's present authority to utilize the services of State and local agencies, and to reimburse them for services rendered by way of assisting it to carry out its responsibilities. As amended by this bill, the EEOC would be permitted, *inter alia*, to contribute to research and other projects of mutual interest. Payments in advence as well as by reimbursement are authorized. (Sec. 6(a) "(b)".)

The bill would keep the recordkeeping requirements of the Act intact except that the provision allowing for modification in certain hardship situations is altered so as to permit persons or organizations experiencing hardship to petition the courts for relief after having exhausted all administrative avenues for such relief. (Sec. 6(a) "(c)".)

In place of the provision to Title VII which permits modification of recordkeeping requirements where similar or related records are kept pursuant to some other law, the bill would order the EEOC to consult with other interested State and federal agencies with a view to coordinating their recordkeeping and reporting re-

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Investigations, inspections, etc.—Continued age or methods of enforcement" between State and local FEP laws and Title VII. (Sec. 709(d).)	quirements. The EEOC is directed to furnish its information to State and local anti-discrimination agencies that request it on condition that such agencies maintain confidentiality of material prior to the commencement of its proceedings. Disclosures in violation of this condition constitute grounds for refusing to honor future requests. (Sec. 6(a) "(d)".)	
Another exemption from the record-keeping requirements is authorized in the case of Government contractors who are subject to the reporting requirements of Executive Order 11246, as amended, which governs employment practices by contractors and subcontractors on federal projects or federally assisted projects. (Sec. 709 (d).) EEOC officials and employees are prohibited from disclosing any information obtained during an investigation. This prohibition carries a maximum fine of $1,000 or imprisonment for one year (Sec. 709 (e).)	The bill would add a new provision authorizing the EEOC or the Attorney General to require any person having custody of records or papers kept pursuant to the	

"The Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation." It may "demand" (1) the right to examine and copy evidence in the possession or control of the respondent, (2) production of such evidence, and (3) the testimony of a witness under oath. If such a "demand" is not complied with, the EEOC may seek court enforcement of its "demand". It cannot require the attendance of a witness outside the State where he is found, resides, or transacts business, or the production of evidence outside the State where it is kept. (Sec. 710(a), (b).)

Anyone served with a "demand" for access to or the production of evidence by the EEOC has 20 days in which to object. A petition for relief from a Commission "demand" must specify each ground upon which the petitioner seeks relief, but objections not raised within 20-day period cannot be raised in defense to a proceeding to enforce the "demand", in the absence of special circumstances. (Sec. 710(c).)

law to make them available for inspection or copying. The district court having jurisdiction over the place where the demand is made may be petitioned for purposes of compelling production of such records or papers. (Sec. 6(b)"(e)".)

The bill would revise the provisions of existing law relating to investigations by incorporating the provision of section 11 of the National Labor Relations Act (29 U.S.C. 161). Accordingly, the EEOC would have access to and the right to copy relevant evidence of a person under investigation or party to a proceeding. It shall issue subpoenas to require the appearance of witnesses or the production of evidence upon application of a party to a proceeding. Any objection to a subpoena on grounds that the evidence sought is not relevant, must be made within five days of its being served. The attendance of a witness or the production of evidence may be required from any place in the U.S. or U.S. possessions and the Federal courts may be petitioned to compel compliance with a subpoena. Witnesses may not refuse to comply with a subpoena on self-incrimination grounds, but may not be proceeded against on the basis of evidence obtained from him. Complaints and all other forms of process may be served personally or by registered mail or telegraph, or by leaving a copy at the principal office for the person being served. No party shall be subpoenaed until the respondent has been served a copy of the complaint and notice of a hearing. Witnesses and persons deposed are entitled to similar proceedings in Federal district courts. (Sec. 7.)

Comparison of Title VII, Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, 253; 42 U.S.C. 2000e et seq., as proposed to be amended by S. 2515 (Williams et al.), 92d Cong., 1st sess., S. 2617 (Dominick), and H.R. 1746 (Erlenborn), 92d Cong., 1st sess., passed by the House of Representatives, Sept. 16, 1971—Continued

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
Posting requirements: Employers, employment agencies, and labor organizations subject to Title VII are required to post in conspicuous places notices to be prepared or approved by the EEOC setting forth excerpts of the Act and other relevant information. Willful violations of the posting requirements carry a fine of not more than $100 for each offense. (Sec. 711.)	Retains provisions of existing law.	Retains provisions of existing law.
Veterans' preference: Title VII makes clear that it does not repeal or modify any Federal, State, territorial or local law creating special rights for veterans. (Sec. 712.)	Retains provisions of existing law.	Retains provisions of existing law.
Rules and regulations: The EEOC is empowered to issue, amend, or rescind suitable procedural regulations to carry out its functions. Such regulations must be in conformity with the standards and limitations of the Administrative Procedures Act. (Sec. 713(a).) In any action or proceeding based upon an alleged unlawful employment practice, no person will be subject to any liability or punishment because of the commission of an unlawful employment practice if he	Retains provisions of existing law. The bill would amend the EEOC's rule-making authority to authorize it, except in specified instances, to delegate its powers with respect to investigating, conciliating, hearing, determining, ordering, certifying,	Retains provisions of existing law.

shows that the act complained of is in good faith, in conformity with, or in reliance upon a written interpretation of the EEOC. No such person will be subject to any liability or punishment because of his failure to publish or file such information in good faith in conformity with instructions of the EEOC. These good faith defenses are effective even though the interpretation or opinion in question is modified or rescinded or is determined by judicial authority to be invalid and even though, after publishing or filing, it is determined by judicial authority not to be in conformity with the provisions of Title VII. (Sec. 713(b).)

reporting, etc. Exemptions from this broad authority to delegate include the power to issue cease and desist orders, the power to modify or set aside its findings, the power to make rules of general applicability, the power to enter or rescind agreements with State and local nondiscrimination agencies whereby it refrains from processing a charge in any case or cases or to relieve certain persons from record-keeping requirements; however, it is not given authority to provide for conduct of hearings by other than hearing officers as specified in 5 U.S.C. 556.

The EEOC may delegate to three or more of its members all of its power.

The bill also would extend criminal safeguards against interference with officials of 18 U.S.C. 1111 and 1114 to EEOC officers, agents and employees. (Sec. 8(g).)

Equal employment opportunity put under one roof:

The bill would repeal an obsolete provision of existing law that directed the Secretary of Labor to make a full and complete study of the problem of age discrimination in employment and to report to Congress thereon by June 30, 1965. In its place the bill would add a new provision transferring to the EEOC all functions in the area of non-discrimination by government contractors and subcontractors conferred upon the Secretary of Labor by Executive Order 11246, as amended, together with necessary personnel, property, records, and unexpended balances. (Sec. 10.)

Comparison of Title VII, Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, 253; 42 U.S.C. 2000e et seq., as proposed to be amended by S. 2515 (Williams et al.), 92d Cong., 1st sess., S. 2617 (Dominick), and H.R. 1746 (Erlenborn), 92d Cong., 1st sess., passed by the House of Representatives, Sept. 16, 1971—Continued

Title VII	S. 2515 (Williams, et al.)	S. 2617 (Dominick) and H.R. 1746 (Erlenborn)
	Equal employment opportunity, etc.—Con. A new section would be added to the Act dealing with non-discrimination in employment by the federal government. All personnel actions of the U.S. and D.C. governments affecting employees or applicants for employment are to be free of discrimination on account of race, color, religion, sex, or national origin. Aliens employed abroad are excluded from these provisions. The EEOC is authorized to carry out the policy against discrimination in employment by the government. It would be empowered to issue rules, regulations, orders and instructions appropriate to this end. Department and agency heads and D.C. officials concerned are directed to comply with EEOC directives. The EEOC is expressly directed to advise any complaining employee or applicant for employment of any final action on his complaint. A complaining employee or applicant for employment aggrieved by the final disposition of his complaint may, within 30 days of notification, sue the department or agency head or D.C. official concerned. The civil suit authorized by this section	

	forcement of EEOC orders. Relevant functions of the Civil Service Commission are to be transferred to the EEOC. The provisions applicable to government employment are to become effective six months after passage of this bill into law. (Sec. 11.)	
Miscellaneous: Title VII provides that "nothing in this title shall be deemed to exempt or relieve any person from liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit doing any act which would be an unlawful employment practice under this title." (Sec. 708.)	Retain provision of existing law.	Retains provisions of existing law.
Nothing in Title VII requires that preferential treatment is to be given to any individual or group on account of an imbalance that may exist with respect to the total number of persons of any race, color, religion, sex, or national origin in comparison with the total number or percentage of persons in that or any other community. This provision applies to the admission to apprenticeship or other training programs as well as hiring by employers, referrals or classifications by employment agencies, and admission to union membership. (Sec. 703(j).)	Retains provisions of existing law. The bill adds a provision which makes it clear that the new enforcement authority conferred hereby is not to apply to charges filed before this bill becomes law. (Sec. 12.)	Retains provisions of existing law.

DATE DUE